



# **HANDBOOK ON RTI ACT, 2005**



**RIGHT TO  
INFORMATION**

**VAW - 2024**

**Southern Railway**

**Vigilance Organisation**

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Vigilance Organisation**

**Handbook**

**On**

**RTI Act, 2005**

**VAW 2024**



## Foreword

The term “Right to Information” fundamentally refers to the citizens’ right to access information held by the government. As observed by the Hon’ble Delhi High Court in the case of **Secretary General, Supreme Court of India vs. Subhash Chandra Agarwal (LPA No: 501/2009)**, *“Information is currency that every citizen requires to participate in the life and governance of the society. In any democratic polity, greater the access, greater will be the responsiveness; and greater the restrictions, greater the feeling of powerlessness and alienation. Information is basis for knowledge which provokes thought, and without thinking process, there is no expression.”*

Sweden pioneered the right to access information with its law in 1766. By 1995, only 19 countries, primarily Western democracies, had implemented RTI laws. Today, more than 125 countries have enacted similar legislation, reflecting its global significance.

While the Constitution of India does not explicitly guarantee a right to information, the Hon'ble Supreme Court in several cases has affirmed that the right to information is implicit in the constitutionally enshrined rights to freedom of speech and expression [Article 19(1)(a)] and the right to life and liberty [Article 21]. Enacted in 2005, the Right to Information Act (RTI Act) was established to facilitate public access to information held by public authorities and to enhance transparency and accountability.

For officials handling RTI matters, particularly Public Information Officers (PIOs), a thorough understanding of the RTI Act, its provisions, and procedures is crucial. This handbook is crafted as an introductory resource to provide a foundational overview and practical insights into the RTI Act. It aims to equip officials with the knowledge needed to effectively manage RTI applications and appeals.

It is important to note that this handbook serves as an initial guide and should not be interpreted as comprehensive legal advice. The interpretations and

guidelines presented are based on the current understanding of the RTI Act and relevant case law. Readers are encouraged to study the detailed provisions of the Act, review judicial interpretations, and seek expert legal advice for a complete understanding of the RTI framework.

The books and resources referred to in the preparation of this handbook are cited in the bibliography. Readers are encouraged to consult these works to gain a more thorough and nuanced understanding of the law. Special appreciation is extended to Shri. Shaji M.K, Law Officer, Rail Wheel Factory, Bengaluru, for his meticulous review of the draft chapters and the valuable corrections suggested.

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## **DISCLAIMER**

The contents of this handbook should not be construed as legal advice; they are meant merely to serve as guidelines. The topics covered in this handbook should not be considered as exhaustive, nor should they be cited as authority in any official reference or produced in a court of law. Any reference, whenever necessary, should always be made to the original case laws, statute provisions etc., which are cited in this handbook.



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## What is “Information”?

### Information:

As defined in Section 2(f) of the Act, “Information” means- any material in any form, including:

✓ records	✓ documents
✓ memos	✓ e-mails
✓ opinions	✓ advices
✓ press releases	✓ circulars
✓ orders	✓ logbooks
✓ contracts	✓ reports
✓ papers	✓ samples
✓ models	✓ data material held in any electronic form and
✓ Information relating to any private body which can be accessed by a public authority under any other law for the time being in force.	

In legal jargon, the word “means” is used to give a strict and specific definition. When a term is defined with “means,” it only has the exact meaning given in that definition, and nothing else.

On the other hand, the word “includes” is used to broaden the meaning of a term. When a term is defined with “includes,” it means the definition covers not just the basic meaning of the term, but also any additional things that are not specifically mentioned in the definition, but are similar in nature to the word being defined.

When both “means” and “includes” are used in a definition [such as being used in the above definition of “information” under Section 2(f)], it provides a full and detailed explanation. This means that the term has a precise definition with extra details that must be considered according to the Act.

**Significance of the term “information”:**

If the details sought in any RTI application/appeal falls within the ambit of the term “information”, then such information is bound to be given, subject to exemptions under this act listed in Section 8 and 9 [Ref: - Section 7 (1)]. Over a period of time some more exemptions have evolved through judicial pronouncements and rulings of Information Commissions.

If the details sought in any such application/ appeal does not fall within the ambit of the term “information”, then such request shall not be accepted and is to be rejected by stating that the details sought are not covered under the term “information” under Section 2(f) of the act.

So, it is basic and essential to understand as to what constitutes “information” and what does not.

**“File Noting” is covered under the definition of “Information”?**

- The definition of “information” under Section 2(f) does not specifically mention “file noting” as one of the ingredients of information.
- The Central Information Commission (CIC) examined this issue and concluded that “file noting” is an integral part of the files and stands covered under the definition of “information” (***Shri Pyare Lal Verma vs Ministry of Railways; [CIC/OK/A/2006/00154]***).

## What is “Information”?

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- Accordingly, Department of Personnel and Training (DoPT) vide its Office Memorandum dated 23<sup>rd</sup> June 2009 had clarified that “file noting” can be disclosed, except file noting containing information exempt from disclosure under Section 8 of the Act.
- Therefore, “file noting” is also covered under the definition of “Information”.

## “Opinion” or “Advice” is covered under the definition of “information”?

- The definition of “information” under Section 2(f) specifically mentions “opinion” and “advice” as being included under the term “information”. Therefore, it would appear that the PIOs are expected to offer “opinion” or “advice” when asked under the act. However, it is not so.
- Hon’ble Supreme Court in the matter of **CBSE &Anr. Vs Aditya Bandopadhyay &Anrs. (CA No: 6454 of 2011)** has amply clarified the issue:

*“A Public Authority is also not required to furnish information which require drawing of inferences and/or making of assumptions. It is also not required to provide ‘advice’ or ‘opinion’ to an applicant, nor required to obtain and furnish any ‘opinion’ or ‘advice’ to an applicant. The reference to ‘opinion’ or ‘advice’ in the definition of “information” in Section 2(f) of the Act only refers to such material available in the records of the Public Authority. Many Public Authorities have, as a public relation exercise, provided advice, guidance and opinion to the citizens. But this is purely voluntary and should not be confused with any obligation under the RTI Act”.*

- Hon’ble Supreme Court in the case of ***Khanapuram Gandaiah vs Administrative Officer &Ors (SLP (Civil) No. 34868 of 2009)*** has observed the following:

*“This definition of ‘information’ under Section 2(f) shows that an applicant under Section 6 of the RTI Act can get any information which is already in existence and accessible to the Public*

*Authority under law. Of course, under the RTI Act, an applicant is entitled to get copy of the opinions, advices, circulars, orders etc., but he cannot ask for any information as to why such opinions, advices, circulars, orders etc., have been passed, especially in matters pertaining to judicial decisions”.*

- Hon’ble CIC in the case of ***Shri Vibhor Dileep Barla vs Central Excise & Customs; Appeal No. [CIC/AT/A/2006/00588]*** has observed that an ‘opinion’ or an ‘advice’, if it is a part of the record, is ‘information’- but one cannot seek from a PIO either an ‘opinion’ or an ‘advice’, as seeking such opinion or advice would be in effect seeking a decision- which the CPIO may not be competent or authorized to take. On the same analogy, answering a question or offering advice or making suggestions to an applicant is clearly beyond the purview of “information” under the RTI act.
- Further, Hon’ble CIC in the case of ***Shri. Yashpal Singh vs Directorate of Education, Delhi;***

**[CIC/AD/A/2013/001327]** has observed that “information” under Section 2(f) of the act means an opinion available in the records of the Public Authority and not the opinions of PIOs or Department about the subject raised by the applicant/appellant.

- Similarly, Hon’ble CIC in the case of ***Shri. Keshav Kumar Bhardwaj vs CPIO, DoPT; [CIC/MPERS/A/2017/170080]*** has held that the CPIO is not supposed to provide deduction/ clarification/ interpretation.
- It could be seen from the above plethora of decisions that seeking personal “opinion” or “advice” of the PIO does not fall within the ambit of “information” under the act, while the opinions and advices that are already available as a part of the records can be sought under the act.

**Furnishing reasons are covered under the definition of “information”?**

- There may be scenarios wherein the RTI applicant/appellant would have asked under the Act to furnish reasons for certain decisions. For example, there may be an RTI application from a bidder (who participated in a tender but his/her offer was not considered) requesting to furnish the reasons for non-consideration of his/her offer in that tender.
- As observed by Hon’ble Bombay High Court in ***Dr.Celsa Pinto vs Goa State Information Commission (WP No: A19 of 2007)***, the definition of “information” cannot include within its fold, answers to the question “why”. The public information authorities expect to communicate to the citizen the reason why a certain thing was done or not done in the sense of a justification because the citizen makes a requisition about information. Justifications are matter within the domain of adjudicating authorities and cannot properly be classified as “information”.
- As observed by Hon’ble CIC in the case of ***Shri Krishna Raghav vs Department of***

**Expenditure, [CIC/AT/A/2010/224]**, questions seeking explanations, reasons, advice etc., lie well beyond the scope of Section 2(f) and merit no response. Therefore, furnishing of reasons is not normally covered within the ambit of "information" under Section 2(f) of the act.

- However, through various rulings of CIC, a distinction has been drawn between 'interrogative queries' and queries relatable to a base document. In ***T.B.Dhorajiwala v. Dy. Registrar (Admn), IIT, Bombay, [CIC/SG/A/2008/00347+00277/1554]*** held:

*"The RTI act does not state that queries must not be answered, nor does it stipulate that prefixes such as 'why, what, when and whether' cannot be used. The PIO is right in accepting that what is asked must be a matter of record, but errs in imposing a new set of non-existent exemptions."*

It was ordered by the CIC to furnish information, if the queries were based on documents.

**Summary:**

To sum up, only such “information” can be furnished under this act, which already exists with the public authority. In simple words, the information which is already available on record can only be furnished under the act.

The public authority under the RTI Act is not supposed to:

- a) Create information for the sole purpose of providing it under the Act;
- b) Interpret the already available information and furnish it under the Act;
- c) Solve the problems raised by the applicant under the Act;
- d) Furnish replies to hypothetical questions;
- e) Offer personal opinions, advices, guidance etc., that are not already available in the records &
- f) Answer a purely speculative or interrogative query, which is not connected to any information available on records.

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## **What is “Right to Information”?**

As defined in Section 2(j) of the act, “Right to information”:

- means the right to information accessible under this Act which is held by or under the control of any public authority and
- includes the right to—
  - (i) inspection of work, documents, records;
  - (ii) taking notes, extracts or certified copies of documents or records;
  - (iii) taking certified samples of material;
  - (iv) obtaining information in the form of diskettes, floppies, tapes, video cassettes or in any other electronic mode or through printouts where such information is stored in a computer or in any other device;

As could be seen from the above, the definition contains both the words “means” and “includes”- which means that the term has a precise definition with extra details that must be considered according to the Act.

While reading the provisions of any Act, the cardinal principle of interpretation of statutes laying down that the various relevant provisions of any Statute/Act must be read together for a harmonious construction of the true purport of the Statute should not be lost sight of.

Accordingly, to construe the true intent of the RTI Act, the provisions of Section 2(j) of the Act cannot be read in isolation and must be read harmoniously along with the provisions of Section 2(f) and Section 2(i).

A combined reading of Section 2(f) and Section 2(j) reveals that the public authority is required to give information available in the material form and not advice, opinion or comments thereon. Citizens can also seek certified samples of the material in a number of cases. The definition of “Right to Information” includes sample of material. Apart from this, the definition of “record” indicates the type of documents that can be provided.

Section 2(i) defines “Record” as under:

*“Record” includes-*

*(a) any document, manuscript and file;*

- (b) any microfilm, microfiche and facsimile copy of a document;*
- (c) any reproduction of image or images embodied in such microfilm (whether enlarged or not) and*
- (d) any other material produced by a computer or any other device.*

Hon’ble CIC has delivered numerous decisions to clarify the definition of “right to information”. Gist of some of the decisions is given below:

**Shri, J.Nehru vs M/o Chemicals and Fertilizers**

**[CIC/MA/A/2010/000587]:**

In this case, the appellant stated before Hon’ble CIC that the information furnished to him is incomplete and misleading. He therefore pleaded for allowing inspection of relevant records and files so as to enable him to clearly specify the required information, which should be furnished to him.

Accepting the plea of the appellant, Hon’ble CIC directed the CPIO to allow inspection of relevant records under section 2 (j) of the Act. It was also held that upon inspection of documents, the appellant may clearly

identify and specify the information, which should be furnished to him as per the provisions of the Act.

**Shri Ram Bahadur Rai vs RCF [CIC/AD/C/2009/001239]:**

The applicant filed an RTI application with the PIO, RCF, Kapurthala stating that he would like to inspect the process of inspection and testing of supplies of “CG-12 Rev 1 Vinyl flooring” being or to be carried out by RCF, along with an expert, citing that the provisions of the RTI Act empowers the citizens to inspect any Government work. No reply was furnished by the PIO and also the FAA. Therefore, he approached Hon’ble CIC.

Citing an earlier decision in a similar case [CIC/AD/A/2010/000211], Hon’ble CIC rejected the request of the appellant, by observing as follows:

*“It is pertinent to note that in the instant case, the Appellant has sought inspection of the “process of inspection” rather than the outcome of the process reduced in the form of a report. The process of inspection sought to be inspected by the Appellant, does*

*not qualify as “information” since it does not fall within any of the specifications as stated in Section 2 (f)...*

*“..... The process of inspection is neither a record, nor document, nor email, opinion, advice nor does it qualify as information under any of the other clauses of Section 2(f) of the RTI Act. The “process of inspection” which is sought to be inspected by the Appellant does not qualify as a “record” defined under the Section 2 (i) of the RTI Act 2005 either. Hence the “right to information” as ensured under Section 2(j) of the RTI Act 2005, specifically the clause Section 2(j) (i) which makes **“inspection of work, documents, records.....”** accessible is not applicable to this case. Since no documents, records etc exists about the “process of inspection”, hence no work, in the form of a report, as an outcome of an inspection is available to be inspected by the Appellant”.*

*“The Appellant is however allowed to obtain samples of the supplies of CG-12 Rev 1 vinyl flooring, under provisions of the Section 2(j) (iii) of the Act, which the Appellant may get tested from an independent expert on his own. However, as discussed above, the scope and*

*ambit of the RTI Act does not provide for a citizen to inspect an ongoing inspection process till the outcome thereof is reduced to records forming information. In the event that such requests are allowed, it will only allow more and more volunteers seeking to inspect and oversee such inspection processes being carried out by experts”.*

**Mrs. Shamshul vs Hindustan Petroleum Corporation Limited [3094/IC(A)/2008]:**

In this case, the appellant *inter alia* sought samples of construction materials supplied by a contractor against a contract for construction of petrol pumps. CPIO stated that for safety reasons, it may not be possible to allow the appellant to take samples of construction materials for inspection and verification. He also said that for obtaining sample of material used in construction of petrol pumps, the permission of Explosive Department would have to be taken.

