

DOs & Don'ts by Public Authority / Assistant Public Information Officer / Public Information Officer

Central Information Commission

Decision No. CIC /OK/A/2008/01083/SG/0820 in Appeal No. CIC/OK/A/2008/01083Dt.1.1.09

Request-

The appellant had asked information relating to the appointment of a lecturer to teach M. Tech. Students in CIL, PU, Chandigarh when she was not an M. Tech degree holder, The PIO in his reply stated that the essential qualification for the appointment of lecturer in Instrumentation is a B. Tech. Degree and not a M. Tech. degree and moreover she fulfilled all the desired qualifications required for the post. Thus the appointment was beyond any controversy and the allegations were frivolous.

The appellant found the information so provided as wrong, misleading and incomplete and therefore, appealed before the First Appellate Authority for imposing fine against the Information Officer, PU.

Decision-

From the evidence shown by the appellant it appears that the PIO is guilty of providing false and misleading information. The PIO was found guilty of furnishing false and misleading information attracting the penal provisions of Section 20 (1). A show cause notice was issued to him to give reasons why penalty should not be levied on him.

F. No. [CIC/MA/A/2009/000102] Decision No.[3774/IC(A)/2009]

Request-

The appellant, wife of an employee of the respondent, has marital dispute. In this backdrop, she has asked for information, including details of salary and emoluments paid, concerning to her husband, Shri. Rajesh Sharma.

The CPIO has replied and furnished partial information, while the remaining information has been refused to her u/s 8(1)(j) of the Act.

In the decision, CIC directed the CPIO to furnish the information asked for by the appellant on the basis of available records.

Decision-

A faster resolution of marital dispute is always in the public interest. Since the appellant is legally married, with a child, and has asked for details about her husband, there is no justification for withholding any part of information to the appellant, as it would assist in resolving the issue by the competent authority. As long as the couple is not legally separated, refusal to share information which commonly belongs to them is untenable. In a situation like this, when the couple is unable to live together, for the reasons best known to them, withholding of any part of personal or official information about them from each other would harm the interest of the society, particularly their girl child.

Decision No. CIC/SG/C/2009/000702/4128

No claim has been made by the PIO of any exemption under the RTI Act to deny the information. **If a Public authority has a process of disclosing certain information**

which can also be accessed by a Citizen other than the route provided by the Right to Information Act, it is the Citizen's right to decide which route he wishes to use.

The existence of another method of accessing information cannot be used to deny the Citizen his freedom to use his fundamental right codified under the Right to Information Act. If Parliament wanted to restrict his right, it would have been stated in the Law. Nobody else has the right to constrain or constrict the rights of the Citizen.

There is no provision in the Right to Information Act which restrains the Citizen's right to use it, if another route to access information has been offered or is available. It is a Citizen's right to use the most convenient and efficacious means available to him.

0/1/2005/CIC dated 25.02.06

Excuse of "potential misuse" is not sufficient to deny information.

2007/00131 Dt.23.6.2007

Since no reply was given by CPIO or any response given to the notice of CIC therefore penalty u/s 20 was imposed. It was directed that the penalty of Rs 25000 should be recovered in three instalments.

Case No: 49/2006

Mr. Habibur Rahman of Dispur submitted an application before the Chief Information Commissioner which was received on 8.8.2006 with the complaint that he did not receive information as sought for by him from the PIO of the office of the Deputy Commissioner Kamrup (M). The Deputy Commissioner Kamrup (M) informed that the relevant records of the Land Acquisition Case No. 42/83 were not traceable and efforts were being made to locate the same.

He further stated that he had fixed up a date for joint verification of the land and issued notices to the petitioner as well as the Commissioner Taxes to be present on the date for joint verification of the land. On hearing both the parties the Commission directed that the records of Land Acquisition Case No. 42/83 be located by the Deputy Commissioner Kamrup (M) / PIO within the next date fixed and the information be furnished to the petitioner within that period.

The Deputy Commissioner Kamrup (M) has submitted before the Commission today that the complainant was informed about the non-availability of the records for giving reply to para 1, 2 & 3 of his petition dated 17.7.2006. He was informed that the office of the Deputy Commissioner Kamrup (M) is not in a position to provide the said information. The Deputy Commissioner Kamrup (M) further informed that a joint spot verification was carried out with the officials / staff of the Land Acquisition branch, Deputy Commissioner's Office, Kamrup Metropolitan District, Settlement Office, the Commissioner of Taxes Office during which it transpires that 11 lechas of land in dag no 217 is at present not under the possession of Kar Bhawan nor utilized by Kar Bhawan and is lying outside the Kar Bhawan.

