

Section 4

Central Information Commission

Appeal No. 10/1/2005-CIC Complaint No. CIC/LS/C/2009/00322 dated 8-5-2009

Request-

Information concerning ongoing modification of the Master Plan of Delhi till the year 2021 ("MPD-2021"). He also sought directions to DDA to fulfill its mandatory obligations under the Act including proactive disclosures. Subsequently, the appellant submitted that the orders of this Commission in Appeal No. 10/1/2005-CIC announced on 25-2-2006 have still not been complied with. Not only in the decision of 25-2-2006 which is quoted above but also in decisions in file Nos. **CIC/WB/C/2008/00115/LS** and 50 others disposed of in the same order of 9.4.'09.

Decision-

In exercise of its powers conferred under section 19 (8) (e) of the Act, the Commission hereby requires the Public Authorities to, inter alia, take the following steps in this regard:-

(i) Since a reasonable time has now passed from the time of promulgation of the Act in 2005, the Public Authorities should now take urgent steps to have their records converted to electronic form, catalogued, indexed and computerized for easy accessibility through the network all over the country, as mandated in section 4 (1) (a) of the Act. The computerization, dissemination and updating of record is an ongoing and continuous process and all Public Authorities should put a proper system in place to make such sharing of records an automatic, routine and continuous process, so that access to such records is facilitated.

(ii) The Public Authorities are required to take immediate steps to publish detailed, complete and unambiguous information under the 16 categories, as on 31.3.2009 (if already not done or partially done) and thereafter update the information as and when necessary, but definitely every year, as mandated under section 4 (1) (b) of the Act.

(iii) While formulating important policies or announcing the decisions affecting the public, the Public Authorities are required to publish all relevant facts about such policies and decisions for the information of public at large, as mandated under section 4 (10) (c) of the Act.

(iv) The information disclosed by the Public Authorities under section 4 (1) (b) & (c) of the Act is required to be disseminated through multiple means as provided under sub sections 2, 3 and 4 of Section 4 of the Act and as also suggested in Para 17.1 of the template prepared by the Tata Consultancy Service Ltd (Reference Para 14 above)/ or as per the practice adopted by the Government of Andhra Pradesh and the Andhra Pradesh State Information Commission (reference Para 13 above).

(v) Needless to say, the information disclosed by the Public Authorities under section 4 (1) (b) & (c) of the Act is a proactive disclosure and the Public Authorities are required to provide immediate access to this material as and when so requested, without the requirement of filing of any written request and the charging of any fee.

(vi) The notice board (s) in the offices of all the public Authorities should display as much information as practicable about suo motu disclosures under section 4(1)(b) & (c).

Further, this information could also be placed in the Library or Reading Room, if such facility exists, for the public convenience. The Public Authorities would, however, be at liberty to take any other steps that may be necessary and expedient for fulfilling the mandate of section 4 of the Act in the matter of suo motu disclosures of information and dissemination thereof, depending on the specific requirements of such Public Authorities.

(vii) The names, room numbers, telephone numbers, e-mail addresses of the CPIOS/ACPIOS and Appellate Authorities may be prominently displayed in each office for the convenience of the public at large. If the complete disclosures of 4(1), (b) & (c) are also available with any other officer (s) other than the CPIOS/ ACPIOs, the names, designations, room numbers and telephone numbers of such officers must be prominently displayed in the offices for easy contact ability.

Order Dt.2.8.2009.

Request-

Project wise information about MLA Local Area Development Scheme to be put up on the Delhi government's website and on boards in each constituency, to ensure transparency in the utilization of MLA local area development funds.

Decision-

Issuing a show cause notice to the PIO of the Urban Development Department, the Commissioner noted that "the PIO is guilty of not making any effort to meet the Section 4 requirements (of the RTI Act)". The PIO has been ordered to ensure that this information is put up on the website of the Department within 15 days. The order of the CIC will ensure that MLA local area development funds are utilized in a consultative, participatory and accountable manner. Over Rs. 700 crore is allocated by MLAs under the Delhi MLALAD Scheme over a five year period. Having access to information on these funds will enable people to meaningfully engage with their MLAs to ensure that these funds are spent on their area's most pressing development needs. The PA should proactively provide information on utilization of public funds to citizens.

CIC/OK/A/2006/00016- 15.6.06.

Record management system ought to be improved such that information which are to be disclosed could be easily provided after delineating those that is exempted.

F.No.CIC/AT/A/2009/000200 Dt. 30.6.2009

Request-

Files pertaining to an ongoing disciplinary proceeding involving the appellant.

Decision-

Considering the fact that these files are currently subject-matter of an ongoing enquiry, any action for disclosure of information thereof will surely impede the enquiry. The Enquiry Officer is entitled to conduct the enquiry as per the procedure established by the Rules governing conduct of such enquiries without any intrusive probing by the officers enquired into or by third-parties. This is consistent with the decision of the Commission in *V.K. Gulati Vs. DG Vig. Customs & Central Excise; Appeal No. CIC/AT/A/2007/01508*; **Date of Decision: 17.06.2008** That file-notings in vigilance and enquiry-related files, which are held confidentially by a public authority, must not be allowed to be disclosed to the employee or to any other seeking that information.

The reason for that is sanguine. First, such disclosures serve no public interest. The employee's personal interest cannot be conflated with public interest. Second, such disclosures undeniably cause injury to the interest of the third-party, who holds these file-notings in certain special category of files, i.e. vigilance and enquiry-related files, confidentially. The officers and members of the staff who make such notings perform the thankless task of commenting on the conduct, reputation, behaviour of the officers enquired into apart from analyzing the evidence in order to help the competent authority make an informed decision. Such comments and remarks recorded by officers, if disclosed to the very person against whom these are recorded, have the potentiality of being used by the employee to start legal processes against these officers for charges such as defamation, criminal conspiracy and so on.