Hon’ble CIC allowed the appeal by observing the following:

*"5. An information seeker is free to seek and obtain sample of materials used in any civil or electrical works, so as to determine the quality of work completed by the contractors, in terms of the standards prescribed in the contract between the parties. Accordingly, the CPIO is directed to allow the appellant to inspect the civil work by obtaining the sample of materials used by the contractors. He should accordingly identify the sites, which have been completed at the rates below the SOR rates prescribed by the respondent.*

*6. The necessary permission of the Explosive Department should also be obtained to ensure safety of the sites. Both the parties should cooperate in the matter of allowing the appellant to ascertain and verifying the quality of civil work services provided by the contractors within 15 working days from the date of issue of this decision notice".*

**Shri Ram Bahadur Rai vs RDSO, Lucknow**  
**[CIC/AD/A/2010/000618 and CIC/AD/A/2010/000619]:**

The applicant in two RTI applications to RDSO had sought sample of PVC vinyl flooring and Vinyl coated

Upholstery Fabric from all the zonal Railways from the supplies of both these items.

Hon’ble CIC directed the PIO to transfer both the RTI applications to all the concerned Zonal Railways where the different samples were available, with the direction to provide the required samples (only one sample of one sq. meters in area of material, from material supplied by each of the manufacturers of both the items)- each sample certified by the Public Authority as having been tested, free of cost to the appellant.

**Shri Sanjay Singh vs PWD [CIC/WB/A/2006/00144]:**

The applicant sought to inspect the work on increase in the width of a road and asked to inspect Measurement Book, details of estimate and sketches etc., Accordingly, he was invited to inspect the work and record. He further sought to make a visual recording of the inspection but he was stopped and threatened.

Hon’ble CIC held in this case that if an applicant wishes to make copies of records/ samples given to him for inspection at his own expenses; it is not for the Public Authority to object to the form in which the copies are being made, provided it is restricted to the information

permissible under the Act. The Commission further observed that there is no provision in the Act disallowing videography, and, therefore cannot be excluded unless it violates the parameters of any information sought and agreed to be provided.

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### **What is “Public Authority”?**

The RTI Act, 2005 is only applicable to public authorities. Therefore, it becomes imperative to define what a public authority is.

As per Section 2(h) of the act, “Public Authority” means any authority or body or institution of self-government established or constituted:

- a) by or under the Constitution
- b) by any other law made by Parliament
- c) by any other law made by State Legislature
- d) by notification issued or order made by the appropriate government, and includes any-
  - i. body owned, controlled or substantially financed
  - ii. non-Government organization substantially financeddirectly or indirectly by funds provided by the appropriate government.

Needless to say, “Ministry of Railways” is a public authority under the Government of India and is therefore covered under the provisions of the Act.

Entities registered under various laws or establishment of a body under a statute will not automatically render it a public authority for the purposes of the RTI Act, as held by Hon'ble Delhi High Court [***NSE of India Ltd. v. CIC, WP (C) No. 4748/2007***]. Therefore, companies incorporated under the Companies Act, 1956 and Societies and Trusts registered under relevant laws do not become public authorities. In another case, Hon'ble Delhi High Court has held that the second part of the definition [i.e., i& ii of Section 2(h)] bring bodies that may not have been established by or under a notification, but are still substantially financed, owned or controlled by the Government. [***Indian Olympic Association v. Veeresh Malik, WP (C) No. 876/2007***].

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## Deemed PIO

The PIO may not have all the information of an organization under his/her direct control. He/she may have to take help from other officials in the organization, before he/she is in a position to process and reply to an RTI application.

Sections 5(4) and 5(5) of the Act provide for the nomenclature, role and responsibilities of such officials whose help is sought by the PIO in satisfactorily performing his/her role as a PIO. These sections state as under:

*“5 (4) The Central Public Information Officer or State Public Information Officer, as the case may be, may **seek the assistance of any other officer** as he or she considers it necessary for the proper discharge of his or her duties.*

*5 (5) Any officer, whose assistance has been sought under sub-section (4), **shall render all assistance** to the Central Public Information Officer or State Public Information Officer, as the case may be, seeking his or her assistance and for the **purposes of any***

**contravention of the provisions of this Act, such other officer shall be treated as a Central Public Information Officer** or State Public Information Officer, as the case may be.”

(Emphasis supplied)

As per this sub-section, any official whose help is sought by the PIO must provide such help. Further, if, during this process, the provisions of the Act are not adhered to, such an official, whose help was sought by the PIO, would be considered as the deemed PIO.

It sometimes happens that an official other than the PIO is in control of the information which has been sought by an applicant. The PIO may request the assistance of this official in obtaining this information in order to process the application and decide upon the course of action to be taken in respect of disclosure or otherwise.

But the said official may take it upon himself/herself to decide if the information should be disclosed or not. He/she may not want even the PIO to see the

information. The said official may or may not be right in adopting such a position.

Whatever his/her stand, this official will have to assume the responsibility of his/her decision as the deemed PIO and will be liable to imposition of penalties and/or recommendation of disciplinary action to be initiated against him, under the Service rules applicable to him, for contraventions of the provisions of the Act.

This is a very important provision in the act, as it protects the PIO from imposition of penalty for contravention of provisions in the act, in case it is established that the deemed PIO is actually responsible for such contraventions.

**Shri Ashkeen Ahmed vs Superintendent Engineer & PIO, Public Works Department [CIC/SG/A/2009/001306/4013]:**

The appellant sought detailed information regarding the repair works carried out in a road. The PIO transferred the application to Superintendent Engineer, PWD under Section 5(4), who in turn transferred it to the Executive

Engineer. The appellant did not get complete information within 30 days.

Hon'ble CIC held that the deemed PIO (Executive Engineer) is guilty of not furnishing information within 30 days and was penalized with Rs. 25,000/- which is the maximum penalty, since the delay in furnishing information in this case was beyond 100 days.

**Shri Kanhiya Lal vs Directorate of Education, Delhi**  
**[CIC/SG/A/2009/000713/3494]:**

The appellant sought information for fourteen queries, but did not get reply to all of them. The PIO stated that he provided the information within time for eleven queries. However, answers to the remaining three queries were to be made available by the Regional Director (North), whose assistance was sought by the PIO. The PIO further stated that the Regional Director (North) objected to the information being sought from her, since she is a First Appellate Authority (FAA), thus resulting in his inability to provide the information in respect of the remaining three queries.

Hon'ble CIC observed that all authorities and officers who hold information are duty-bound to provide the information when a PIO seeks assistance under Section 5(4). Any public servant, no matter how high, will have to provide the assistance so that the PIO can discharge his/her duty under the RTI act. The deemed PIO (who was also the FAA in this case) was found guilty and was penalized with Rs. 25,000/- which is the maximum penalty, since the delay in furnishing information in this case was beyond 100 days.

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### **Third Party Information**

“Information” pertaining to “third party” is called as “Third party information”. While the term “information” has been defined under Section 2(f) of the act, “third party” is defined under Section 2(n) of the Act.

As per Section 2(n) of the Act, "third party" means a person other than the citizen making a request for information and includes a public authority.

Third party information means the information which belongs to someone other than the applicant. For example, “X” seeks information about his wife from a public authority in which his wife is employed. Here, “X” is the applicant and he is seeking information about his wife- who is the third party. Therefore, the information sought would be called as “third party information”.

The procedure for furnishing third party information is given in Section 11 of the RTI Act, 2005. It is as follows:

- 1) PIO receives the application from the applicant and ascertains that the information being sought

is related to or supplied by a third party and treated as confidential by the third party.

- 2) If the PIO intends to disclose the information or part thereof, if the same do not come under the ambit of Section 8 or 9, then the PIO sends a notice to the third party informing him/her that the supplied information is being sought. This notice must be sent within five days of the receipt of the application. This notice is sent only if the PIO intends to disclose the information.
  
- 3) PIO makes the decision based upon the submission made (which is to be made by the third party within ten days). If the third-party information is not relating to trade or commercial secrets, such disclosure may be allowed if the public interest in disclosure outweighs in importance any possible harm or injury to the interests of such third party. (However, “public interest” has not been defined in the RTI act and it needs to be examined on merits of each case).

- 4) PIO has to provide a reply to the applicant within 40 days of the receipt of the RTI application.
  
- 5) Third-party may file an appeal to the FAA under Section 19, in case he/she is aggrieved by the decision of the PIO to allow the disclosure of the information to the applicant.

This procedure under Section 11 is to be followed, only if the PIO intends to disclose such third-party information. In case the PIO has come to the conclusion that the information is exempt under Section 8 or Section 9, the question of following the procedure provided in Section 11 does not arise.

It may be noted that Section 11 is not a ground of exemption for rejection of information. The exemptions under the Act are provided only under Section 8 and Section 9. Section 11 contains nothing but a procedure for an affected party to raise his objections regarding the releasing of information which is considered by the third party as confidential in nature.

**Pawan Kumar Saluja vs CPIO, Income Tax Office**  
**[CIC/CCITD/A/2019/120284]:**

In this case, the husband had sought the income tax returns of his wife, which was denied to him by PIO. Hon'ble CIC held that filing Income Tax Returns by an individual with the Income Tax Department is not a public activity.

The appellant requested that Section 11 should be invoked. The contention was rejected on the following ground:

*“The CPIO is expected to follow the procedure of Section 11 when he 'intends to disclose any information or record'. In the present case, the CPIO did not find any merit in disclosure and accordingly, Section 11 was not invoked”.*

In simple words, Section 11 is only invoked when the PIO intends to disclose the information. Here, there was no intention to disclose the information, and so section 11 was correctly not invoked. Lastly, section 8(1)(j) was used to deny the information to the applicant.

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**Mr. P.Vijayan vs Southern Railway**  
**[CIC/SG/A/2009/000463/3074]:**

In this case, the appellant sought community certificates of seven persons working in Southern Railway, which was refused under Section 11.

Hon'ble CIC observed that the information which is routinely collected by the Public Authority and routinely provided by individuals, would not be an invasion on the privacy of an individual. Copies of community certificates given by employees to get a job cannot be denied under the RTI Act.

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## **What to do on receipt of an RTI application?**

As per Section 6(1) of the act, a person who desires to obtain any information under the act, shall make a request to CPIO/CAPIO (CPIO: Central Public Information Officer, CAPIO: Central Assistant Public Information Officer) of the concerned public authority, specifying the particulars of the information sought. Such request for information under the Act shall be accompanied by such fee as prescribed under the rules. Currently, the fee for filing the application for persons above the poverty line is Rs.10/-, while it is free of cost for persons below the poverty line- subject to furnishing of proof that the applicant is below poverty line.

On receiving an RTI application, it would be prudent to first examine the same before processing it further. Affirmative answers to each of the following questions would mean that the application can be processed further: (These questions are only illustrative and shall not be construed as exhaustive)

- 1) Whether the application pertains to Ministry of Railways?

- 2) Whether the language of the application is as per the Act?
- 3) Whether the application is signed and contains the details necessary for furnishing reply to the applicant?
- 4) Whether the application fee has been paid in the appropriate manner?
- 5) Who has submitted the application?

Each of the above questions is explained further below:

### **1) Whether the application pertains to Ministry of Railways?**

- If the application is not related to the Ministry of Railways and the Public Information Officer (PIO) doesn't know which public authority it belongs to, the applicant is to be informed that the application is not pertaining to the Ministry of Railways and that the PIO cannot determine which organization it should go to. As a result, no action can be taken on the application.

- If the application is not related to the Ministry of Railways but the Public Information Officer (PIO) knows the appropriate public authority it should be sent to, the PIO of the Ministry of Railways must transfer the application to the appropriate PIO of that organization within 5 days of receiving it, as per Section 6(3) of the Act. The applicant should be informed about this transfer.

## **2) Whether the language of the application is as per the act?**

- As per Section 6(1) of the act, the application filed under the Act shall be written in English or in Hindi or in the official language of the area in which the application is being made.
- For example, if an applicant residing in Kerala has submitted an application to the PIO in Tamil Nadu, the language options available for submitting such an application would be: (1) English or (2) Hindi or (3) Tamil (and not Malayalam).

- If the application does not satisfy the above condition, then it may be rejected. If the application satisfies the above condition, it can be processed further.

### 3) Whether the application is signed and contains the details necessary for furnishing reply to the applicant?

- The applicant's signature or thumb impression is required for the application to be in order.
- If the application is not signed, then the same must be rejected on this ground. While rejecting the application, a copy of the application may be sent to the applicant to show that his/her signature is missing. [Ref:-***Binesh.C.P. v. CPIO. File No. CIC/LS/A/2013/901474***]
- If an application does not contain the contact address, e-mail address and the phone number of the applicant then it is not possible for the PIO to furnish reply to the applicant. In other words, at least one among the above three details is

required to be incorporated by the applicant to facilitate furnishing of information. Since it is mandatory to include in the application, such details as necessary for contacting the applicant [Section 6(2)], the absence of at least one such detail justifies rejection of the application. In such cases, the application need not be processed and may be filed with appropriate remarks.

#### **4) Whether the application fee has been paid in the appropriate manner?**

- As per Rule 6 of the DoPT notification dated 31<sup>st</sup> July 2012, the application fee may be paid in any one of the following modes:
  - a) In cash, to the public authority or to the CAPIO of the public authority, against a proper receipt
  - b) By way of demand draft (DD) or Bankers' Cheque or Indian Postal Order (IPO) payable to the Accounts Officer of the public authority or
  - c) By Electronic means to the Accounts Officer of the public authority.

- Some State Governments have permitted payment of application fee by way of Court fee stamp also. But Court fee stamp is not permitted for public authorities coming under the Central Government. In other words, for any RTI application pertaining to Ministry of Railways, payment of application fee by way of court fee stamp is not a valid mode of payment.
- If the applicant has paid the application fee by way of financial instruments such as DD, Bankers' Cheque or Indian Postal Order, it is equally important to check whether these instruments would remain valid at the time of encashment of the same by the PIO.
- Demand drafts (DD) have a validity period of 3 months from the date of issue (printed on DD). If it is not presented within its validity period, the DD becomes invalid.
- Bankers' Cheques (which are non-negotiable financial instruments and are different from normal

cheques) have a validity period of three months from the date it is issued.

- The validity period of Indian postal order (IPO) is 24 months from the last day of the month of issue. It can be paid during the next 12 months from the last date of the month of issue on payment of second commission. Thus, IPO older than 36 months from last date of the month of issue will be forfeited if presented for payment.
- Therefore, if the application fee has not been paid in the appropriate manner or if the validity period of the instruments such as DD, Bankers' Cheque or Indian Postal Order (by way of which the application fee was paid by the applicant) expired, the application must be rejected on this ground. While rejecting the application, a copy of such instrument is to be sent to the applicant, if the originals are retained by the PIO.

## 5) Who has submitted the application?

- As per Section 3 of the Act, the right to information is available only to the citizens of India. Therefore, the PIO must ensure that the application has been submitted by a citizen of India.
- Normally from the name and contents of the application, a fairly safe presumption can be made regarding the citizenship of the applicant. However, in case of doubt, the PIO can ask the applicant to give proof of his/her citizenship (such as Passport, Aadhar Card etc.,)
- As observed by Hon'ble CIC in ***R.K.Malik vs CPIO and Anr. (CIC/MESER/A/2018/168728)***, nowhere the Section 3 of the Act states or implies that the applicant would be required to prove his/her citizenship every time he/she was asking for information. In the rarest of rare cases where there is a doubt that the applicant is indeed an Indian citizen, the PIO may ask the applicant to

furnish proof of citizenship. This, however, can only be an exception rather than the rule.