He has further informed that the Kar Bhawan has been directed to let his office know if the said land is required or not so as to enable the authority concerned for taking necessary action for acquisition or derequisition of the said plot of land. The Deputy Commissioner Kamrup (M) further informed that the land in dag no 216 was declared as Ceiling Surplus in the Urban Land Ceiling Case No. 354/76 and as such the complainant is not entitled to compensation under the Land Acquisition Case.

The Commission on hearing both the parties finds that Shri Avinash Joshi, IAS, Deputy Commissioner, Kamrup (M) as well as Shri Jayanta Dutta Lahkar, ACS, Addl. Deputy Commissioner, & PIO of the office of the Deputy Commissioner, Kamrup (M) have made sincere efforts to find out the records of the Urban Land Ceiling Case to make it clear to the complainant that the land under Dag No 216 which the complainant presumed to have been acquired under the Land Acquisition Act for Kar Bhawan was, infact, declared ceiling surplus and the land measuring 11 lechas in Dag No 217 was found to be remaining unutilized and the **Deputy Commissioner, Kamrup (M) has rightly written to the Kar Bhawan authorities to let him know whether the said land is required by the Kar Bhawan authorities or not.**

In case the said land is not required by the Kar Bhawan, the complainant will get back the said 11 lechas of land on de-requisition by the Deputy Commissioner, Kamrup (M) and the necessary compensation for requisition of the land up to date shall have to be paid and in case the said 11 lechas of land is required by the Kar Bhawan authorities the said land will be acquired by the Deputy Commissioner, Kamrup (M) in which case compensation as per Land Acquisition Act shall have to be paid to the complainant. In so far as the land declared as ceiling surplus under the Urban Land Ceiling Act is concerned, the petitioner may feel free to move the Deputy Commissioner, Kamrup (M) for payment of compensation as per the said Act if not already paid.

The Commission records its appreciation of the good work done by Shri Avinash Joshi, IAS, Deputy Commissioner, Kamrup (M) and by Shri Jayanta Dutta Lahkar, ACS, Addl. Deputy Commissioner, & PIO of his office in locating some of the old records for giving information to the complainant.

Assam State Information Commission

Case No: 49/2006

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217 is at present not under the possession of Kar Bhawan nor utilized by Kar Bhawan and is lying outside the Kar Bhawan.

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In case the said land is not required by the Kar Bhawan, the complainant will get back the said 11 lechas of land on de-requisition by the Deputy Commissioner, Kamrup (M) and the necessary compensation for requisition of the land up to date shall have to be paid and in case the said 11 lechas of land is required by the Kar Bhawan authorities the said land will be acquired by the Deputy Commissioner, Kamrup (M) in which case compensation as per Land Acquisition Act shall have to be paid to the complainant. In so far as the land declared as ceiling surplus under the Urban Land Ceiling Act is concerned, the petitioner may feel free to move the Deputy Commissioner, Kamrup (M) for payment of compensation as per the said Act if not already paid.

The Commission records its appreciation of the good work done by Deputy Commissioner, Kamrup (M) and by Shri Jayanta Dutta Lahkar, ACS, Addl. Deputy Commissioner, & PIO of his office in locating some of the old records for giving information to the complainant.

Case No: 43/2006

The complainants filed a complaint with the SIC that the responses to their queries were not satisfactory. **The PIO submitted a detailed report on the matter. His main contention is that the complainant did not file an appeal before the first Appellate Authority as provided in the RTI Act and instead came before the Hon'ble Commission.** It was also pointed out by the PIO that no fee was deposited by the complainant with the application. **It appears from the record that the PIO did not ask the complainant to deposit the requisite fee and the Commission directed that necessary fee might be collected from the complainant.**

The persons representing the complainant were not satisfied with the information regarding the names of the officers responsible. The persons representing the complainant alleged that the information furnished against certain queries were incomplete, misleading and vague. They also alleged that **neither the requested APWD manual nor the source where it could be available were not provided.**

The Commission heard the PIO, who stated clearly that the First Appellate Authority was indicated in the notice board in their office. He also submitted photographs of the action

taken on the points raised by the complainant. The persons representing the complainant were however not satisfied and submitted a CD to show that all the manholes / pits that were not covered. PIO was told by the Commission that u/s. 7(3)(b) of RTI Act he has to inform the petitioner the particulars of the appellate authority to facilitate filing of appeal and it is not enough to just keep the name of the appellate authority in the office notice board.

