

Third Party Information and Related Aspects / Issues

Central Information Commission

2006/00555 Dt 31/01/07

Request-

Balance Sheet of a third party and balance payable by third party to the applicants

Decision-

Any information which a third party entrusts to a public authority in discharge of a legal obligation such as tax payment is prima facie personal information which is supplied to the public authority for the sole purpose of enabling that authority to perform its function under the law.

The decision whether or not to make such information public cannot be taken by the public authority in isolation or arbitrarily. The RTI act under section 8(1)(j) mirrors the objectives set out in section 138 of the Income Tax Act ,viz unless it is proved that a personal information is related to a public interest or activity such information shall be exempted from disclosure.

The decision of the CPIO and the AA to disclose the balance sheet of a third party without the third party concurrence was wholly unjustified.

Appeal No. CIC/LS/A/2009/000200 Dt. 05/03/2009

Request-

Income Tax Returns of third party.

Decision-

Income Tax Returns filed by an assessee are confidential information, which include details of commercial activities and that it relates to the third person. These are submitted in fiduciary capacities. There is no public action involved in the matter. Disclosure is exempted under section 8 (1) (j).

F.No.CIC/AT/A/2009/000149 Dated, the 31st July, 2009.

Request-

The subject-matter of the second-appeal is the question asked by the appellant regarding information of a third-party about *Raw Material imported, Products Manufactured, Product exported, and product cleared in DTA – Details required product wise and both in terms of quantity and value as per the format enclosed. Alternatively, copy of the monthly return submitted by them may be provided.*

CPIO declined to disclose this information under Section 8(1)(e) after consulting the third-party, who objected to disclosure of any information.

Decision-

The Commission inter alia observed that A third-party cannot be forced to share with an applicant any information which is personal to the third-party if no public interest is served by such disclosure. The monthly information regarding the output related details of the Company handed over by the third-party to the Department of Central Excise cannot be made available to the requester only because such information aggregated into annual details as given out in the Company's Annual Reports. The reasoning that if an aggregate information on an annual basis is available in the public domain, a holder of such information is automatically obliged to give out its monthly breakup, is flawed logic and hence unacceptable.

Commission has noticed that since the advent of the RTI Act, business rivals have often, quite brazenly, attempted to access important information of each other to settle private scores, or to use it in the litigation. In my view, all business-related information also fall under Section 8(1)(d) of the RTI Act and, unless there are strong arguments to the contrary, there is no reason why these should be allowed to be disclosed only to provide grist to the rival to pursue his rivalry. The appeal is closed.

Kerala State Information Commission

Ref: AP.No.735(4)/2008/SIC (File No.7068/SIC-Gen3/2008) : G.Sasi Kumar Vs. Conservator of forests, Social forestry, Southern region: Order dated 17th March, 2009

Appellant asked information on the date of appointment and relieving, date of relieving the gratuity and the gratuity amount of an employee of the respondent. The appellate authority has contended that the information/documents sought for are available with it in its fiduciary relationship (i.e. employer-employee relationship) and the disclosure of which is exempted u/s 8(1) (e). the commission observed that the information sought are not pertaining to the personal aspects of the person and that the Kerala HC court has under order WP(C)No.9988 of 2007 stated that unless information does not deeply pertains to personal life of a third party, information should be provide. Commission directs to provide information to the appellant.

Ref: AP. No. 840(4)/2008/SIC (File No.8204/SIC-Gen1/2008) : Shri.Rajan.P Vs. University of Calicut: Order dated 29 January, 2009

Appellant requested information on the answer sheet of a third party on the grounds that the concerned answer sheet was lost and, therefore, information has to be collected with regard to the liability of the custodian of the answer paper. It was also intended to know whether any departmental action had been taken against the person responsible for the loss of the answer sheet. Initially informed that information pertains to a third party and can be provided only with her consent after which incomplete information was provided. PIO contended that the magnitude of the workload in University makes it difficult to trace lost examination sheets.