- Proprietorship concern, Partnership firm, Private Limited Company, Public Limited Company, Department of a public sector unit, a Government Department etc., are entities that do not fall under the definition of “Indian Citizen”. If any RTI application has been filed by these entities, then such an application must be rejected on the grounds that the application has not been submitted by a citizen of India.
- In ***M/s. Lyka Labs Limited vs Ministry of Chemicals & Fertilizers (CIC/SS/A/2011/001130)***, it was held that the RTI act empowers only the citizens of India to obtain information from the public authorities. A company is not a citizen and so is not eligible to seek information under the said act.
- However, a person can file an RTI application on behalf of a company. In other words, an employee

**What to do on receipt of an RTI application?**

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or an office-bearer of the company can file the RTI application on behalf of the company indicating his/her name and mentioning that he/she is a citizen of India. In such a case, the information shall be provided.

If the application meets all the above criteria, it can be processed further.

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## **Processing the request for information**

If the application received is proper in all the aspects discussed in the previous chapter, the next step is to process the request for information.

The application is to be read thoroughly and is to be understood with reference to the following:

- 1) Is information being sought?
- 2) Does the information pertain to your administrative unit?
- 3) Is the information sought available?
- 4) Can the information be disclosed?

### **1) Is information being sought?**

- The application must be perused to see if information is being sought through the same and if it satisfies the conditions given in Section 2(f).
- Many citizens use the Act as a platform to air their grievances and to seek redressal of the same through their applications. Such applications read like a complaint letter, seeking compensation or

request penalty/punishment to be imposed on the officials of the public authority.

- Such applications must be rejected on the grounds that information, as defined under Section 2(f) of the Act, has not been sought. Further, the applicant must also be advised that the act cannot be used as a grievance redressal platform.

## **2) Does the information pertain to your administrative unit?**

- The information sought may be held by Ministry of Railways, but not necessarily, by the department which come under your control. In such cases, the application is to be forwarded to the PIO of the relevant department immediately.
- It is important to note that Section 6(3) of the Act provides for these additional five days only when the application is transferred to a PIO of another public authority.

- Section 6(3) of the Act empowers the PIO to transfer RTI application to the PIO of another public authority- not within the same public authority. Going by the legal maxim “*expressio unius est exclusio alterius*” (to express or include one thing implies the exclusion of the other, or of the alternative), this provision bars transfer of RTI request from one PIO to another PIO of the same Public Authority.
- In ***Yuvraj Sharma v. CPIO HQ CE (WAC) AF, Palam, Delhi Cantt., [CIC/IARMY/C/2017/173876]***, Hon’ble CIC held: “It shall be noted that under Section 6(3) of the RTI Act, a RTI Application is to be transferred to another public authority altogether where information sought is under the control of that public authority and it is not to be invoked for procuring the information from within the same public authority”.
- However as an exception, Hon’ble CIC in the case of ***J.K.Mittal v. Delhi Police/PHQ***

**[CIC/SS/A/2012/003779]** held that a CPIO is allowed to transfer an RTI application, or part of it, to another CPIO within the same public authority for practical purposes, especially if the public authority has a large number of PIOs.

### 3) Is the information sought available?

- Information held with an office may not always be available. It is possible that the information supposedly held by the public authority would have been destroyed as per the record retention policy of the public authority.
- The RTI Act does not require the public authority to retain records for indefinite period. The information needs to be retained as per the record retention schedule applicable to the concerned public authority. [CIC in ***Balhadra Vyas v. Dept. of Posts. F. No. CIC/BS/A/2014/000882***].
- Under such circumstances, the application must be rejected on the grounds that the information

sought does not exist anymore as it has been destroyed as per the record retention policy.

- However, such a reply should be sent only after ensuring that the records have actually been destroyed as per the policy and that proof of destruction is held on record. Also, once the application has been received, the said record if available at the time of receipt of the application, cannot be destroyed for the sake of rejecting the application under such ground.

#### **4) Can the information be disclosed?**

- Unless the information sought by the applicant falls into the categories listed under Section 8 and Section 9 of the act, there is no justification for the PIO to refuse to disclose the information.
- Partial disclosure of information is permitted under Section 10(1) of the act. This is also known as the “Doctrine of Severability”. However, in such cases, the applicant must be informed that only part of the information requested, after severance

of the record containing information which is exempt from disclosure, is being provided, duly citing the reasons on which such decision was based.

- For example, an application under the Act was received seeking disclosure of complete investigation report. In such a case, the CIC held that disclosure of complete investigation report to the Appellant may endanger the life of the persons who contributed to investigation process, namely witnesses and the Investigation Officer. It was therefore, directed that the PIO shall furnish the copy of the said investigation report only after severing from it under Section 10(1) of the RTI Act the names of the investigation officer and the names of witnesses which attract exemption under Section 8 (1) (g) of the RTI Act. [***J.P.Singh v. Ministry of Railway, Railway Board; CIC/AD/A/2012/000187***].
- In the case of ***Rakesh Kumar Gupta (Union Bank of India) & Anr. Vs CIC and Anr [W.P (C)***

**900/2021]**, Hon'ble Delhi High Court stated the following:

- a) *No Public Information Officer can withhold information without any reasonable cause;*
- b) *Every effort should be made to locate the information, and the fear of disciplinary action should work as a deterrent against the suppression of information for vested interests.*
- c) *The Public Information Officer cannot function as a mere post office but instead must be responsible to ensure that the information sought under the Act is provided.*
- d) *The Public Information Officer must apply his mind, analyze the materials and then direct disclosure or give reasons for non-disclosure. The Public Information Officer cannot rely upon sub-ordinate officers.*
- e) *Information cannot be refused without reasonable cause.*

- In ***S.Mathur vs Public Information Officer of Delhi High Court [2011 SCC OnLine Del 2592]***, the Hon'ble Court stated the following:

*“The scheme of the RTI Act, its objects and reasons indicate that disclosure of the information is the rule and non-disclosure the exception. A public authority that seeks to withhold information available with it has to show that the information sought is of the nature specified in Section 8 RTI Act”.*

- In the case of ***Shri.R.Ganesan vs CPIO & Superintendent of Post Offices, Dindigul Division [CIC/BS/A/2013/000040]***, Hon'ble CIC held the following:

*“Access to information, under Section 3 of the Act, is the rule and exemptions the exception. The information can be denied only if it is exempt as per the provisions of Section 8 or 9 of the RTI Act. Further, while denying information, the authority withholding the information must show satisfactory reasons and such reason should be germane and based on some material”.*

## **Exemption from disclosing information--**

### **An introduction**

The Act puts reasonable restrictions on providing of information. It does not guarantee that whatever information one seeks shall be provided. Section 7 (1) restricts denial of information to “any of the reasons specified in sections 8 and 9”. Section 8(1) of the Act lists out 10 aspects/ categories under which the PIO can reject the application and refuse to disclose such information that are covered under any of these categories.

Section 8(1) of the Act begins with a *non-obstante* clause and stipulates that notwithstanding any other provision under the Act, information need not be furnished when any of the clauses (a) to (j) apply. In other words, right to information is subject to exceptions or exclusions stated in Sections 8(1)(a) to 8(1)(j) of the Act, which are furnished below:

*8. Exemption from disclosure of information. —*

*(1) Notwithstanding anything contained in this Act, there shall be no obligation to give any citizen, —*

- a) information, disclosure of which would prejudicially affect the sovereignty and integrity of India, the security, strategic, scientific or economic interests of the State, relation with foreign State or lead to incitement of an offence;*
  
- b) information which has been expressly forbidden to be published by any court of law or tribunal or the disclosure of which may constitute contempt of court;*
  
- c) information, the disclosure of which would cause a breach of privilege of Parliament or the State Legislature;*
  
- d) information including commercial confidence, trade secrets or intellectual property, the disclosure of which would harm the competitive position of a third party, unless the competent authority is satisfied that larger public interest warrants the disclosure of such information;*

- e) *information available to a person in his fiduciary relationship, unless the competent authority is satisfied that the larger public interest warrants the disclosure of such information;*
  
- f) *information received in confidence from foreign Government;*
  
- g) *information, the disclosure of which would endanger the life or physical safety of any person or identify the source of information or assistance given in confidence for law enforcement or security purposes;*
  
- h) *information which would impede the process of investigation or apprehension or prosecution of offenders;*
  
- i) *cabinet papers including records of deliberations of the Council of Ministers, Secretaries and other officers;*

*Provided that the decisions of Council of Ministers, the reasons thereof, and the material on the basis of which the decisions were taken shall be made public after the decision has been taken, and the matter is complete, or over:*

*Provided further that those matters which come under the exemptions specified in this section shall not be disclosed;*

- j) information which relates to personal information the disclosure of which has no relationship to any public activity or interest, or which would cause unwarranted invasion of the privacy of the individual unless the Central Public Information Officer or the State Public Information Officer or the appellate authority, as the case may be, is satisfied that the larger public interest justifies the disclosure of such information:*

*Provided that the information which cannot be denied to the Parliament or a State Legislature shall not be denied to any person.*

It is evident from the above that:

- a) there is a complete ban on disclosing information under Sections 8(1)(a), 8(1)(b), 8(1)(c), 8(1)(f), 8(1)(g), and 8(1)(h).
  
- b) the Act allows for the disclosure of information otherwise prohibited under Sections 8(1)(d), 8(1)(e), and 8(1)(j), if the competent authority deems that the larger public interest warrants such disclosure.
  
- c) the restrictions on providing information specified in Section 8(1)(i) are subject to the two conditions (provisos) detailed in that section.

Notwithstanding any of the above stated exemptions under Section 8(1) and also anything contained in the Official Secrets Act of 1923, Section 8(2) of the Act allows a public authority to provide access to information, if public interest in disclosure of such information outweighs the harm to the protected interests. In other words, even though a complete ban on disclosing information appears to have been

envisaged under Sections 8(1)(a), 8(1)(b), 8(1)(c), 8(1)(f), 8(1)(g), and 8(1)(h) of the Act, such information can still be allowed to the applicant/appellant, if the public authority is of the view that such disclosure would be in public interest, which would outweigh the harm to the protected interests.

Therefore, it could be seen that the decision for disclosure of information, even if restricted under this Act, can be taken by the public authority- if it is satisfied that such disclosure would be in the larger public interest. However, the term “public interest” is nowhere defined under the Act and therefore has to be interpreted on a case-to-case basis.

Hon’ble Supreme Court in the matter of ***Bihar Public Service Commission v. Saiyed Hussain Abbas Rizwi: (2012) 13 SCC 61***, while explaining the term “Public Interest” observed the following:

*“The expression "public interest" has to be understood in its true connotation so as to give complete meaning to the relevant provisions of the Act. The expression "public interest" must be*

*viewed in its strict sense with all its exceptions so as to justify denial of a statutory exemption in terms of the Act. In its common parlance, the expression "public interest", like "public purpose", is not capable of any precise definition. It does not have a rigid meaning, is elastic and takes its colour from the statute in which it occurs, the concept varying with time and state of society and its needs (State of Bihar v. Kameshwar Singh([AIR 1952 SC 252])). It also means the general welfare of the public that warrants recognition and protection; something in which the public as a whole has a stake [Black's Law Dictionary (8th Edn.)].*

In ***Mardia Chemical Limited v. Union of India (2004) 4 SCC 311***, the Hon'ble Supreme Court of India recognised the significance of Public Interest and had observed as under:

*".... Public interest has always been considered to be above the private interest. Interest of an individual may, to some extent, be affected but it cannot have the potential of taking over the public*

*interest having an impact in the socio-economic drive of the country....”*

The Hon'ble Supreme Court in the matter of **Ashok Kumar Pandey vs The State Of West Bengal (WP(Crl.) 199 of 2003)** had defined the meaning of “public interest”, citing Strouds Judicial Dictionary, Volume 4 (IV Edition), which is furnished below:

*"Public Interest- (1) a matter of public or general interest does not mean that which is interesting as gratifying curiosity or a love of information or amusement but that in which a class of the community have a pecuniary interest, or some interest by which their legal rights or liabilities are affected."*

In **Sanjeev Goel vs CPIO, External Affairs [CIC/MOEF/A/2018/146793]**, Hon'ble CIC observed as follows:

*“Public Interest in access to information refers to something that is in the interest of the public welfare to know. Public welfare is widely different from what is of interest to the public. “Something*

*which is of interest to the public” and “something which is in the public interest” are two separate and different parameters. For example, the public may be interested in private matters with which the public may have no concern and pressing need to know. However, such interest of the public in private matters would repudiate and directly traverse the protection of privacy. The object and purpose behind the specific exemption vide clause (j) to Section 8(1) is to protect and shield oneself from unwarranted access to personal information and to protect facets like reputation, honour etc., associated with the right to privacy. The public interest test in the context of the RTI Act would mean reflecting upon the object and purpose behind the right to information, the right to privacy and consequences of invasion, and breach of confidentiality and possible harm and injury that would be caused to the third party, with reference to a particular information and the person”.*

*Section 9. Grounds for rejection to access in certain cases:*

*Without prejudice to the provisions of Section 8, a Central Public Information Officer or a State Information Officer, as the case may be may reject a request for information where such a request for providing access would involve in infringement of copyright subsisting in a person other than the State.*

However, Section 9 does not mostly come into play while dealing with RTI requests of Railways.

The next chapters will briefly explain the Sections often used to reject applications under the Act and whether they are appropriate.

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**Exemption from disclosing information-**  
**Section 8(1)(b)**

As per this Section, information can be withheld which has been expressly forbidden to be published by any court of law or tribunal or the disclosure of which may constitute contempt of court.

Most of the PIOs usually withhold such information on the ground that the matter is *sub-judice*, without going into the merits of the case. A prohibitory order from the Court/Tribunal is a *sine qua non* for denial of information under Section 8(1)(b). Even if a Court/Tribunal has not expressly forbidden publishing certain information, if the disclosure of the same constitutes contempt of court, then the information can be denied.

Hon'ble CIC in the case of ***Shri Bihari Singh vs Allahabad Bank, [CIC/SG/A/2012/001239]*** has held that the PIO had incorrectly applied the exemption under Section 8(1)(b) and denied the information on the ground that any proceedings in a court of law or tribunal are exempt. It was clarified by Hon'ble CIC in this case that the lawmakers have specifically exempted

information which has been expressly forbidden by any court of law or tribunal but not exempted matters merely because they are *sub-judice*.

Hon'ble CIC in the case of ***Dr.Prasanna T vs Jawaharlal Institute of Postgraduate Medical Education and Research, [CIC/AD/C/2011/901017]*** has rejected the contention of the respondent that the information cannot be given as per Section 8(1)(b), since no evidence was adduced to show that there was a specific prohibition or ban by any court/tribunal on disclosure of the information sought.

In the case of ***Shri Sandeep Garg vs Ministry of Home Affairs (MHA), [CIC/WB/A/2007/00292]***, Hon'ble CIC held that mere pendency of a *lis* before a court does not signify exemption of information under Section 8(1)(b).

It could be seen from the above that an explicit order from any court of law or tribunal forbidding publication of the information asked for is one of the pre-requisites for application of Section 8(1)(b). In the absence of such

explicit order, the information cannot be denied citing this Section.

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**Exemption from disclosing information-**  
**Section 8(1)(d)**

As per this Section, information can be withheld if it relates to commercial confidence, trade secrets or intellectual property, the disclosure of which would harm the competitive position of a third party.