Hence, the Commission directed the PIO to hold site inspection in presence of the persons representing the complainant and submit a report to the Commission. After a couple of months, the Complainant has send an email to the Commission intimating that the PWD (Roads) has covered the pits and the man-holes. **The Commission is happy to note that the PWD (Roads) has complied with the requirements in covering the pits and the man-holes which posed danger to the life of the pedestrians. This is a process which should continue.**

Case No: 39/2006

(Designation of PIOs, arrear salary disbursement of the retired principals/teachers of government high school and higher secondary schools)

The complainant stated before the Commission that she was in receipt of the letter from the PIO in which it was stated that the Director of Secondary Education, Assam had instructed all the Principals and Head Masters of Government High School / Higher Secondary Schools to submit arrear particulars in respect of in service and retired / deceased employees for onward submission to the Government of Assam in the Education Department and that the Principal Government BHSS, Golaghat submitted arrear particulars in respect of the complainant.

The PIO submitted before the Commission that the issue is a major one as there is no budget provision for payment of arrear salary of the retired Principals / Teachers of the Secondary and Higher Secondary Schools which involves not only the Director of Secondary Education but also the Department of Secondary Education and the Department of Finance.

As it is a matter of great importance concerning the payment of arrear salaries of the retired Principals / Teachers of the Schools the Commission considers it expedient and necessary to have a consultation with the Commissioner, Education and the Commissioner, Finance in presence of the Director of Secondary Education and the PIO who should place all the required particulars before the Commission for due consultation and necessary directions.

In a case hearing on 30th October 2006, the Commission issued directions to the Education department:

- The Director, Secondary Education will submit the proposal for all the schools for payment of arrear salaries to the retired / serving teachers within one month to the Department of Secondary Education, Government of Assam
- The Department of Secondary Education, Government of Assam will submit such proposals to the Finance Department within 15 days of receipt of the proposal from Director, Secondary Education
- The Finance Department after holding necessary field inspections and scrutinizing the accounts will sanction the proposals for payment of arrear salaries preferably within the current financial year but not later than 4 months from receipt of proposal from the department of Secondary Education
- The matter in its entirety is to be resolved within 6 months from this date

The Commission has also observed that the Education Department has designated only one PIO who is the Deputy Secretary of Elementary Education. The Commissioner & Secretary, Education is directed to designate PIOs for each of the functional department under him for facilitating better dissemination of information and report compliance to the Commission within 15 days.

Bihar State Information Commission

Case No. 78 / 06-07 Dt. 07.03.2007

Since it was brought to the notice of the Information Commission that ' - the APIOs and PIOs designated in the 'Babasaheb Bhimrao Ambedkar University', Muzaffarpur i.e. the Public Authority were not employees of the University but were employees of the colleges affiliated to it. Hence, they were not aware of the functioning of the University and were not in a position to provide any information about these matters.

Since the APIO(s), PIO(s) were not designated as required under the 'RTI Act, 2005', but only the FAA had been designated as per the Act's provisions, the Information Commission ordered the FAA to appear before itself and present the reasons for the applicant not getting the information even as the FAA was also asked to explain the procedure followed in the designation of PIOs and APIOs.

Case No. 106 / 06-07 Dt. 22.11.2006

The Information sends a copy of a complaint received by it to the Managing Director of the Bihar State Road Transport Corporation (i.e. the Public Authority concerned) asking the MD to have the matter sent to the First Appellate Authority (FAA) concerned for its disposal.

The order further reads that if the PA concerned has not designated FAA, then the complaint may be returned to the Information Commission.

In another case (**Case No. 142 / 06-07 Dt. 09.01.2007**) the matter was sent to the FAA concerned and the latter was asked to dispose it within 30 days.

Case No. 147 / 06-07 Dt. 15.03.2007

On the submission by a PIO that the file is in custody of the Additional Secretary (of the Department concerned i.e. Civil Aviation Department in this case), the IC maintained that the authority who is in custody of the record should be the PIO - in this case. Thereupon the IC asked the Additional Secretary Civil Aviation Department to provide information to the applicant within 25 days and appear for the hearing as scheduled on the 27th day. On this date the concerned Additional Secretary appeared before the Information Commission and informed it that the information had been provided.

Case No: 16/2006

Both the complainant as well as the Chief Executive Officer, Golaghat Zila Parishad heard. The complainant acknowledges receipt of the information as asked for by him except the copies of the Muster Rolls. The CEO, Zila Parishad submits an affidavit as a reply to the points raised by the complainant and submits that the Muster Rolls are voluminous and can not be photocopied because of their sizes.