There is also a chance that the officer enquired into attempt to seek vengeance against those who recorded adverse notes against him in the note-files. The vengeance can take several forms, such as physical and mental threats, causing annoyance, long and expensive judicial proceedings and so on. Even if such actions of the employees or others sympathetic to them, do not yield any useful result to them; as long as these actions last, they cause boundless anxiety, annoyance, physical discomfort and stress to the officers for no fault of theirs, and in true fact, for doing their job ably, honestly and conscientiously. Anonymity of officers recording file-notes deserves to be protected in their own interest as well as the interest of the system they serve.

There is, therefore, enough reason to conclude that disclosure of confidential file-notings in vigilance, investigation and enquiry-related files, attracts the first proviso of Section 11(1), i.e. it possessing the power to inflict "*possible harm or injury to the interests of such third-party.*" The public authority is duty-bound to protect the interests of its officers who examine through their notings in files the conduct of other employees of the public authority and thereby expose themselves to possible revengeful action by those whose conduct they bring under scanner.

Appeal No.908/ICPB/2007-F.No.PBA/07/211-17.9.2007-

The CIC reiterated its earlier decisions stating that if the information sought relates to a pending proceeding before a competent court/tribunal, then the said information should be obtained only through court /tribunal and not under the provisions of the RTI Act.

Decision No. CIC /WB/A/2008/00838/1777

The appellate authority had claimed exemption under Section 8 (1) (e), but the PIO has given no reason to justify how Section 8 (1) (e) can apply. The CIC decision cited by the respondent states 'The matter is sub judice. The appellate authority has correctly advised that information in question could be obtained through Court, which is examining the matter.' No reasoning has been offered as to which exemption clause of the RTI act applies. The only exemption of Section 8 (1) which might remotely apply is Section 8 (1)(b) which states, '*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;*' can be denied.

This clause does not cover sub judice matters, and unless an exemption is specifically mentioned, information cannot be denied. Disclosing information on matters which are sub judice does not constitute contempt of Court, unless there is a specific order forbidding its disclosure. I respectfully have to disagree with the earlier decision cited by the appellant since it is *per incuriam*.

This Commission rules that a matter being sub judice cannot be used as a reason for denying information under the Right to Information Act.

F.No. CIC/AT/ A/2006/00500 Dt.16.01.2007

Request-

-Copies of complaint lodged by the applicant and action taken on the same. The Commission has been approached by Government servants facing investigations, departmental action and other enquiries, to know the names of those who filed complaints against them.

Decision-

Such disclosures, if allowed, have the potentiality to put at risk the interest and the physical safety of those who file such complaints.

There are specific provisions in various Laws, Rules, Orders and instructions regarding the entitlement of a person facing an enquiry, investigation or disciplinary action for documents, records, etc. What he can access and cannot access is also specified. On the other hand, the RTI Act makes an omnibus provision regarding disclosure of all variety of information to a requester, who can also be a person facing investigation etc., but quite cautiously limits this right through certain exemptions. The eligibility of such persons to access information as requested is to be determined under the provision of the RTI Act regardless of what the other Laws may prescribe.

The two eligibilities are best examined independently. An employee facing disciplinary action at the hands of his superiors may wish to invoke the RTI Act to access the file/records in which his case may be dealt with, but will be hindered by the exemption provided under Section 8(1)(j) since the information sought would be personal to him with no relationship to any public activity or interest. The appeal is consequently rejected.

Kerala State Information Commission

Ref: AP.No.737 & 740(4)/2008/SIC (File No.6909 & 5300/SIC-Gen3/2008): Shri. K. Unnikumaran vs. Tahsildar, Chittoor: Order dated 19 March 2009

Appellant wanted the copies of documents submitted by a third party in 1999 for a possession certificate and details of documents that were inspected by the concerned Taluk office for the purpose. SPIO replied that the request and the documents produced in support of it were not available in the Taluk office and the information could not be provided. Appellant argued that documents purported to have been produced for issuing possession certificate to the third party should have been kept by the Village Officer at least for a period of 20 years and the statement that no such document was available was in violation of the provisions of S.4 of the RTI Act.

The RTI Act came into being on the 15th of June 2005. It was true that the modality for preservation of documents and maintenance of records in the office were illustrated in S.4 of the RTI Act. However, the Village Officer may be helpless in providing the information if the documents were not available in the said office. List of documents that might have been verified for issue of possession certificate by a revenue official are the usual documents to prove possession and hence an attempt to trace out the same was possible.

Ref: A.P. No. 980(5)/2008/SIC (File No. 9557/SIC-G1/2008): Shri. M.N. Parthasarathy Vs. Municipal Office Muvattupuzha, Kerala : Order dated 5 February 2009

Appellant requested for the copy of the plan approved by the municipality for constructing a building State Public Information Officer informed the appellant on 7-7-2008 that the

information required was not available as it was lost. The Commission observed that the approved plan of the building, which has to be kept as a permanent record, is not available with the public authority. An approved plan is, absolutely, necessary to find out any subsequent violation in the construction, and, hence it has to be kept permanently. It cannot be simply stated that this document was lost during the shifting of the office.

Therefore, the Commission orders that a thorough search shall be made by the State Public Information Officer and the Appellate Authority to find out the approved plan within 10 days and, if found available, authenticated copy of the plan should be provided to the appellant free of cost. If the record cannot be traced out, the Public Authority shall file an affidavit before the Commission, accordingly. It is also ordered that the Appellate Authority should keep all records as stipulated u/s. 4 of the RTI Act in future.