This provision is cited by PIOs in several instances to reject the applications seeking information pertaining to tender documents. Stating that the minutes of the tender committee proceedings and the documents furnished by the bidders are relating to commercial confidence, such applications were rejected.

Hon'ble CIC in the case of ***Harish Kumar Joya v. East Central Railway, [CIC/MA/A/2009/000776]*** has observed the following:

*“The minutes of the Tender Committee should ideally be put in public domain, so as to enable the citizens to observe and scrutinize the decision-making process in the matter of award of tenders. While the respondent has refused to provide the information on the ground that “the tender committee minutes is a confidential*

*document" the relevant provisions of the Act under which exemption is claimed from disclosure of information has not been indicated. Therefore, the denial of information merely on the ground of confidentiality of the document is unacceptable".*

Hon'ble CIC in the case of **Raj Kapoor v. CPIO, Kendriya Vidyalaya, New Delhi, [CIC/KVSAN/A/2018/106722]** has observed the following:

*".... the Commission noted that the desired information such as details of contracting agency, tenders/quotation (technical and financial bids), rates, rules/regulations/instructions of minimum service charges etc. should be suo motu disclosed in the public domain for the ease and convenience of the Public at Large as per the provisions of the RTI Act, 2005. The Commission thereby directed the Respondent to furnish the certified copies of the desired information as referred in the RTI application to the Appellant".*

Relying upon a judgment of Hon'ble Jharkhand High Court (***State of Jharkhand vs Navin Kumar Sinha and Anr., AIR 2008 Jharkhand 19***), Hon'ble CIC in ***Raj Kapoor v. CPIO, KV, AAI Rangapuri, New Delhi, [CIC/KVSAN/A/2018/174208]*** observed the following:

*“26.....The question therefore that falls for consideration is as to whether disclosure of various documents submitted by the bidders is a trade secret or commercial confidence or intellectual property. Prima facie, we are of the view that once a decision is taken in the matter of grant of tender, there is no justification to keep it secret. People have a right to know the basis on which the decision has been taken”.*

*“.... the fact that the appellant sought for information is regarding the details of the contract already awarded with comparative details, the matter can no longer be considered confidential. In fact, such type of information relating to awarding of a contract for a specific purpose should be available on the website of the organisation suo motu so as to show the transparency with which the tenders are*

*scrutinised vis-à-vis the criteria laid down. This will show competing parties why the contract as awarded to a particular party and not them.”*

Hon'ble CIC in the case of **Mr. Syed Khasim Hussain vs Heavy Water Plant, [CIC/SM/A/2013/000040]** observed that after the bid process is over, the desired documents could be disclosed subject to the usual exemption provisions contained in the RTI act. The CIC noted that in any bid document, there could be some records which happen to be the intellectual property of the bidder and cannot be disclosed; rest all the documents furnished in a tender process can be disclosed. The CIC directed the PIO to re-visit the bid documents and disclose the copies thereof to the appellant excluding those documents which were in the nature of the intellectual property of the bidder.

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**Exemption from disclosing information-**  
**Section 8(1)(e)**

As per this Section, information can be withheld if such information is available to the public authority in a fiduciary relationship, unless the competent authority is satisfied that the larger public interest warrants its disclosure.

**What is “fiduciary relationship”?**

- The word “fiduciary” is derived from the Latin word *fiducia* meaning “trust”. It is often used as an alternative term for “trustee”.
  
- The term “fiduciary relationship” can be defined as a relationship where one person places complete confidence in another to a particular transaction or one’s general affairs or business. Typical fiduciary relationships exist between agents and principals, client and attorney, trustees and beneficiaries, doctor and patient, banker and customers etc.,

- It is necessary that the principal character of the relationship is the trust placed by the provider of information in the person to whom the information is given. An equally important characteristic for the relationship to qualify as a fiduciary relationship is that the provider of information gives the information to be received for using it for his benefit. When a committee is formed to give a report, the information provided by it in the report cannot be said to be given in a fiduciary relationship. All relationships usually have an element of trust, but all of them cannot be classified as fiduciary.

**Shri Sunil Kumar Bansal vs Southern Railway,**  
**[CIC/OK/A/08/00893-AD]:**

The applicant sought the following documents:

- i) Report sent by Southern Railway Vigilance to Railway Board for obtaining the first stage advice of the CVC and
- ii) Full copy of the first stage advice of the CVC

CPIO denied the information under Section 8(1)(e) and also under Section 8(1)(h). First Appellate Authority (FAA) reiterated the CPIO's arguments while denying the information under First Appeal. Second appeal was filed before CIC.

Hon'ble CIC observed that the investigation in the case was already completed and the appellant was charge sheeted, thus rendering the rejection of the request under Section 8(1)(h) as invalid.

Hon'ble CIC also observed that CVC was not holding any document in confidence, but inquired into the whole incident, prepared an Inquiry report and handed it over to Southern Railway. The Commission decided that since the documents have not been held in a fiduciary capacity (since no "fiduciary relationship" existed), the denial of information under Section 8(1)(e) was completely ruled out.

In this case, Hon'ble CIC directed the Southern Railway to disclose the information asked for by the Appellant.

**Shri. Rakesh Kumar Singh and others vs Lok Sabha Secretariat and others (CIC/WB/A/2006/00469; CIC/WB/A/2006/00394; CIC/OK/A/2006/00266/00058/00066/00315):**

Six applicants sought information from Lok Sabha Secretariat, CBSE, Delhi Jal Board, DDA and North Western Railway with regard to examination matters, such as copies of their evaluated answer sheets and also the evaluated answer sheets of their colleagues- apart from seeking copies of proceedings of the Departmental Promotion Committee.

These requests were rejected mainly on the grounds that there is a fiduciary relationship between the examiners and the department [Section 8(1)(e)] and also under Section 8(1)(j).

Full bench of Hon'ble CIC examined the issues and held the following:

- 1) In regard to public examinations conducted by institutions such as UPSC, CBSE, SSC, Universities etc., the function of which is

mainly to conduct examinations and which have an established system as fool-proof as that can be, and which, by their own rules or regulations prohibit disclosure of evaluated answer sheets or where the disclosure of evaluated answer sheets would result in rendering the system unworkable in practice, a citizen cannot seek disclosure of the evaluated answer sheets under the RTI Act, 2005.

- 2) In so far as the departmental examinees are concerned or the proceedings of Departmental Promotion Committees are concerned, the numbers of examinees are limited and it is necessary that neutrality and fairness are maintained to the best possible extent. Disclosure of proceedings or disclosure of the answer sheets not only of the examinees but also of the other candidates may bring in fairness and neutrality and will make the system more transparent and accountable. Moreover, the proceedings of the

Departmental Promotion Committees or its Minutes are not covered by any of the exemptions provided for under Section 8(1) and, therefore, such proceedings and minutes are to be disclosed. If a written examination is held for the purpose of selection or promotion, the concerned candidate may ask for a copy of the evaluated answer sheet from the authority conducting such test/examination. This right to get an evaluated answer sheet does not, however, extend to claiming inspection of or getting a copy of the evaluated answer sheets concerning other persons in which case, if the concerned CPIO decides to disclose the information, will have to follow the procedure laid down under Section 11 of the act.

**Shri Mahesh Kumar Gupta vs National Institute of Technology, [CIC/SG/A/2010/000505]:**

Hon'ble CIC in this case observed that any information provided in discharge of a statutory requirement, or to obtain a job, or to get a license cannot be considered to

have been given in a fiduciary relationship. Similarly, information about the details of the dates of leave and nature of leave taken by an employee cannot be held to be information available in a fiduciary capacity.

**The Institute of Chartered Accountants of India vs H. Satya and Ors. (CA No: 7571 of 2011):**

Hon'ble Supreme Court in this case held that the instructions and solutions to questions issued to the examiners and moderators by ICAI in connection with evaluation of answer scripts are issued to them in their fiduciary capacity and are therefore exempted.

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## **Exemption from disclosing information-**

### **Section 8(1)(g)**

As per this Section, information can be withheld if disclosure of such information would endanger the life or personal safety of any person or identify the source of information or assistance given in confidence for law enforcement or security purposes.

### **Smt. V. Renuka Devi vs Southern Railway; [CIC/SG/A/2009/000500/3131]:**

The applicant in this case asked for details of settlement regarding pension benefits and details of nominations in respect of a third person due for superannuation. The CPIO rejected the request under Section 8(1)(g) and Section 8(1)(j), which was upheld by the FAA.

Hon'ble CIC also agreed with the findings of the CPIO and exempted the disclosure of information pertaining to the details of pension and nominations of a third person, as its disclosure could lead to some danger to the safety of a person and could also be considered an intrusion of his privacy.

**Dr. Tariq Islam vs Aligrah Muslim University;**  
**[CIC/SG/A/2009/002567/5719]:**

The applicant in this case sought information about his suspension from the university such as certified copies of all file noting leading to the legal opinions obtained before issuing the said suspension order apart from other such documents. PIO refused it under Section 8(1)(g).

Hon'ble CIC in this case observed that the implication of using this exemption would be that Aligarh Muslim University believes that faculty member is capable of physically harming those who may have been involved in the process of his suspension, which is a very serious charge. Hon'ble CIC further observed that this would be reducing the respect and the structure of the university. In view of the same, Hon'ble CIC rejected the exemption claimed by the PIO under Section 8(1)(g).

**Smt. Rajni Bajaj vs National Board of Examinations,**  
**Ministry of Health and Family Welfare,**  
**[CIC/SG/A/2011/002273]:**

The applicant sought information regarding non-implementation of Hon'ble CAT's decision. The PIO refused to give information and stated that revealing the names of the officers who made the noting is likely to endanger the life or physical safety of such officers.

Hon'ble CIC noted that it is a very sad comment on the employees of an organisation, if an organisation claims that a former employee, who is a lady, is capable of physically harming its officers. Hon'ble CIC directed the PIO to sever the names of the officers as per Section 10 of the RTI act and to give a typed copy of noting to the appellant.

**Bihar Public Service Commission vs Saiyed Hussain Abbas Rizwi&Anr., CA No: 9052 of 2012:**

The respondent in this case (Saiyed Hussain Abbas Rizwi) filed an application under RTI Act, 2005 before the Bihar Public Service Commission seeking information related to providing the names, designation and addresses of the subject experts present in the Interview Board.

This case ultimately reached the Hon'ble Supreme Court, which observed that the disclosure of names and addresses of the members of the Interview Board would *ex facie* endanger their lives or physical safety and that the possibility of a failed candidate attempting to take revenge from such persons cannot be ruled out.

Hon'ble Supreme Court in this case held that the Bihar Public Service Commission is not bound to disclose the information asked for by the applicant.

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## **Exemption from disclosing information-**

### **Section 8(1)(h)**

As per this Section, information can be withheld if disclosure of such information would impede the process of investigation or apprehension or prosecution of offenders.

Hon'ble CIC and courts have examined a number of cases where Section 8(1)(h) has not been properly implemented and given numerous decisions. At the same time, Hon'ble CIC and courts have also upheld the decision to reject the information under Section 8(1)(h) in few cases. A pending departmental disciplinary proceeding is treated as an investigation for RTI purposes. Gist of some of the decisions of Hon'ble CIC and judicial pronouncements in this regard is given below:

**Shankar            Sharma            &Ors.            vs.            DGIT**

**[CIC/AT/A/2007/0007, 10 & 11]:**

In this case, Hon'ble CIC clearly defined the term "investigation" as under:

*“....17. .... the term ‘investigation’ used in Section 8(1)(h), in the context of this Act should be interpreted broadly and liberally. We cannot import into RTI Act the technical definition of ‘investigation’ one finds in Criminal Law. Here, investigation would mean all actions of law enforcement, disciplinary proceedings, enquiries, adjudications and so on. Logically, no investigation could be said to be complete unless it has reached a point where the final decision on the basis of that investigation is taken. In that sense, an investigation can be an extended investigation..... The respondents are, therefore, right in holding that it would be a misnomer to hold that investigation in matters such as this, the moment the Investigating Officer submits his report to the competent authority spells the end of investigation.”*

**Shri.R.Govindarajan vs UCO Bank**

**[CIC/SG/A/2012/000371]:**

In this case, the appellant sought copies of all documents based on which sanction for prosecution was

given for prosecuting him. The PIO denied the information under Section 8(1)(h) without giving any reasons how Section 8(1)(h) would be attracted by the information sought.

Hon'ble CIC held that the respondent has not been able to establish that disclosing the information would impede the process of investigation. Denial of a citizen's fundamental right must be justified and the mere act of continuing an investigation cannot be used to deny citizens' rights. Therefore, the Commission directed the PIO to provide the information.

**Shri Goverdhan Das Kesharwani vs Food Corporation of India, Jaipur [CIC/SS/A/2011/000657]:**

The appellant was not provided information forming part of Vigilance Inquiry which was under process in the Vigilance Branch. The FAA stated that the disclosure of the requested information may impede the ongoing process of investigation.

Hon'ble CIC in this case held that the file noting of information sought is exempt from disclosure under Section 8(1)(h) observing the following:

*“Such file notings constitute inter-departmental communications concerning vigilance inquiry and information received from third parties. The Inquiry Committee’s deliberations can quite possibly be based on the matter contained in such file notings, the disclosure of which may impede or obstruct the process of inquiry as those officials who apprehend of being charged at the end of the whole inquiry may try to interfere in the process of inquiry by using iniquitous tactics, by trying to tinker with material evidence, by influencing material witnesses or by unduly influencing the members of the Inquiry Committee inter alia. Viewed from the other perspective, in case the inquiry culminates into regular departmental proceedings, the charged official will have a right to access these documents in the impending inquiry proceedings under relevant rules. Thus, the authenticated copies of File Notings under Question No.7 with respect to the*

*QPV Reports etc. cannot be provided to the Appellant”.*

However, the Commission in this case also held that the other documents sought for which are already available in the public domain shall be furnished, by observing the following:

*“...merely because the Inquiry Committee is considering such information during the ongoing inquiry doesn’t mean that divulging the same would ipso facto impede the process of inquiry”.*

**Shri S.K.Nagarwal vs Ministry of Railways**  
**[CIC/SG/A/2009/001293]:**

The appellant sought copy of the report/proposal prepared in connection with major penalty proceedings against him as also copy of report submitted to CVC for obtaining first stage advice. The same was denied to him under Section 8(1)(h).

Hon’ble CIC observed that the case was still under inquiry and therefore had not reached its finality. The respondent also added that the appellant had also filed

two OAs, one with CAT Principal Bench, Delhi and the other one in Jaipur. The applicant had also filed a writ petition, apart from allegedly threatening the vigilance/other officials who deal/ were related with his cases, with the intention to intimidating them Court Cases, filing FIR etc.,

Considering the above, Hon'ble CIC denied the information under Section 8(1)(g) of the RTI Act, as disclosure may endanger the physical safety of the officers concerned and also under Section 8(1)(h) as it would impede the process of investigation.

**Shri. Prakash Chandra vs Directorate of Vigilance, GNCT Delhi [CIC/SG/A/2009/000015/2695]:**

The appellant asked for supplying the report with all its enclosures and the copy of the note portion of the file. But these were denied under Section 8(1)(h).

Hon'ble CIC observed that there was no merit in denial of the information under Section 8(1)(h), since the investigations were clearly over in this case.