He submits that initially he did not furnish the information as called for by the complainant as he as well as his office were not aware of the provisions of the Act and also the Zila Parishad authorities passed a resolution for referring the matter to the Government. Now that the provisions of the RTI Act are known to him and to the authorities of Zila Parishad, information as requested by the complainant were furnished to him except copies of the Muster Rolls as these documents are voluminous and unwieldy for photocopy.

The complainant alleged that the CEO was very rude towards him during his many visits to his office in connection with obtaining information. He even stated that he was threatened with bodily harm by the henchmen of the CEO. The CEO however denied all such allegations. The Commission advised the complainant that threat of physical harm would constitute an offence under the Indian Penal Code and that he was free to take recourse to legal options.

The Commission hereby directs that the CEO, Zila Parishad allow the complainant to take copies of the Muster Rolls which are required by the complainant to copy and the copies will be certified by his office and allowed to be taken free of charge. Also if the complainant finds that the information furnished to him is incomplete or misleading he can approach the Commission for further orders.

Goa State Information Commission

Complaint No. 126/SIC/2010

The mere fact that the application seeking the information is not accompanied by court fee of Rs.10/- is no ground not to provide the information. There is no need to make a fresh application and on the same application the court fee of Rs.10/- can be affixed by the applicant.

Appeal No. 33/SCIC/2010

Views regarding correctness or otherwise of any circular or notification of the Government in the light of the decision of the Supreme Court cannot be sought under the RTI Act (CIC decision dated 11/5/2007 Satish Mehra V/s. Supreme Court). In any case if the public authority does not hold information or the information cannot be accessed under section 2(f) or information is non- est, the public authority cannot provide the same under the Act. To be noted further Act does not make it obligatory on the part of the public authority to create information for the purpose of its dissemination.

Complaint No.23/SCIC/2010

According to the appellant, information furnished to him is incomplete and hence the present complaint. The Opponent resist the complaint and their say is on the record. It is the case of the Opponent that the Complaint is not maintainable in law and is based on misconstruction and misinterpretation of the RTI Act.

That the Complainant is attempting to raise grievances on behalf of his wife which is not permissible under the RTI Act. The complainant does not dispute that no information given to him according to him all the document are not given. In view of this position no further intervention of this commission is required.

The Complainant contends that the information furnished to him is incomplete and is incorrect this is disputed by the Advocate for the opponent. According to him information

furnished is correct. It is to be noted that the purpose of RTI Act is per se to furnish information. Of course complainant has a right to establish the information furnished to him is incomplete, incorrect, misleading etc but the Appellant has to prove it by means of some sort of documentary evidence to counter opponent's claim. The information seeker must feel that he got the true and correct information otherwise purpose of Right to Information Act would be defeated.

It is pertinent to note that the mandate of the RTI Act is to provide information – information correct to the core and it is for the complainant to establish that what he has received is incomplete and incorrect. The approach of the Commission is to attenuate the area of secrecy as much as possible. **The complainant should be given an opportunity to prove that information is incomplete, incorrect, misleading etc as provided in section 18(1) (e) of the Right to Information Act.**

Gujarat State Information Commission

Designation of the First Appellate Authority (FAA) and hearing of a 1st appeal as per the Act's provisions was ordered to be done within 30 days in **Inquiry No. 0031 / 2006 dt. 21.03.2006** also **Appeal No. 0019 / 2006-07 dt. 16.05.2006**. That FAA should give personal hearing to the appellant was reiterated in the decision on **Appeal No. 0020 / 2006-07 dt. 26.04.2006**.

Appeal No. 0104 / 2006 dt. 23.05.2006

The IC took serious note of the fact that the PIO concerned had not attended the hearing as also of the fact that for 9 straight days the PIO was not available in the office for the postman to be able to deliver to the PIO the communication about the hearing. It went on to order the Block Development Officer to conduct an inquiry into the reasons for the PIO's absence from office as mentioned earlier.

Inquiry No. 0024 / 2006 dt. 22.03.2006

The respondent (PIO / PA) is informed that whenever any citizen at any time submits an application for information under the Act, on a plain paper, the application has to be accepted (whether the PA concerned has a pre-designed format for application or not).

This was also stated in the IC's decision on **Inquiry No. 0039 / 2006 dt. 28.03.2006** wherein it was said that whenever a request is made on plain paper, it should not be rejected only on the ground that it is not in the prescribed form. The decision further stated that the PIO has the responsibility to educate the citizens in filling the forms prescribed by Government for this purpose, but Right to Information cannot be denied only because a citizen as not applied in the prescribed format.