SIC observed thus: 'The magnitude and volume of work involved in the conduct of examination, valuation etc., were indispensable and the principal duty of the University was to conduct examination, find out qualifying persons and award the certificates according to the University norms. *But, if a candidate was very particular to have his answer script as an item of information, the same could not be denied on the ground that it was impossible to trace it out or the magnitude of work involved in it was just and reasonable cause to deny the information*'.

Ref: AP. No.844(4)/2008/SIC (File No.8212/SIC Gen1/2008): Dr. Ravindran Nair Vs. KSEB Electrical Section, Pathanamthitta, Kerala: Order dated 29 January 2009

Appellant's request for information on the agreement executed by five consumers in favour of the KSEB as the customers other than the requester were third parties who expressed their disagreement in providing the information. SIC observed thus:

The third party information, of course, was information available with the third party and the disclosure of which could be made only with his permission. However, what was requested, herein in this case, was common agreement executed by customers viz., consumers in favour of the Electricity Board in a standard format. It was the same for all the customers and all type of consumers. The information was available in the public domain with the public authority and therefore, the interpretation that the agreement falls within the purview of third party information was irregular. The PIO is hereby directed to provide the information to the concerned appellant, within 15 days of receipt of this order.

Ref: AP.No.952(4)/2008/SIC (File No.9325/SIC-Gen1/2008): Shri.K.M.Balan Vs. AEO Office Vadakara, Kerala : Order dated 13 January 2009

Appellant sought information on the DOB of a student who studied in a particular school under the jurisdiction of the AEO office and the year in which she had studied during 1948-55. Request declined as it was third party information and no consent from third party could be obtained due to absence of correct address. The Commission observed that if a student had studied in a particular School, the date of birth given of such a student could not be considered as third party information. The information had to be, however, available with the School records. Further, no damage could have visited such a student, even after later years, if that information was divulged.

Ref: CP.No.1068 (4)/2008/SIC File No.10033/SIC-Gen1/2008: Shri. D.B.Binu Vs. KSEB: Order dated 02March 2009

Appellant's application for information was rejected on the grounds that information sought pertained to third party. SIC observed thus: 'It was a common man's knowledge that the details requested were third party information because the details demanded were the leave particulars of a particular employee'.

A person who was employed was in public service and the details of his service could not be held as private information because he was functioning in the public domain in the public office. Availing the leave as legally available right, leave either long leave or short leave was a right conferred on a Govt. employee or, since it was a public order that enables him to either grant or reject the leave, the information was available in the public domain and hence not a third party information. Therefore, there was nothing personal to refuse the information. This information was in the public domain. The public interest was an aspect that outweighs the reason for denial. Therefore, the PIO is hereby directed to provide the information to the requester.

Ref: AP No. 1236(2)/2008/SIC (File No.10918/SIC-Gen 3/2008): Shri. C. Balan Vs. Collectorate, Kozhikode, Kerala : Order dated 06 March 2009

Information sought by the applicant was rejected on the grounds that it pertained to third party before a bench and that the third party did not want to disclose such information. SIC observed that the third party had submitted the information before a bench and that information submitted before a bench cannot be treated as confidential and therefore do not come under Sec 11 (1). Hence the information may be provided to the applicant

Maharashtra State Information Commission

Appeal no. 2007/907 /02

When an Applicant seeks information pertaining to Third Party, procedure under section 11 titled "Third Party information needs to be followed". It seems that applicant has asked for the documents supplied by the successful bidder to prove his capability to execute the contract. It is true that such information is available to organization in fiduciary relationship, however, this could also be disclosed if larger public interest is served. Disclosure of the information which would harm the competitive position of a third party need not be disclosed as per Section 8(d) of RTI Act, 2005.

Appeal No.2009/2117/02

Section II of the RTI Act clearly says that except in the case of trade or commercial secrets protected by law, disclosure may be allowed if the public interest in disclosure outweighs in importance any possible harm or injury to the interest of such third party.

Appeal No.2008/551/02

An unauthorized construction even if the man who has indulged in it and wants it to be confidential cannot be confidential. Under the RTI Act his application for regularization or permission also cannot be confidential. The Act allows even disclosure of trade or commercial secret if public interest in disclosure outweighs in importance any possible harm or injury to the interest of such third party.