**Bhagat Singh v. CIC &Ors. [WP(C) 3114/2007]:**

In this case, Hon'ble Delhi High Court observed the following:

*“13. Access to information, under Section 3 of the Act, is the rule and exemptions under Section 8, the exception. Section 8 being a restriction on this fundamental right, must therefore be strictly construed. It should not be interpreted in manner as to shadow the very right itself. Under Section 8, exemption from releasing information is granted if it would impede the process of investigation or the prosecution of the offenders. **It is apparent that the mere existence of an investigation process cannot be a ground for refusal of the information; the authority withholding information must show satisfactory reasons as to why the release of such information would hamper the investigation process. Such reasons should be germane, and the opinion of the process being hampered should be reasonable and based on some material. Sans this consideration, Section 8(1)(h) and other such***

**provisions would become a haven for dodging demands for information.**

(Emphasis supplied)

**B.S. Mathur v. PIO [W.P. (C) 295 of 2011]:**

Hon'ble Delhi High Court in this case observed the following:

*“19...Whether the disclosure of the information sought by the Petitioner to the extent not supplied to him yet would "impede the investigation" in terms of Section 8(1)(h) RTI Act. The scheme of the RTI Act, its objects and reasons indicate that disclosure of information is the rule and non-disclosure the exception. A public authority which seeks to withhold information available with it has to show that the information sought is of the nature specified in Section 8 RTI Act. As regards Section 8(1)(h) RTI Act, which is the only provision invoked by the Respondent to deny the Petitioner the information sought by him, it will have to be shown by the public authority that the information sought "would impede the process of investigation." The mere reproducing of the*

*wording of the statute would not be sufficient when recourse is had to Section 8(1)(h) RTI Act. The burden is on the public authority to show in what manner the disclosure of such information would 'impede' the investigation.....”*

*“22. ....The mere pendency of an investigation or inquiry is by itself not a sufficient justification for withholding information. It must be shown that the disclosure of the information sought would "impede" or even on a lesser threshold "hamper" or "interfere with" the investigation. This burden the Respondent has failed to discharge”.*

**Adesh Kumar v. UOI and Ors. [W.P. (C) 3542/2014]:**

Hon’ble Delhi High Court in this case observed the following:

*“10. A bare perusal of the order passed by the FAA also indicates that the aspect as to how the disclosure of information would impede prosecution has not been considered. Merely, citing that the information is exempted under*

*Section 8(1)(h) of the Act would not absolve the public authority from discharging its onus as required to claim such exemption. Thus, neither the FAA nor the CIC has questioned the Public Authority as to how the disclosure of information would impede the prosecution”.*

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## **Exemption from disclosing information-**

### **Section 8(1)(j)**

As per this Section, information can be withheld if disclosure of such information relates to personal information, the disclosure of which has no relationship to any public activity or interest or which would cause unwarranted invasion of the privacy of the individual. PIO can however disclose such information, provided he/she is satisfied that the larger public interest justifies its disclosure. Though Section 8(1)(j) got amended through Section 44(3) of the Digital Personal Data Protection Act, 2023 the same has not yet come into effect. When the amendment comes into effect, Section 8(1)(j) will merely read: “information which relates to personal information” instead of the existing text.

The public interest involved in disclosing the information triumphs over the privacy of the information. The PIO has to maintain a balance between public interest and individual privacy in the case. Exemption under this Section is to be given by the PIO only after applying his/her mind to it, giving cogent reasons. It cannot be blatantly rejected by giving any reasons or applying no

mind to it. In case there is a situation whereby the disclosure of the information outweighs the harm to the protected interests, the PIO may allow access to the information, even though it falls under the exemptions mentioned above.

The PIO must balance the right to privacy and the right to information with the purpose sought to be achieved and the purpose that would be served in larger public interest. The PIO must arrive at the satisfaction objectively and the consequences of the disclosure must be weighed with regard to the circumstances of the case.

Hon'ble CIC and courts have examined a number of cases where Section 8(1)(j) has not been properly implemented and given numerous decisions. At the same time, Hon'ble CIC and courts have also upheld the decision to reject the information under Section 8(1)(j) in few cases. Gist of some of the decisions of Hon'ble CIC and judicial pronouncements in this regard are given below:

In ***Madhu Sharma vs CPIO, Bank of Baroda, Corporate Centre, Mumbai, [CIC/SH/A/2016/001640]***, Hon'ble CIC held that the onus of proving and convincing the PIO that there is a larger public interest is upon the applicant/ appellant, as the case may be.

**Degree of privacy affordable to a public servant:**

In ***Vijay Prakash vs Union of India [W.P (C) 803/2009]***, the issue that arose before the Hon'ble Delhi High Court was that of the degree of privacy afforded to a public servant. In this case, the petitioner was seeking information from the Indian Air Force about his wife, with whom a divorce case was pending. The contention of the petitioner was that the information obtained from the Indian Air Force could be used to refute the claim of the wife that she had made in the court. Hon'ble Delhi High Court held that there was no public interest in the disclosure of the matter and exemption under section 8(1)(j) was upheld. The reasoning that was used is of considerable importance:

*“A bare consideration of the right of individuals, including public servants, to privacy would seem to suggest that*

privacy rights, by virtue of Section 8(1)(j) whenever asserted, would have to prevail. However, that is not always the case, since the public interest element, seeps through the provision. **Thus, when a member of the public requests information about a public servant, a distinction must be made between “official” information inherent to the position and those that are not, and therefore affect only his/her private life.** The balancing task appears to be easy; but is in practice, not so, having regard to the dynamics inherent in the conflict. Though it may be justifiably stated that protection of the public servant’s private or personal details such as an individual, is necessary, provided that such protection does not prevent due accountability, there is a powerful counter argument that public servants must effectively waive the right to privacy in favour of transparency. Balancing exercise, necessarily dependant and evolving on case-by-case basis may take into account the following relevant considerations, i.e.,

- i. **Whether the information is deemed to comprise the individual’s private details,**

**unrelated to his position in the organization, and,**

- ii. Whether the disclosure of the personal information is with the aim of providing knowledge of the proper performance of the duties and tasks assigned to the public servant in any specific case;**
- iii. Whether the disclosure will furnish any information required to establish accountability or transparency in the use of public resources”.**

(Emphasis supplied)

The above three tests are of vital information. The tests can be used to determine whether the information of a public servant should be disclosed or not.

**Shri. Yamaji Sakharam Rathod vs Commissioner of Income Tax, Aurangabad [CIC/AT/A/2007/00009]:**

In this case, the appellant had asked for the information regarding a certain complaint he had filed with the Income Tax Department about alleged tax evasion by a third party. The following was held by Hon’ble CIC:

*“There is no doubt that the Appellate Authority has come to a reasoned conclusion that, given the nature and the type of information, requested by the appellant, there is ground to believe that what was being sought was only the personal information about a third party, which was barred under Section 8(1)(j) of the RTI Act. However, the fact which the Appellate Authority seemed not to have duly focused on is that the complaint made by the appellant to the Income Tax authorities was about a matter of alleged tax evasion. Such a matter cannot be said to be a personal matter of the alleged tax evader. These evasions involved public money and, therefore, were related to a public activity and have had a public purpose. Larger public interest justifies disclosure of the information. It is useful to mention here that in evaluating any information in terms of Section 8(1)(j), utmost care needs to be exercised. **There is hardly an information which does not have some “personal” focus. To bar their disclosure only for that reason will exclude vast swathe of information from the ambit of RTI Act.** Therefore, each information should be closely scrutinized to determine whether it need be barred from*

*disclosure, if at all. No rule of the thumb can be applied. Each case should be treated as unique”.*

(Emphasis supplied)

**Union of India vs R.S Khan [W.P (C) 9355/2009]:**

In this case, Hon’ble Delhi High Court held that there is no question that noting made in the files by government servants in discharge of their official functions is definitely a public activity and concerns the larger public interest and so it does not come under the exemption provided under Section 8(1)(j).

**Shri Shailendra Verma vs Nuclear Power Corporation of India Ltd., Mumbai [CIC/WB/A/2007/00178]:**

The appellant in this case sought information *inter alia* about the basis for the selection of a candidate and reason for disqualification of another candidate by selection committee. The same was rejected by PIO under Section 8(1)(j).

Hon’ble CIC held that the information sought in the present case is clearly information on a public activity

which is selection for the post of HRM. Therefore, it was decided by Hon'ble CIC that recourse cannot be taken to Section 8(1)(j) in providing information and the CPIO was directed to furnish information.

**Mrs. Umadevi Torvi vs Syndicate Bank, Manipal [344/ICPB/2006]:**

The appellant in this case sought information regarding names, designation of the clerks/officer employees working in the bank, who have been transferred on account of their spouse transferred to other places. PIO denied furnishing the information under Section 8(1)(d) and Section 8(1)(j).

Hon'ble CIC held that the provisions of Section 8(1)(j) or Section 8(1)(d) cannot be applied to decline to disclose the details in the matter of posting and transfer of public servants, as they do not relate to any personal affairs of the transferees, whereas the information sought relate to the functions/ affairs of the public authority.

**Major Ramesh Upadhyay vs IHQ of MoD (Army), New Delhi [CIC/RM/A/2013/001261]:**

The appellant in this case *inter alia* sought copy of service book of a Lieutenant Colonel. CPIO denied the information under Section 8(1)(j).

Hon'ble CIC held that the service book contains information related to the service particulars, such as the details of nominees, deductions from monthly pay bills, insurance details etc., the disclosure of which might cause invasion of privacy of a third party and would be exempt under Section 8(1)(j).

**Subhash Chandra Agarwal vs Registrar, Supreme Court of India and Others [(2018) 11 SCC 634]:**

In this case, the appellant had sought information relating to the details of medical facilities availed by individual judges of the Supreme Court and their family members, including information relating to private treatment in India and abroad in last three years.

Hon'ble Supreme Court in this case had held that the information sought by the appellant was “personal” information and was protected under Section 8(1)(j) of the RTI Act, for disclosure would cause unwarranted

invasion of privacy, which prohibition would not apply where larger public interest justifies disclosure of such information.

**Canara Bank vs C.S.Shyam and another (2018) 11**

**SCC 426:**

The applicant (C.S.Shyam) had sought information on parameters with regard to the transfer of clerical staff with details of individual employees, such as date of their joining, promotion earned, date of their joining the branch, the authorities who had posted the transfer letters etc.,

The information sought was declared to be personal in nature, which was conditionally exempted from disclosure under Section 8(1)(j) of the RTI act.

**Girish Ramchandra Deshpande vs CIC and Others**

**[SLP (Civil) No. 27734 of 2012]:**

In this case, it was questioned whether the CIC was right in denying the information regarding the personal matters pertaining to service career and also denying the details of assets and liabilities, movable and

immovable properties on the ground that the information sought for was qualified to be personal information as defined in Section 8(1)(j) of the act.

Hon'ble Supreme Court agreed with the views of CIC that the details called for by the petitioner i.e. copies of all memos issued to a person, show cause notices and orders of censure/punishment etc. are qualified to be personal information as defined in Section 8(1)(j) of the RTI Act.

Hon'ble Supreme Court observed that the performance of an employee/officer in an organization is primarily a matter between the employee and the employer and normally those aspects are governed by the service rules which fall under the expression “personal information”, the disclosure of which has no relationship to any public activity or public interest. On the other hand, the disclosure of which would cause unwarranted invasion of privacy of that individual.

Further, Hon'ble Supreme Court observed that the details disclosed by a person in his income tax returns

are “personal information” which stand exempted from disclosure under Section 8(1)(j) of the RTI Act, unless involves a larger public interest and the CPIO or FAA is satisfied that the larger public interest justifies the disclosure of such information.

Since the petitioner in this case had not made a *bona fide* public interest in seeking information, Hon'ble Supreme Court held that the disclosure of such information would cause unwarranted invasion of privacy of the individual under Section 8(1)(j) of the RTI act.

**Subramanian K Ansari vs CPIO, Dy.Commissioner of Income Tax [CIC/CCITM/A/2017/182415-BJ]:**

The appellant in this case *inter alia* sought information such as certified copy of balance sheet, Profit and Loss Account for ten years period pertaining to a company (M/s Cambata Aviation Pvt. Ltd), in which the appellant was working. CPIO rejected this request under Section 8(1)(j) citing the judgment of Hon'ble Supreme Court in the case of ***Girish Ramchandra Deshpande vs CIC and Others [SLP (Civil) No. 27734 of 2012]***.

Thereafter, the FAA in its order instructed the CPIO to contact the Third Party (i.e., the company M/s Cambata Aviation Pvt. Ltd) and request it to make a submission in writing regarding whether the information sought should be disclosed or not. In compliance with the order of the FAA, the CPIO stated that the consent of the Third Party was sought, which objected to the disclosure of information. Hence, the information was not furnished to the appellant.

During the second hearing in this case, the appellant stated that the information sought was incorrectly denied to him under Section 8(1)(j) of the RTI Act, 2005 without considering the larger public interest involved in the matter. Explaining the background of the case, the appellant alleged that M/s Cambata Aviation Pvt. Ltd had deprived salary/wages to more than 2100 employees since March, 2016 on the pretext of bad condition of finance and loss in the business resulting in extreme financial hardships to him and hundreds of other employees. On the other hand, the company had allegedly given increments in Jan 2014, and recruited more than 800 employees in the year 2014 and 2015

which was contradictory. He further alleged that the said Company was also wilfully defaulting in payment of statutory dues of PF/ST/LIC/ESIC and Credit Society, etc. The appellant further submitted that he had approached the Metropolitan Court in the matter and that several other FIRs were lodged against the Company officials in various police stations.

Hon'ble CIC in this case observed that taking into consideration the factual background in which the information was sought, it can undoubtedly be construed that the details were required by the Appellant in the larger public interest of the employees working in the said company. The issue of non-payment of salary/wages and other statutory dues to employees was certainly a grave matter which could not be brushed aside.

Hon'ble CIC further observed that it cannot be a mute spectator to the pitiable conditions being faced by the employees of the company which is seeking shelter under Section 8(1)(j) of the RTI Act, 2005. Therefore, considering the sensitivities of the matter as also in the

light of the criticality of sustenance issues faced by its employees, Hon'ble CIC instructed the respondent to disclose point-wise information as held and available with them to the appellant.

**Shri Dinesh Berry vs Bharat Petroleum Corporation Ltd., Mumbai [07/IC(A)/CIC/2006]:**

The appellant in this case requested to furnish certified copy of Traveling Expense Statement, Tour itinerary etc., of the DGM, which were denied under Section 8(1)(j) of the act.

Hon'ble CIC held that the information sought by the appellant relates to the tour program and travel expenses of a public servant, which cannot be treated as personal information.

**Shri.M.K.Kinhikar, Mumbai vs Department of Posts, Maharashtra Circle [278/ICPB/2006]:**

In this case, the appellant had sought certain information connected with recruitment where some irregularities have taken place and he has been allegedly held

responsible for these irregularities. The information sought were denied under Section 8(1)(j) of the act.

Since the appellant was seeking information about his own case and not about third party and the information that he was seeking is relevant to his own case, Hon'ble CIC did not agree with the CPIO as well as the FAA decision in applying Section 8(1)(j) for denying the information to the appellant.