Complaint No. 0395/ 2008-09 dt. 04.01.2010

PIO is restrained from / should avoid giving a personal opinion / explanation – which is not a part of the record –in response to an RTI application. The same applies when reasons / grounds for something done or not done are sought. The PIO should also be careful about following the stipulations of S. 11 where '3rd party information is involved'.

The last observation also made later in **Complaint No. 0368/2008-09 dt. 05.01.2010**

Kerala State Information Commission

AP.No.781(4)/2008/SIC(FileNo.7690/SIC-Gen1/2008): Adv. T. Asaf Ali Vs. Revenue department: Order dated 4th March 2009

As response to the application for extension of time by the State Public Information Officer, the Commission had categorically told the SPIO concerned that there was no provision under the RTI Act for extension of time for complying with the orders and directions of the Commission. Commission therefore, observe that the PIO had not complied with the directions of the Commission yet.

Non-compliance tantamount to disobedience of the orders of the Commission to provide information on the second appeal and such an act is punishable u/s. 20 of the RTI Act. PIO is thereby directed to appear before the Commission to explain as to why action should not be taken against PIO for non-compliance of the orders of the Commission

Ref: A.P. No. 280(5)/2008/SIC (File No. 1042/SIC-G3/2008) : K. Savithri Kunjamma Vs. Social Welfare Department : Order dated 5th March 2009

Application filed under u/s. 19(3) of RTI act: Appellant requested information on the original RTI application filed by her son to Secretary, Social welfare department on service benefits and pension benefits due to him from KSRTC, in accordance with the provisions in the Persons With Disabilities Act. The original request under RTI Act was transferred to Transport Department. However, no information regarding this matter was provided to the appellant. The Appellate Authority did not dispose off the appeal according to the provisions of the RTI Act.

The Public Information Officer of Social Welfare Department had the obligation to provide the information. The information was not provided during the appeal stage also. Information requested by the appellant should be provided within 7 days, free of cost, by the Public Information Officer, Social Welfare Department

Ref: AP No.663(2)/2008/SIC (File No.6208/SIC-Gen2/2008) : A. M. Bashir vs. Nedumangadu Municipality: Order dated March 24, 2009

The appellant had asked for information on the decisions of a Municipal committee meeting in 2004. However, he was informed that the information was not available. On submitting a second application for the same information, he was provided the information. The appellant filed an appeal against one of the respondents that there was willful negligence in providing information on the first application. The commission on detailed hearing observed that the delay in providing information arose from the lapses in record management and adjudged that the accused respondent could not be penalized owing to lack of evidence for willful negligence in providing information.

Ref: A.P. No. 651(5)/2008/SIC (File No. 6065/SIC-G3/2008): Sri. A. Varghese vs. Maradu Grama Panchayat : Order dated 19 March 2009

The appellant had filed three applications to the PIO seeking information on tender and work order of the maintenance of road. He was informed that all his three applications were rejected, as there was no application fee attached to it. The appellant submitted that court fee stamp for Rs.10/- had been affixed on the application and the application was received by hand by the Senior Superintendent of the Panchayat Office.

The Commission observed that the application was received in the Office of the Grama Panchayat by the Superintendent by hand. If there was no application fee along with the application, he could have informed the matter to the appellant and got corrected the

mistake. *The State Public Information Officer owes a duty to help the applicant in making an application for information. The application was not sent by post. It was handed over in person. Hence, if there was any deficiency in the application, it could have been rectified on the spot. Moreover, the Commission viewed that the information sought for was regarding the tender and work order of the maintenance of road, which was of public interest. Hence, the Commission order that the information sought for by the appellant shall be provided to him within 7 days, free of cost.*

Ref: A.P. No. 606(5)/2007/SIC (File No. 7855/SIC-G1/2007) : The Secretary, Kerala State Consumers Association vs. Kerala State Road Transport Corporation: Order dated 26 February 2009

The Secretary of the Consumers Association requested for certain information under RTI Act to the State Public Information Officer, Kerala State Road Transport Corporation, Palakkad on 12-2-2007. The State Public Information Officer vide his letter dated 12-3-2007 informed the appellant that the application was not maintainable since the name of the applicant was not mentioned. Moreover, the application fee in the form of Court Fee stamp or Treasury Chelan was not acceptable to KSRTC. It had to be remitted in cash at the KSRTC office or by demand draft.