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## **Powers and Duties of a Public Information Officer (PIO)**

As per Section 5(1) of the act, every public authority shall designate Public Information Officers (PIO) to provide information to persons requesting for the information under the Act. The number of such officers to be appointed as PIOs is not mentioned in the Act. It depends upon the size of the public authority. Following are the powers and duties of a PIO:

- 1) Receiving the applications for furnishing information under this Act. In terms of Section 5(2) of the Act, the Assistant Public Information Officers (APIO) can receive such applications, which shall be forwarded by them to PIO.
  
- 2) In terms of Section 5(3) of the Act, PIO shall render reasonable assistance to the persons who are seeking information. Further, as per the *proviso* under Section 6(1) of the Act, in cases where the request for obtaining information cannot be made in writing, the PIO shall render all reasonable

assistance to the person making the request orally to reduce the same in writing.

- 3) In case the application does not pertain to the concerned public authority but to some other public authority, it is the duty of the PIO to transfer the application to the PIO of the concerned public authority, in terms of Section 6(3) of the act, within 5 days from the receipt of the application.
- 4) As per Section 5(4) of the Act, PIO can seek the assistance of any other officer for procuring information that is sought in any application. The officer whose assistance is sought is mandated to render all assistance to the PIO.
- 5) Only the PIO is authorised to furnish information to the application received under this Act. In other words, only the PIO should communicate with the RTI applicant. No other official of the public authority should communicate with the RTI applicant.

Hon'ble CIC in the case of ***R.K.Jain v. IT Appellate Tribunal, [CIC/ITAT/A/2017/131638]*** (Interim decision dated 17<sup>th</sup> October 2018) observed that the reply to RTI application must be signed by the CPIO only and did not accept the submission that the reply by the APIO in this case was sent to the applicant after getting approval of CPIO.

- 6) As per Section 7(1) of the act, the PIO has to provide a reply within 30 days of the receipt of the application. The reply may be in the form of information or rejection. In case there is no reply within 30 days, it is deemed to be rejected. While rejecting the information, the PIO has to mention the reasons for the rejection.
  
- 7) In case the information sought concerns the life or liberty of a person, the same shall be provided by the PIO within 48 hours of the receipt of the request, as per the *proviso* to Section 7(1) of the Act. What concerns the life or liberty of a person depends upon the facts of the case.

In the case of ***NN Dhumane vs Department of Posts [CIC/POSTS/A/2017/185367]***, Hon'ble CIC stated that any information regarding pension and salary concerns to the life and liberty of a person and must be provided within 48 hours of the receipt of the application.

- 8) If additional fee is required to be paid by the applicant as provided in the Rules, the PIO should inform the applicant:
- (i) the details of further fees required to be paid;
  - (ii) the calculations made to arrive at the amount of fees asked for;
  - (iii) the fact that the applicant has a right to make appeal about the amount of fees so demanded;
  - (iv) the particulars of the authority to whom such an appeal can be made; and
  - (v) the time limit within which the appeal can be made.
- 9) As per Section 19(5) of the act, in any appeal proceedings, the onus to prove that a denial of a

request was justified shall be on the PIO who denied the request.

10)As held by Hon'ble CIC in the case of ***Sh. V.R. Eliza, CPIO Vs Central Board of Excise & Customs, [CIC/AT/A/2008/00291]***, CPIO can file second appeal before Hon'ble CIC against the orders of the FAA. It was held in the above case that the Act does not debar a 2nd appeal either by the PIO or by a Public Authority.

**Transfer of RTI application from one PIO to another PIO of the same public authority:**

Section 6(3) of the act empowers the PIO to transfer RTI application to the PIO of another public authority- not within the same public authority. Going by the legal maxim "*expressio unius est exclusio alterius*" (to express or include one thing implies the exclusion of the other, or of the alternative), this provision bars transfer of RTI request from one PIO to another PIO within the same public authority.

In ***Yuvraj Sharma v. CPIO HQ CE (WAC) AF, Palam, Delhi Cantt.***, [CIC/IARMY/C/2017/173876], Hon'ble CIC held: "It shall be noted that under Section 6(3) of the RTI Act, a RTI Application is to be transferred to another public authority altogether where information sought is under the control of that public authority and it is not to be invoked for procuring the information from within the same public authority".

However as an exception, Hon'ble CIC in the case of ***J.K.Mittal v. Delhi Police/PHQ, [CIC/SS/A/2012/003779]*** held that a CPIO is allowed to transfer an RTI application, or part of it, to another CPIO within the same public authority for practical purposes, especially if the public authority has a large number of PIOs.

**Format for giving information by the PIO to the applicants:**

Observing that different public authorities provide information to RTI applications in different formats, DoPT in its OM No: 10/1/2013-IR dated 06<sup>th</sup> October

2015 listed out the essential aspects which should be furnished in reply to RTI application, as furnished below:

- (i) RTI application number, date and date of its receipt in the public authority.
- (ii) The name, designation, official telephone number and email ID of the CPIO.
- (iii) In case the information requested for is denied, detailed reasons for denial quoting the relevant sections of the RTI Act should be clearly mentioned.
- (iv) In case the information pertains to other public authority and the application is transferred under section 6(3) of the RTI Act, details of the public authority to whom the application is transferred should be given.
- (v) In the concluding para of the reply, it should be clearly mentioned that the First Appeal, if any, against the reply of the CPIO may be made to the First Appellate Authority within 30 days of receipt of reply of CPIO.
- (vi) The name, designation, address, official telephone number and e-mail ID of the First

Appellate Authority should also be clearly mentioned.

**Furnishing certified copies under the act:**

DoPT in the aforesaid OM has clarified that wherever the applicant has requested for 'certified copies' of the documents or records, the CPIO should endorse on the document "True copy of the document/ record supplied under RTI Act", sign the document with date, above a seal containing name of the officer, CPIO and name of public authority. It was further clarified by DoPT in the aforesaid OM that in case the documents to be certified and supplied is large in number, information on RTI application should be supplied by a designated PIO but the certification of the documents, if need be, could be done by another junior gazetted officer.

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**Powers and Duties of a First Appellate Authority**  
**(FAA)**

As per Section 19(1) of the Act, the applicant can file first appeal to FAA, if he/she is aggrieved by the reply furnished by PIO or if no decision was received from the PIO within the stipulated time period of thirty days or 48 hours, as the case may be. Such appeal is to be made within thirty days from the date of receipt of reply of PIO (If no reply was received from PIO, this period shall be taken as 30 days from the date within which the reply ought to have been received from PIO).

Following are the powers and duties of a FAA:

- 1) FAA may admit any belated appeal, if he or she is satisfied that the appellant was prevented by sufficient cause from filing the appeal in time.
  
- 2) An appeal shall be disposed of by the FAA within thirty days of the receipt of the appeal or within forty-five days from the date of filing, for reasons to be recorded in writing.

- 3) While disposing off first appeals, the FAA should act in a fair and judicious manner. It is very important that the order passed by the FAA should be a detailed and speaking order, giving justification for the decision arrived at. (DoPT OM No: 1/32/2013-IR dated 17<sup>th</sup> February 2015)
  
- 4) If the FAA while deciding an appeal comes to a conclusion that the appellant should be supplied information in addition to what has been supplied by the PIO, he/she may:
  - a. pass an order directing the PIO to give such information to the appellant; or
  - b. the FAA himself/herself may give information to the appellant.

In the former case, the FAA should ensure that the information ordered by him/her to be supplied is supplied to the appellant immediately. It would, however, be better if the FAA chooses the latter course of action and directly furnishes the

information along with the order passed by him/her in the appeal.

- 5) Deciding appeals under the RTI act is a quasi-judicial function. It is therefore necessary that the appellate authority should see to it that the justice is not only done but it should also appear to have been done. In order to do so, the order passed by the appellate authority should be a speaking order giving justification for the decision arrived at. (DoPT OM No. 10/23/2007-IR dated 9<sup>th</sup> July 2007)
  
- 6) As held by Hon'ble CIC in the case of ***J.K.Mittal v. Delhi Police/PHQ, [CIC/SS/A/2012/003779]***, an FAA can transfer the first appeal to another FAA if he/she does not have jurisdiction over it and the transferee FAA has territorial jurisdiction over the matter. This was further reiterated by Hon'ble CIC in ***R.K.Jain v. CPIO, Min. of Finance, [CIC/LS/C/2013/000114]***.

- 7) As held by Hon'ble CIC in the case of ***R.K.Jain v. Dept. of Legal Affairs, [CIC/SA/A/2014/000254]***, FAA shall grant personal hearing before deciding the First Appeal, if requested by the appellant. It was also held in the case that the FAA is liable for punishment, for breach of provisions of RTI Act, if such hearing is not given to the appellant.

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## Timelines under RTI Act

### For disposal of applications filed under Section 6(1) of the Act:

The Act is highly time sensitive. It provides for disposal of RTI requests by the PIO in a time-bound manner ranging from 48 hours to 45 days, depending upon the nature of the request.

<b>OCCASION</b>	<b>TIMELINE</b>	<b>SECTION</b>
Normal course	30 Days excluding the time taken for payment of further fees.	S. 7 (1)
Concerns Life / Liberty	48 Hours.	Prov. to S. 7 (1)
APIO received application / appeal.	30 Days + 5 Days.	S. 5 (2)
PA to PA transfer	5 Days for transfer + 30 Days thereafter,	S. 5 (6)
3 <sup>rd</sup> Party involvement	40 Days in all. PIO's notice to 3 <sup>rd</sup> party within 5 days. 10 Days for 3 <sup>rd</sup> party to reply to the PIO's notice.	S. 11 (3) r/w S.11 (2)
Human Rights violation in Schedule – II Organisations	45 Days with the consent of the CIC.	S. 24 (1)

If the timelines are not followed by the PIO, it will be deemed that the PIO has refused the request for information.

**For filing appeals:**

The following time limits are stipulated for the appellant to file the appeals:

<b>Time limit within which the appeal shall be filed by the appellant</b>	<b>Scenario under which the time limit is applicable</b>
30 days from the date on which the decision should have been made by the PIO or was actually received from the PIO	First appeal to be filed before the First Appellate Authority (FAA). Delay can be condoned, if the FAA is satisfied that the appellant was prevented by sufficient cause from filing the appeal in time.
90 days from the date on which the decision should have been made by the FAA or was actually received from the FAA	Second appeal to be filed before the Central Information Commission (CIC). Delay can be condoned, if the CIC is satisfied that the appellant was prevented by sufficient cause from filing the appeal in time.

**For disposal of the first appeal:**

The first appeal shall be disposed of within 30 days from the date of receipt of the appeal by the FAA. This time limit can be extended upto 45 days, for reasons to be recorded in writing.

**For disposal of the second appeal:**

No time limits are mentioned in the law.

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## **Fees under RTI Act**

There are two kinds of fees payable under this Act:

- 1) Application fees [Section 6(1)]
- 2) Further fees representing the cost of providing information [Section 7(3) and Section 7(5)]

As per the aforesaid Sections, fees as may be prescribed by rules made under this Act is payable by the applicant. Accordingly, DoPT, drawing power from Section 27 of the RTI Act, vide its notification dated 31<sup>st</sup> July 2012 made the Right to Information Rules, 2012.

### **Application fees: [Section 6(1)]**

Rule 3 of this notification is furnished below:

*3. Application Fee. —An application under sub-section (1) of Section 6 of the Act shall be accompanied by a fee of rupees ten and shall ordinarily not contain more than five hundred words, excluding annexures, containing address of the Central Public Information Officer and that of the applicant:*

*Provided that no application shall be rejected only on the ground that it contains more than five hundred words.*

In terms of the aforesaid rules, an RTI application should be accompanied by a fee of Rupees Ten.

**Further fees representing the cost of providing information [Section 7(3) and Section 7(5)]:**

If the information sought is such that certain costs have to be incurred by the PIO before he/can furnish the information to the applicant, then the applicant has to be advised of this cost of information or fees for providing information. While advising the applicant in this regard, the details of further fees representing the cost of providing the information together with the calculations made to arrive at the amount in accordance with the prescribed fee shall also be furnished by the PIO.

Rule 4 of the notification of DoPT dated 31<sup>st</sup> July 2012, which pertains to the fees for providing information is furnished below:

*4. Fees for providing information. —Fee for providing information under sub-section (4) of Section 4 and sub-sections (1) and (5) of Section 7 of the Act shall be charged at the following rates, namely: —*

- (a) rupees two for each page in A-3 or smaller size paper;*
- (b) actual cost or price of a photocopy in large size paper;*
- (c) actual cost or price for samples or models;*
- (d) rupees fifty per diskette or floppy;*
- (e) price fixed for a publication or rupees two per page of photocopy for extracts from the publication;*
- (f) no fee for inspection of records for the first hour of inspection and a fee of rupees 5 for each subsequent hour or fraction thereof; and*
- (g) so much of postal charge involved in supply of information that exceeds fifty rupees.*

While advising the applicant, it shall also be intimated by the PIO that the applicant has the right to review the decision regarding the amount of fees charged and can

request the intervention of appellate authority in this regard, whose particulars shall also be furnished.

Further, as per Section 7(3) of the Act, the period intervening between the despatch of the said intimation and payment of fees by the applicant shall be excluded for the purpose of calculating the period of thirty days.

**Exemption from payment of fee:**

- 1) Section 7 (5) of the RTI exempts payment of application processing fee payable under Section 6 (1) [i.e., Rs.10/-] and further fees under Section 7(1) & (5) for those who are below poverty line. Rule 5 states that no fee under Rule 3 and Rule 4 shall be charged from any person who is below poverty line, provided the applicant submits a copy of the certificate issued by the appropriate Government in this regard.
  
- 2) As per Section 7(6) of the Act, the applicant shall be provided the information free of charge, where a public authority fails to comply with the specified time limits while providing such information.

**Mode of payment of fee:**

This is stipulated in Rule 6, which is furnished below:

*6. Mode of Payment of fee. —Fees under these rules may be paid in any of the following manner, namely: —*

- (a) in cash, to the public authority or to the Central Assistant Public Information Officer of the public authority, as the case may be, against a proper receipt; or*
- (b) by demand draft or bankers' cheque or Indian Postal Order payable to the Accounts Officer of the public authority; or*
- (c) by electronic means to the Accounts Officer of the public authority, if facility for receiving fees through electronic means is available with the public authority.*

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## **Penalties under RTI Act**

Section 20 of the Act provides for two types of punishment which can be imposed by the Information Commissions on the PIO:

- a) Penalty and/or
- b) Recommendation for Disciplinary Action.

### **Penalty:**

Section 20(1) states the reasons for which penalty may be imposed and includes the following:

- Refusing to receive an application for information, without any reasonable cause;
- Not furnishing the information within the time specified under Section 7(1);
- Denying the request for information with *malafide* intention;
- Knowingly giving incorrect, incomplete or misleading information;
- Destroying information which was the subject of the request;
- Obstructing in any manner in furnishing the information.

The amount of penalty has been prescribed as Rupees 250/- each day till application is received by the PIO (in cases where he/she refused to receive the application without any reasonable cause) or the information is furnished, subject to a maximum of Rs.25,000/-. However, CIC had imposed token penalty on couple of occasions, instead of imposing penalty at Rs.250 per each day of delay / denial.[**CIC/DOREV/C/2017/192170 and CIC/LS/A/2013/000562**].Hon'ble Delhi HC upheld the decision of the Single Bench which reduced the maximum penalty (Rs.25,000/-) imposed by the CIC to Rs.2500/- [**LPA No.777/2010**]. Per contra, Hon'ble Calcutta High Court had ordered that it has to be a case of Rs.250 for each day or no penalty, but cannot be a case of reduced penalty [**Madhab Kumar Bandhopadhyay v. State CIC &Ors. WP 18653(W)/2009**]. The conflict needs to be resolved by Apex Court.

However, the Act provides for the PIO to be given a reasonable opportunity to be heard by way of a show cause notice issued to him/her advising him/her to show cause as to why penalty should not be imposed on

him/her. The Act also states that the burden of proving that he/she acted reasonably and diligently shall be on the PIO.

**Recommendation for Disciplinary Action:**

Section 20(2) provides for the CIC to recommend that Disciplinary action be initiated against the PIO, under the Service rules applicable to him/her, if he/she

**persistently:**

- Refuses to receive an application for information, without any reasonable cause
- Has not furnished the information within the time specified under Section 7(1)
- Denied the request for information with *malafide* intention
- Knowingly given incorrect, incomplete or misleading information
- Destroyed information which was the subject of the request
- Obstructed in any manner in furnishing the information.

It may be noted that the grounds for imposition of penalty and/or recommendation for disciplinary action are the same except that when the PIO persistently behaves in a manner inconsistent with the duties and responsibilities of a PIO as laid down in the act, then the CIC is empowered to take a more serious view of the case and recommend that Disciplinary Action be initiated against the PIO, under the Service rules applicable to him/her.

**Complaint to the Hon'ble CIC:**

As per Section 18(1) of the act, it shall be the duty of the Hon'ble CIC to receive and inquire into a complaint from any person regarding the following:

- (a) APIO refused to accept his/her application or appeal and forward the same to PIO or FAA;
- (b) Access to any information was refused;
- (c) No response was given within the time limit;
- (d) He/she was required to pay an amount of fee which he/she considers unreasonable;
- (e) He/she believes that incomplete, misleading or false information was given under this act &

- (f) In respect of any other matter relating to requesting or obtaining access to records under the Act.

If the CIC is satisfied that there are reasonable grounds to inquire into the matter, it may initiate an inquiry in respect thereof. For conducting such inquiry, the CIC will have the same powers as are vested in a civil court while trying a suit.

**Compensation to the appellant:**

Hon'ble CIC in its decision has the power to require the public authority to compensate the complainant for any loss or other detriment suffered. This is stipulated in Section 19(8)(b) of the RTI act, 2005.

**Mujibur Rehman vs. Central Information Commission [W.P (C) 3845 of 2007]:**

In this case, Hon'ble Delhi High Court held that the imposition of penalty is mandatory, if the CIC finds that the information was denied "without any reasonable cause".

**Registrar of Companies and Others vs Dharmendra Kumar Garg and Another [W.P (C) 11271 of 2009]:**

Hon'ble Delhi High Court in this case observed the following:

*“61.....It can happen that the PIO may genuinely and bonafidely entertain the belief and hold the view that the information sought by the querist cannot be provided for one or the other reasons. **Merely because the CIC eventually finds that the view taken by the PIO was not correct, it cannot automatically lead to issuance of a show cause notice under Section 20 of the RTI act and the imposition of penalty.** The legislature has cautiously provided that only in cases of malafides or unreasonable conduct i.e., where the PIO, without reasonable cause refuses to receive the application, or provide the information, or knowingly gives incorrect, incomplete or misleading information or destroys the information, that the personal penalty on the PIO can be imposed”.*

(Emphasis supplied)

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**Col. Rajendra Singh v. Central Information Commission and Anr., [W.P (C) 5469 of 2008]:**

Hon'ble Delhi High Court in this case observed as under:  
*"Section 20, no doubt empowers the CIC to take penal action and direct payment of such compensation or penalty as is warranted. Yet the commission has to be satisfied that the delay occurred was without reasonable cause or the request was denied malafidely. ....The preceding discussion shows that at least in the opinion of this court, there are no allegations to establish that the information was withheld malafide or unduly delayed so as to lead to an inference that petitioner was responsible for unreasonably withholding it".*

**R.K.Jain v. UOI [LPA 369/2018]:**

Hon'ble Delhi High Court in this case held as under:  
*"If the legislative intent, as can be made out on a combined reading of various provisions are taken note of, it would be seen that the legislature only proposes for taking action against CPIO, and not against any other authority like the Appellate Authority or officer to whom the appeal lies. That being so, the legislative intent was that **the penal provisions are to be implemented or***

**enforced only against the CPIO and not against any other authority like the senior ranking officer or the Appellate Authority who decides the appeal** under Section 19(1). ..... This is not permissible under law and when the CPIO is only indicated to be officer against whom penal action can be taken under Section 20, we cannot read into the said statutory provision anything more by supplying words or meaning which would enlarge the scope of the penal provisions under Section 20. That apart, the CPIO being custodian of the information or the documents sought for, is primarily responsible under the scheme of the RTI Act to supply the information and in case of default or dereliction on his part, the penal action is to be invoked against him only. **The Appellate Authority is not the custodian of the information or the document. It is only a statutory authority to take a decision on an appeal with regard the tenability or otherwise of the action of the CPIO and, therefore, there is a conscious omission in making the Appellate Authority liable for a penal action under Section 20 of the RTI Act** and if that be the scheme of the Act and the legislative

*intention, we see no error in the order passed by the learned writ Court warranting reconsideration”.*

(Emphasis supplied)

**Shri Kanwaljeet Singh vs Registering & Licensing Authority, UT Chandigarh [CIC/DS/A/2013/000594]:**

In this case, the appellant sought information from the Registration and Licensing Authority through multiple queries. He preferred first appeal when he did not receive any information from the concerned CPIO. The FAA did not hear the matter pertaining to the first appeal, even after issuing notice of hearing to the appellant. Appellant has alleged that FAA was not present at the venue for the hearing. On the day of the hearing, the appellant had presented himself but was asked to wait by the FAA and was never called for hearing even though the appellant waited outside the office of FAA for over 1½ hrs. Subsequently, appellant left after recording his presence and thereafter filed second appeal before Hon’ble CIC.

It was observed by Hon’ble CIC in this case that the FAA had not given any valid or credible explanation for not

having heard the matter pertaining to the first appeal of the appellant even after issuing notice of hearing to the appellant. Further, the commission observed that the conduct of the first appellate authority is in complete violation of the responsibility to be discharged by him under Section 19(1) and Section 19(6) of the act. Therefore, in pursuance of the provisions of Section 25(5) of the act, Hon'ble CIC recommended disciplinary action against the Service Rules applicable to him.

For the harassment caused to the appellant on account of denial of information, the Commission awarded compensation of Rs. 5,000/- to the appellant as per the provisions of section 19(8)(b) of RTI Act, 2005.

**Shri A.K.Bose vs North Central Railway, Allahabad**  
**[CIC/OK/A/2006/00644]:**

The appellant sought reasons for not releasing his gratuity even after one year of retirement. He wanted to know the rate of interest which could be paid to him for delaying his payment of gratuity. The PIO informed the appellant that the concerned file was with the Headquarters and once it was received from there, it

would be shown to him. Not satisfied with the response of the PIO, the appellant filed an appeal with the FAA and thereafter filed the second appeal before the CIC.

During the second hearing, it came to light that the gratuity of the appellant was withheld because of an inquiry into the case of a fire which took place in one of the Railway Track Depot in 1988. The inquiry which was started could not be completed and the file was with Railway Board for writing off the amount of loss of stock, so that the Gratuity can be released to the Appellant. The Appellant regretted the fact that the case of loss of stock due to fire was nearly 18 years old and had not been settled. The Respondents clarified that there was a delay in the whole process because at one point of time, the file regarding the case was lost/misplaced and therefore the case had to be reconstructed.

The Commission felt that nothing brought out the apathy, the callousness and the insensitivity of the Government more than this case for in this case, the gratuity of its own employee was held up.

The Commission gave the Railway Board one month time to settle the issue. The Commission also recommended to the Chairman, Railway Board, to initiate an inquiry (after all the dues to the appellant are paid) as to why and because of whom the case was delayed for 18 years and to fix responsibility.

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## **Handling frivolous, vexatious or repetitive applications**

While the RTI Act, 2005 is designed to promote transparency and accountability, it shall also be ensured that the provisions of the Act are not misused through frivolous, vexatious, or repetitive applications. There are instances where applications are filed not to acquire information but to harass public authorities.

There is no provision in RTI Act, 2005 to penalize the applicant for abusing his/her right to information or clogging the public office with frivolous or repeated applications which are vexatious in nature. Aside from Section 7(9), which states that information should generally be provided in the form requested unless it would significantly divert the public authority's resources or harm the record's safety or preservation, there are no other provisions in the Act to specifically address or manage such requests.

However, there have been cases where the Hon'ble Courts or the Central Information Commission (CIC)

have identified misuse of the RTI Act and admonished the applicants for such behaviour, distinguishing between legitimate use and abuse of the Act. Some of such cases are furnished below:

- 1) Hon'ble Supreme Court in **CBSE vs Aditya Bandopadhyay (2011) 8 SCC 497** has held as under:

**“... Indiscriminate and impractical demands or directions under the RTI act for disclosure of all and sundry information (unrelated to transparency and accountability in the functioning of Public Authorities and eradication of corruption) would be counter-productive as it will adversely affect the efficiency of the administration and result in the executive getting bogged down with the non-productive work of collecting and furnishing information.** The Act should not be allowed to be misused or abused to become a tool to obstruct the national development and integration, or to destroy the peace, tranquillity and harmony among its citizens. Nor should it be

*converted into a tool of oppression or intimidation of honest officials striving to do their duty.*

**The nation does not want a scenario where 75% of the staff of Public Authorities spends 75% of their time in collecting and furnishing information to applicants instead of discharging their regular duties. The threat of penalties under the RTI Act and the pressure of the authorities under the RTI Act should not lead to employees of a Public Authority prioritising “information furnishing” at the cost of their normal and regular duties...**

(Emphasis supplied)

- 2) Hon’ble Supreme Court in ***The Institute of Chartered Accountants of India vs Shaunak H. Satya and Ors., AIR 2011 SC 3336*** observed as under:

*“... The competent authorities under the RTI Act will have to maintain a proper balance so that while achieving transparency, **the demand for information does not reach unmanageable proportions affecting other public interests, which include efficient operation of public***

**authorities and government**, preservation of confidentiality of sensitive information and optimum use...”

- 3) Hon’ble Madras High Court in ***Public Information Officer, Registrar (Administration) vs B. Bharathi, [W.P. No: 26781 of 2013]*** gave its opinion about vexatious litigation crippling the public authorities and held as follows:

“... The action of the second respondent in sending numerous complaints and representations and then following the same with the RTI applications; that it cannot be the way to redress his grievance; that **he cannot overload a public authority and divert its resources disproportionately while seeking information and that the dispensation of information should not occupy the majority of time and resource of any public authority, as it would be against the larger public interest...**”

(Emphasis supplied)

- 4) Hon'ble Delhi High Court in ***Shail Sahni vs Sanjeev Kumar and Others [W.P (C) 845 of 2014]*** stated as under:

*".... misuse of the RTI Act has to be appropriately dealt with, otherwise the public would lose faith and confidence in this "sunshine Act". A beneficent Statute, when made a tool for mischief and abuse must be checked in accordance with law".*

- 5) Hon'ble Delhi High Court in ***Rajni Mendiratta vs Dte. Of Education (North West-B) [W.P (C) 7911 Of 2015]*** held as under:

*"... Though undoubtedly, the reason for seeking the information is not required to be disclosed but when it is found that the process of the law is abused, the same become relevant. Neither the authorities created under the RTI Act nor the Courts are helpless if witness the provisions of law being abused and owe a duty to immediately put a stop thereto ..."*

6) **Samir Sardana vs CPIO, Mormugao Port Trust**  
**[CIC/MPOTR/A/2018/637412]:**

In this case, the appellant had requested CPIO to furnish information for several queries, for which the CPIO provided item-wise information. Being dissatisfied, first appeal was filed and thereafter the second appeal.

Hon'ble CIC observed that as much as the CPIO has a statutory responsibility to comply with the provisions of the RTI Act, the applicants filing a request under RTI Act should also keep in mind that they should not transgress the letter and spirit of the RTI act by flooding RTI applications, which are cumbersome, protracted and circumlocutory in nature.

The Commission further observed that the appellant had not only included the queries pertaining to different departments but had also sought voluminous information in a single RTI application, which invariably counteracts the letter and spirit of

the RTI Act and the said attempt was erratic in nature.

After listing down the prayers made by the appellant in the second appeal, the commission stated that it was left with no other alternative to infer that the appellant was not seeking the information from the Respondent in public/national interest. The Commission further remarked that it appeared that the appellant was on a mission to see vengeance or had some personal vendetta against the Respondent Public Authority.

Commenting upon the behaviour of the appellant during the hearing in this case, the Commission remarked that the *modus operandi* adopted by the appellant was nothing but a classic example of systematic persecution as well as wasting precious time of the public authority as well as the Commission.

Further, the Commission stated that the appellant had also used the words viz., non-sensical, foolish

etc., and observed that such words are not just improper, but are inappropriate and indecent as well. Hon'ble CIC cautioned the appellant to desist from using such intemperate language.

The Commission unavoidably mentioned the fact that the appellant was in a habit of filing RTI applications in a numbered manner i.e., "RTI Application No.1, ... No.2, ... No.3 and No.4". Further, the Commission observed that the appellant had set a pattern of enclosing all or more than one RTI application, which was not just confusing but irksome as well.

Observing that the appellant rather appeared to have converted the provisions of the RTI act as a tool of oppression/ intimidation, the Commission has remarked that it is outrightly discouraging such activity.

Citing several judgments of Hon'ble Courts, the Commission dismissed the second appeal.

7) **Samir Sardana vs CPIO, Ministry of Railways**

**[CIC/MORLY/C/2019/601132]:**

Appellant in this case filed the application before the PIO, Ministry of Railways, Government of India and has sought information pertaining to South Western Railway, Central Railway and Western Railway. Alleging that the reply was not received within time, the appellant filed the appeal.

Hon'ble CIC observed that the appellant instead of filing the RTI Application before the concerned branch of the public authority i.e., South Western Railway, Central Railway and Western Railway being the custodian of information has filed the present RTI Application before the Ministry of Railways.

Further, the Commission noted that the appellant vide his email representations addressed to the then Minister for Railways had made use of certain unparliamentary terms. The Commission was extremely irked with such conduct and admonished him for such conduct.

Dismissing the appeal, the Commission observed that the appellant had made several remarks against certain individuals and the same was neither substantiated nor an effort was made to justify such statement. The Commission opined that anyone who utters the word 'corruption', 'illegality' etc. does not become entitled to get information and that the onus of substantiating the same lies on the RTI applicant and mere 'perception' is certainly not a ground to agitate for right to information.

8) **Mr. Ramesh Chand Jain Vs. DTC**

**[CIC/AD/A/2013/001326]:**

In this case, Hon'ble CIC held that the principles of ***res judicata*** (already adjudicated and hence future litigation barred between the parties), ***constructive res judicata*** (claim barred since the same should /ought to have been raised in an earlier litigation), ***interest republicae ut sit finis litium*** (it is in the interest of the State that there should be an end to litigation) and ***nemo devet vis vexari pro una eadem cause*** (no man should be taxed twice

over for the same cause) can be invoked to deny repeated RTI requests.