After perusal of the records and the report of the Appellate Authority, the Commission observed that the name of the citizen was not mentioned in the application form. As per section 3 the RTI Act, all the citizens shall have the right to information. *The request made by the Secretary of an association without mentioning his name cannot be considered as an application made by a citizen. Moreover, KSRTC is a public sector undertaking, and hence, the application fee has to be remitted as demand draft or Banker's cheque or by cash in the office of the public authority.* Hence, the decision taken by the State Public Information Officer and Appellate Authority is correct, and hence, it is upheld. The appellant is free to seek for information again on the same subject matter in his name, remitting the fee either in cash in the O/o KSTRTC or by demand draft or by banker's cheque.

Ref: A.P. No. 1007(5)/2008/SIC (File No. 9799/SIC-G1/2008): Smt. Lathika S Vs. Kerala State Drugs & Pharmaceuticals Ltd., Alappuzha, Kerala : Order dated 5 February 2009

Appellant sought for information regarding the details of her salary. Incorrect information was provided by PIO as correct information was not provided by the Personnel department. The Commission observed that there was laxity from the part of Sri. Achuthankutty, Manager in-charge, Personnel and Administration to provide the correct and complete information. *The Public Information Officer owes a duty to collect the correct information from the sections; if any officer refused to co-operate with her she could have taken the matter to the higher authority.* Manager in-charge (Personnel & Administration) is cautioned as he has violated S. 5(5) of the RTI Act by refusing to tender on assistance to the state Public Information Officer. His action attracts S.20(1) of the Act and, hence, he should be more careful in future.

Ref: CP No. 109(2)/2009/SIC File No.2399/SIC-Gen 1/2008: Shri Raghu KV Vs. Grama Panchayat,Kazhakkootam, Kerala : Order dated 27 January 2009

Applicant had sought information pertaining to action taken on his complaint to the Panchayat on a dispute with his neighbour. Instead of providing the information sought, the respondent had proceeded to redress the basic grievance of the applicant. The SIC observed that RTI act only mandates providing information and does not hold the PA responsible for administrative action to redress the grievance based on an application.

Since the delay in providing information occurred due to the time taken for administrative action, SIC observes that the respondent had no malafide intention and directs the respondent to provide the requested information.

Similar case: **CP No. 1045(2)/2008/SIC (File No.6720/SIC-Gen 2/2008) (P. 156 2009 II)**

Ref: CP No. 1369(2)/2008/SIC (File No.10913/SIC-Gen 2/2008): Shri Subhash S Vs. District Collectorate, Thiruvananthapuram: Order dated 21 March 2009

The appellant had filed an RTI application seeking copy of the sections of the RTI act, which mandates an applicant to make separate applications for each item of information requested. He was informed in the reply from the respondent that the information sought does not come within the purview of the respondent's office and needs to be sought from the State Information Commission.

The SIC observed that PIOs of all institutions should familiarize themselves with all sections of the RTI act and should not avoid their responsibility by directing applicants to the SIC. Moreover, there is not provision in RTI that asks an applicant to make separate applications for each item of information. The Commission therefore directed the respondent to provide the correct information to the applicant.

Ref: CP No.1345(1)/2008/SIC (File No.10210/SIC-Gen1/2008) : Shri V.G. Krishnanachary Vs. District Police Complaint Authority, District Collectorate, Kottayam, Kerala: Order dated 17 March 2009

The appellant had filed an RTI application to the O/o the Superintendent of Police, Kottayam on 24-04-2008 seeking information on the action taken on his complaint dated 12-2-2008 to the Secretary, Kottayam District Police Complaint Authority. The office of the Superintendent of Police, Kottayam had transferred his application to the Kottayam District Police Complaint Authority situated in the Kottayam District Collectorate vide letter dt.21-05-2008. Thereafter, no information was received from the Kottayam District Police Complaint Authority.

The District Police Complaint Authority, Kottayam was constituted of a District Judge, District Collector, and the Superintendent of Police. The Shirestadar was the Secretary to the Authority. The Authority had adopted a resolution designating the Secretary of the Authority as the SPIO and the Addl. District Magistrate as the first Appellate Authority.

The Commission observed that designating the Addl. District Magistrate, as the First Appellate Authority was not in consonance with the RTI Act. *When the ADM was not a member of the DPCA and, therefore, was not privy to the proceedings of the DPCA, he had no locus standi to function as the First Appellate Authority. This was highly irregular. The first Appellate Authority should be a superior officer to the SPIO in the same Authority, i.e. the District Police Complaint Authority.*

Maharashtra State Information Commission

Appeal No.2007/983/02

Appeal No.2009/2608/02

Appeal No.2009/1809/02

Central Information Commission (in its order dated 06.02.2006 in Appeal no ICPB/A-2/CIC/2006) has held that, awarding the marks by the Examiner is in fiduciary capacity and, therefore, such type of information need not be given under section 8(e) of the Act. Moreover, no larger public interest gets served if a candidate gets to see his answer sheet. And the information being personal having no relation to any public interest is exempted from disclosure under section 8(1) (J) of the RTI Act.

In **Appeal No.2007/1085/02** also the PIO contended that the answer sheets are the property of MPSC and evaluation of answer papers under Sec. 8(e) involves fiduciary relationship. Central Information Commission also held that answer paper copies need not be given under right to information Act. In this regard even the Supreme Court has held that the examination is not a participating process and its result should reach finality as early as possible and if there is no finality in such examinations as early as possible, it may lead to gross and indefinite uncertainty. It is not a fundamental right of a student to get to see the evaluated answer sheet. In **Appeal No.2009/2110/02**, the Commission also held the view that copies of evaluated answer books need not be furnished as this will lead to compromising the fairness and impartiality of the examination system.

In **Appeal No.2007/1085/02**, the Commission held that if the appellants request for merit list, the PIO cannot refuse to give information under section 8(j) (that deals with information, which relates to personal information the disclosure of which has no relationship to any public activity or interest) if it involves a public authority which is responsible for conducting exams and drawing up a list of suitable candidates to be recommended to the Government for appointment in various Government Departments. In this case, the contention of no public interest cannot be upheld. In fact it would serve the larger public interest to publish the marks of at least all candidates who have been called for interview.

In the same appeal, the applicant has asked for the qualifying marks kept in the (Prelims) examination of 2000, 2001,2002 an 2003 for the State Service (Mains) Examination (under MPSC) and has asked for his score (marks) in the said (Prelims) Examination.

This was rejected by the respondent as per their advertisement and plan and under section 8(j) of the RTI Act. The SIC then reiterated that the MPSC is a public authority with the role of drawing up a list of candidates for recommending to the State Government for appointment in various Government Departments.

They are required to uphold the highest norms of openness and transparency in their selection process. Non disclosure of the aforementioned qualifying marks cannot be a part of Sec. 8(j) of the RTI Act.

MPSC is also required to have openness as far as their planning and rules go. Qualifying marks should be disclosed. Since a very large number of candidates appear for such examinations information of individual candidate his score in prelims will put great strain on the MPSC examination machinery. Therefore, the contention of MPSC is accepted.

Appeal No.2007/361/02 (fees for RTI)

The Complainant's contention is that as per article 265 of the Constitution no tax shall be levied or collected except by the authority of law and as per the judgment of *Muhammadbhai Vs. State of Gujarat* (AIR 1962 **S.C.1517@1530**) that "tax" includes fees. The contention is that the rates prescribed are not by the competent authorities. Since the fees prescribed by various authorities mentioned above has been in vogue for decades together, Commission felt that the issue whether these fees have been prescribed by the proper authorities or not needs to be taken by the Applicant with the proper authorities under Municipal Corporation Act/ with Government / or Courts.

As regards fees under RTI Act, 2005, is concerned Maharashtra Government has framed the rules called the Maharashtra Right to Information rules, 2005 and in Rule 4 gave the charges/fee amounts. Therefore, for information asked under RTI Act, the Public Authority should charge the fees prescribed under the State Government rules.

Appeal No.2008/1097/02

The information has to be furnished by the Public Authority who holds it.

Appeal No.2009/3987/02 (More than 2 PIOs – applicant should directly approach the PIOs)

The latest instruction by Govt. of Maharashtra says that the PIO need not send copies of the application but ask the applicant to apply to different Public Information Officers in case the no of PIO concerned happens to be more than two.

Appeal No.KR- 448/2009

Appeal No.KR- 466/2009

Appeal No.KR- 465/2009

Appeal No.KR-491/2009

Appeal No.KR-498/2009

Appeal No.KR-506/2009

Appeal No.KR-522/2009

Appeal No.KR-488/2009

Appeal No.KR-506/2009

Appeal No.KR-511/2009

Appeal No.KR-510/2009

In case the information asked for is related to more than one Public Information Officer, then all the concerned Information Officers should be invited for the hearing and thereafter issue a fresh reasoned order with a view to give better satisfaction to the appellant.