Hon'ble CIC observed the following:

- a) The citizen do not have a right to repeat the same or similar or slightly altered information request under RTI Act, 2005, for which he already got response.
- b) Appellants shall refrain from filing another RTI application against the public authority as once information is received and held by them or posted in public domain, because such information is deemed to have ceased to be 'held' by the public authority.
- c) Such repetition shall be considered as reasonable ground of refusal under the RTI Act.
- d) An applicant or appellant repeating the RTI application or appeal either once or multiple times, suppressing the fact of earlier application and receipt of the answer, the CPIO of public authority shall reject it forthwith after intimating it along with reasons.

e) The First Appellate Authority and Commission shall be right and reasonable to consider this as a ground for rejecting the first or second appeal, respectively among other reasons if any.

9) **S.K. Lal vs. Ministry of Railways**  
**[CIC/OK/A/2006/00268-272]:**

The appellant in this case had filed five applications to the railway authorities asking for “all the records” regarding various services and categories of staff in the Railways. The public authority, however, did not provide him with the information requested.

Hon’ble CIC in this case observed that though the RTI Act allows citizen to seek any information other than the 10 categories exempted under Section 8, it does not mean that the public authorities are required to entertain all sort of frivolous applications. The Commission held that asking for “all the records” regarding various services and categories of staff in the railways, “only amounts to making a mockery of the Act.”

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## Annexure-1

### YEAR-WISE AND ZONAL RAILWAY WISE SUMMARY OF SECOND APPEALS DECIDED BY CIC FOR THE YEARS 2017 TILL 2023

This summary has been prepared based on the data available in the website of CIC under the link <https://cic.gov.in/decision> (Accessed on 31<sup>st</sup> August 2024):

Sl. No	Public Authority	2017	2018	2019	2020	2021	2022	2023	Total
1	Railway Board	2166	548	599	286	425	567	196	<b>4787</b>
2	NR	404	385	452	258	391	511	159	<b>2560</b>
3	CR	160	136	118	118	180	134	124	<b>970</b>
4	ECR	132	125	180	101	102	115	86	<b>841</b>
5	NCR	110	113	99	101	124	84	94	<b>725</b>
6	NWR	88	90	104	68	102	135	77	<b>664</b>
7	ER	107	116	105	78	92	90	75	<b>663</b>
8	WR	70	90	79	83	127	116	72	<b>637</b>
9	SR	89	73	81	62	87	77	105	<b>574</b>
10	WCR	79	55	104	46	97	90	74	<b>545</b>
11	NER	50	55	69	46	102	124	59	<b>505</b>

**Annexure-1**

<b>Sl. No</b>	<b>Public Authority</b>	<b>2017</b>	<b>2018</b>	<b>2019</b>	<b>2020</b>	<b>2021</b>	<b>2022</b>	<b>2023</b>	<b>Total</b>
12	SER	58	49	51	27	69	92	77	<b>423</b>
13	SCR	75	40	50	53	44	79	64	<b>405</b>
14	SECR	45	28	86	38	66	62	63	<b>388</b>
15	NFR	24	50	51	44	74	60	34	<b>337</b>
16	ECoR	47	25	28	33	32	41	34	<b>240</b>
17	SWR	27	15	18	15	31	25	24	<b>155</b>
18	IRCTC	33	6	9	2	21	11	5	<b>87</b>
19	Konkan Railway	6	4	4	9	3	6	1	<b>33</b>
20	CRIS	5	0	3	1	6	6	6	<b>27</b>
21	CRS	0	0	0	0	2	4	1	<b>7</b>
22	MRVC	0	2	1	1	1	1	0	<b>6</b>
23	IRFC	0	2	0	0	0	2	0	<b>4</b>
24	Metro, Kolkata	0	0	0	0	0	0	1	<b>1</b>
	<b>Total</b>	<b>3775</b>	<b>2007</b>	<b>2291</b>	<b>1470</b>	<b>2178</b>	<b>2432</b>	<b>1431</b>	<b>15584</b>

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## Annexure-2

### LIST OF APPELLANTS WHO HAD FILED APPEALS BEFORE CIC IN SEVERAL CASES AGAINST RAILWAYS DURING THE YEARS 2017 TILL 2023

Sl. No.	Name of the appellant (Shri/Smt)	2017	2018	2019	2020	2021	2022	2023	Total
1	Ashwani Kumar	54	59	223	92	136	26	9	599
2	Mahesh Prasad Agrawal	8	6	11	10	32	79	20	166
3	Saidur Rahman	39	26	37	10	0	15	19	146
4	Subrat Kumar Jena	0	0	0	0	4	64	35	103
5	Shankar Poddar	9	1	12	3	6	36	10	77
6	Girish Prasad Gupta	20	17	11	6	10	5	3	72
7	Pankaj Sharma	0	0	1	2	1	55	11	70
8	Sunil Kumar	6	5	25	11	5	4	10	66
9	Avanindra Kumar Singh	1	1	3	50	0	0	0	55
10	Sanjay Sharma	26	4	24	1	0	0	0	55
11	Kundan Kishore	0	0	34	9	8	0	0	51
12	Rajesh Kumar	15	9	16	6	2	0	2	50
13	Nikhil Khurana	0	4	14	10	8	11	1	48
14	Baidyanath Sen	0	0	0	0	1	40	6	47
15	J P Tiwari	0	0	0	4	25	17	1	47
16	Kamlesh Kumar	8	6	22	0	9	0	0	45
17	Hukma Raj Badala	9	15	5	9	1	1	0	40
18	Bimalendu Samaddar	0	0	0	0	0	29	10	39
19	Ashok Kumar	10	7	9	3	1	1	7	38
20	Shankar Lal Nigam	4	5	8	1	20	0	0	38
21	Santosh Kumar	1	3	2	0	15	10	5	36
22	Anil Kumar	9	1	0	3	6	13	3	35
23	Sarfaraz Ali Khan Niyazi	2	10	0	1	21	0	0	34
24	Samir Sardana	0	0	0	8	22	3	0	33
25	Abhishek Kumar	2	0	4	6	2	12	5	31
26	Rajinder Kumar Arora	0	0	0	1	15	15	0	31
27	Sumit Mitra	6	0	2	3	4	12	4	31

**Annexure-2**

Sl. No.	Name of the appellant (Shri/Smt)	2017	2018	2019	2020	2021	2022	2023	Total
28	Mohd Khalid	0	0	4	4	17	5	0	30
29	Arvind Sharma	14	13	2	0	0	0	0	29
30	Krishna Kumar	4	2	7	3	9	3	1	29
31	Vinod Bhimrao Dhurandhar	6	0	0	1	20	2	0	29
32	Dilip Kumar Saha	0	0	0	0	18	10	0	28
33	Sanjeev Kumar	4	0	3	1	5	7	8	28
34	Ajay Kumar	8	1	1	12	1	2	1	26
35	Krishan Kumar	4	4	1	4	12	0	1	26
36	Mukesh Kumar	7	3	10	0	1	3	1	25
37	Deepak Kumar	7	9	0	0	3	5	0	24
38	Manoj Kumar	11	1	1	0	7	3	1	24
39	Rakesh Kumar	3	2	1	5	4	7	2	24
40	Ajit Kumar Singh	1	6	11	0	2	0	3	23
41	P C Sharma	5	2	1	0	0	15	0	23
42	Raju Ingle	2	3	1	17	0	0	0	23
43	Tushar Kanti	3	1	6	3	7	3	0	23
44	Upasna Sahni	23	0	0	0	0	0	0	23
45	Brajendra Kumar	0	0	0	1	7	14	0	22
46	Chandrashekhara Datta	0	2	2	0	3	15	0	22
47	Eshwarprasad Nandlal Jharane	0	0	20	0	0	0	2	22
48	Uma Shankar Singh	4	1	9	2	4	0	1	21
49	Mohd Mustafa	6	7	0	3	4	0	0	20
50	Amit Kumar	3	0	4	1	1	7	3	19
51	Dattadin Pal	0	2	3	3	9	0	2	19
52	Gulzar Saifi	0	0	16	3	0	0	0	19
53	Madan Prasad Yadav	1	0	2	7	4	3	2	19
54	Manoj Kumar Sinha	0	0	15	2	1	1	0	19
55	Sanjay Kumar	7	2	1	0	7	2	0	19
56	Sushil Kumar	6	0	4	3	3	3	0	19
57	Ajay B Bose	3	1	0	0	9	5	0	18
58	S C Khanna	6	5	2	2	3	0	0	18
59	Ajeet Kumar Singh	3	0	3	2	1	3	5	17
60	Ravishankar Kumar	16	1	0	0	0	0	0	17
61	Jayanta Kumar Das	7	0	4	0	4	1	0	16
62	Narendra Singh	0	0	5	1	8	2	0	16
63	Sanjeev Sharma	9	3	3	1	0	0	0	16
64	Utkarsh Singh	0	0	0	0	0	16	0	16

Sl. No.	Name of the appellant (Shri/Smt)	2017	2018	2019	2020	2021	2022	2023	Total
	Chauhan								
65	Anand Ramesh Awasarmal	0	0	0	0	0	9	6	15
66	Arvind Kumar Shrivastava	0	0	13	2	0	0	0	15
67	Baliram N Jogdankar	0	0	0	0	0	15	0	15
68	Dinesh Kumar	2	0	0	0	2	8	3	15
69	Mahesh Prasad Agarwal	0	3	2	1	2	4	3	15
70	Ram Krit Yadav	6	5	3	1	0	0	0	15
71	Raman Kumar	1	0	0	1	10	3	0	15
72	Sushil Kumar Tailor	2	0	3	3	0	7	0	15
73	Vijay Kumar	6	2	0	1	1	4	1	15
74	Ashutosh Shukla	0	0	0	0	0	14	0	14
75	Dilip Yadav	0	2	2	2	8	0	0	14
76	Kamal Thakur	1	3	2	0	0	8	0	14
77	Surendra Kumar	7	1	2	0	4	0	0	14
78	Suresh Chand Meena	0	0	0	0	0	0	14	14
79	Urmila Devi	11	3	0	0	0	0	0	14
80	Vijay Singh	6	2	1	0	3	2	0	14
81	E Veera Raju	4	9	0	0	0	0	0	13
82	Fateh Chandra	0	0	0	0	2	11	0	13
83	Kazi Rubina	0	0	1	0	12	0	0	13
84	Kuljit Singh Nanrah	0	0	0	0	0	10	3	13
85	M P Agrawal	5	4	3	0	1	0	0	13
86	Manish Kumar Sharma	1	3	0	0	2	6	1	13
87	Mohd. Khalid	0	0	10	1	0	2	0	13
88	Om Prakash	6	0	2	2	3	0	0	13
89	R V Singh	13	0	0	0	0	0	0	13
90	Ramchandra Sahu	4	4	5	0	0	0	0	13
91	Rohtash Singh	11	0	1	0	0	0	1	13
92	Atul Kumar Garg	0	0	9	3	0	0	0	12
93	B K Shah	12	0	0	0	0	0	0	12
94	Hari Shankar Sharma	5	3	3	1	0	0	0	12
95	Jitendra Kumar	4	3	2	0	1	2	0	12
96	Manisha Sharma	12	0	0	0	0	0	0	12
97	Mohammad Khalid	0	3	9	0	0	0	0	12

**Annexure-2**

Sl. No.	Name of the appellant (Shri/Smt)	2017	2018	2019	2020	2021	2022	2023	Total
98	Pawan Yadav	0	0	0	5	7	0	0	12
99	Saidur Rehman	3	9	0	0	0	0	0	12
100	Satish Kumar	3	0	0	2	5	2	0	12
101	Satya Vijay Singh	7	1	1	1	0	2	0	12
102	Shivnarayan S Rajbhar	0	0	0	0	2	10	0	12
103	Ajay Kumar Singh	0	2	0	2	3	3	1	11
104	Anup Kumar Shukla	0	0	0	0	0	11	0	11
105	Debashis Dutta	0	1	0	3	5	1	1	11
106	Pradeep Kumar	6	1	2	1	0	0	1	11
107	Pratap Singh	6	2	1	1	1	0	0	11
108	Raju Dajiba Ingle	0	0	0	0	11	0	0	11
109	Shyamal Kumar	5	4	2	0	0	0	0	11
110	Subhash Chandra Parmhans	0	0	0	0	0	10	1	11
111	Sujit Sengupta	4	2	0	2	1	2	0	11
112	Tathagata Datta	0	0	0	7	0	1	3	11
113	Amresh Chandra Mathur	0	0	2	4	3	1	0	10
114	Arvind Punatar	0	0	0	0	0	10	0	10
115	Ashok Kumar Jain Mahatma	0	0	0	4	5	1	0	10
116	Dilip Kumar Sengupta	0	0	0	1	0	9	0	10
117	Ganga Ram Meena	5	5	0	0	0	0	0	10
118	Krishan Meena	0	0	0	0	0	10	0	10
119	M P Agarwal	1	2	7	0	0	0	0	10
120	Mahesh Prasad Ram	2	3	2	1	2	0	0	10
121	Naresh Kumar	7	0	1	0	0	2	0	10
122	Nashib Singh	0	0	0	0	0	1	9	10
123	Nisha Maurya	0	0	0	2	7	1	0	10
124	Prasanta Basu Ray	7	3	0	0	0	0	0	10
125	Prem Prakash Prajapati	0	1	3	5	1	0	0	10
126	Ram Prasad Gautam	0	0	0	3	0	6	1	10
127	Ravi Kumar	2	0	0	0	4	4	0	10
128	Ravindra Kumar	2	1	3	2	1	0	1	10
129	Samir Zaveri	0	2	5	3	0	0	0	10
130	Shil Asheesh	0	0	3	4	3	0	0	10

Sl. No.	Name of the appellant (Shri/Smt)	2017	2018	2019	2020	2021	2022	2023	Total
131	Surendra Singh	5	2	1	0	0	1	1	10
132	Sushil Kumar Singh	2	3	4	1	0	0	0	10
133	Varun Krishna	0	2	7	1	0	0	0	10
	<b>Total</b>	<b>588</b>	<b>346</b>	<b>722</b>	<b>403</b>	<b>640</b>	<b>778</b>	<b>245</b>	<b>3722</b>

**Note:**

- 1) This summary is based on data from the CIC website at <https://cic.gov.in/decision> (accessed on 31<sup>st</sup> August 2024). Of the 7,941 appellants who sought a second appeal (with a total of 15,584 appeals from 2017 to 2023), each of the above 133 listed appellants submitted at least 10 second appeals during this period.
  
- 2) In the case of ***Mr. Ramesh Chand Jain vs. DTC [CIC/AD/A/2013/001326]***, Hon'ble CIC recommended the following actions for the respondent public authority:
  - a. Review all recurring RTI applications,
  - b. Compile the questions from these applications, provide the corresponding information, and

- c. Post this consolidated information on the website along with a factual background note, avoiding baseless claims, and also send a copy to the applicant and the relevant Information Commission.

Therefore, if there are any similar repetitive applications in these cases, the aforementioned recommendations of the Hon'ble CIC may be implemented.

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# Notes

# Notes

**Thirukkural - 466**

**Doing unfit action ruins;  
Not doing fit-act also ruins.**



**செய்தக்க அல்ல செயக்கெடும் செய்தக்க  
செய்யாமை யானுங் கெடும். (466)**