Appeal No.2009/1832/02 (Technical grounds)

The appellant had sought information relating to certain property in possession of the court receiver. The Public Information Officer rejected his request on the ground that the application was not in the prescribed format and the information is in respect of judicial record and proceedings and in view Rule 9 & 19 of the Bombay High Court Right to Information Rules 2006 the same cannot be provided under Right to Information Act. The appellant preferred the first appeal but the same was rejected on the ground that the appellant had not taken cognizance of all grounds of rejection of his application. He was asked to amend his appeal memo. This appeal is against this order.

The respondent has made his submission in writing. It appears that the appellant's applications as well as the first appeal have been rejected on technical ground. It was up to these authorities to ignore or take cognizance of the omissions but it would not be proper for me to say that the application / appeal could have been heard despite deficiencies. I would therefore, advice the appellant to rectify these deficiencies and approach the Public Information Officer for being heard.

Appeal No.2008/3494/02 (Denial of information for fear of misuse)

The central point is whether information can be denied, because it is feared that this may be used against someone or in some proceedings. This cannot be a ground for refusing the required information. The only exemptions are provided in section 8 of the Act. The Hon High Court of Delhi at Delhi in WP (C) 3144/2007 Bhagat Singh Vs Chief Information Commissioner upheld the order of the Central information Commission directing disclosure of similar information.

Appeal No.2009/2014/02 (voluminous info being sought is no reason for not furnishing info) Appeal No.2009/2057/02

'Information was vast and voluminous' cannot be a ground for not furnishing the information.

Even through the information is voluminous, it needs to be furnished. If the information is available then it is obligatory on the part of the Public Information Officer to furnish the same.

However, in **Appeal No.2009/1171/02**, it is stated that it is not expected to collect the information and furnish to the appellant especially in cases where the range and volume of the information sought is very wide and big, and from Cooperative Societies. The appellant in such cases pursue her case under the Maharashtra Cooperative Societies Act 1960.

(Response in Marathi language) In **Appeal No.2008/1159/02**, the Public Information Officer and the First Appellate Authority argued that in accordance with instruction of the Govt, all correspondence has to be in the state language – Marathi. They have also pointed out that the Right To information Act does not prescribe that orders has to be in the language of choice of the appellant.

The appellant in his appeal has submitted that the Central Information Commissioner, New Delhi has ruled that if the information sought is English it should be furnished in English. The State Commission is of the view that normally the PIO and the First Appellate Authority should have accommodated the appellant. They chose not do so. It is not possible for the Commission to hold them guilty.

They have quoted the state Govt. instruction and the Commission is in no way in a position to force them to pass orders in language of the appellant's choice.

**Appeal No.2008/1099/02
Appeal No.2008/1100/02**

The MSRTC is not following govt. circular dated 14.03.1986. This is binding on them. They have been filling vacancies without reference to the govt. circular and depriving themselves of the trained manpower.

The commission therefore directs the PIO to obtain necessary order from the competent authority for immediate compliance of the Govt. circular dated 14.03.1986.

Orissa State Information Commission

Complaint Case No. 614/2007, dated 1 October 2008, Jagamohan Pandit vs. PIO, Office of the Tahasildar, Anandapur, Keonjhar, Orissa

The SIC depreciated the action of the PIO in seeking more time than prescribed from complainant to provide information. Instead, it ordered the PIO to streamline record management system in its office.

On the other hand, the SIC ordered to the complainant that he could seek only information and cannot ask for certified copies of his own mutation certificates as it is supposed that the owner should have a copy of the same with himself.

Ref: Complaint Case No. 768/2007, dated 21 October 2008, Damayanti Biswal vs. PIO, Paliabindha, Bhadrak district & First Appellate Authority-cum-

Principal, Biranchi Narayan Madhab Arjun College, Paliabindha, Bhadrakh, Orissa

Antyodaya Anna Yojana beneficiaries to be treated at par with BPL beneficiaries in terms of not depositing prescribed application fee.

&

Money order, account payee bank draft, account payee postal order or banker's cheque payable to the PIO of the public authority and not personal cheques to be considered as cash delivered on behalf of the citizen.

Ref: Complaint Case No. 125/2007, dated 02 March 2007, Shri Paramanada Nayak, Jajpur, Orissa vs. PIO, Office of the Chief District Medical Officer, Jajpur, Orissa

Complainant sought information from the PIO, CDMO office, Jajpur on postmortem of Kalinganagar Police action against tribal people, which was considered to be safeguarding larger public interest.

The PIO did not provide information u/S 7(1) of the Act within stipulated period and therefore was directed to pay compensation of Rs. 1,500 to the complainant even as the applicant had got the information from some other source using RTI.