OPEN DECISIONS

THE RIGHT TO INFORMATION ACT 2005

LANDMARK DECISIONS OF
THE CENTRAL INFORMATION COMMISSION
AND STATE INFORMATION COMMISSIONS AND
JUDGMENTS OF THE COURTS

Decisions that provide guidance on future similar cases and reduce the need of appeals

Section 8

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Information as to whether any declaration of assets filed by the Judges

The appeal[1] concerns an unsuccessful request for:

- a copy of the Resolution dated 7.5.2007 passed by all the judges of the Supreme Court which required every judge to make a declaration of assets in form of real estate or investments held in their names or in the name of their spouses and any person dependent on them to the Chief Justice.

- information on any such declaration of assets etc ever filed by the Hon'ble Judges of the Supreme Court.

- information concerning any declarations filed by the High Court Judges about their assets to the respective Chief Justices in the various High Courts.

CIC clarified that the requester was seeking 'simple information as to whether any such declaration of assets etc. had ever been filed by the Judges of the Supreme Court or High Courts', and the request did not:

- seek a copy of the declarations or the contents therein or even the names etc. of the judges filing the declaration
- request inspection of any such declaration already filed.

The Decision was pronounced by the CIC Bench consisting of A.N. Tiwari, Prof. M.M. Ansari, Information Commissioners and Wajahat Habibullah, Chief Information Commissioner on 6 January 2009.

The Supreme Court Registry filed an appeal in the Delhi High Court against the Decision. Justice Ravindra Bhatt after hearing the plea of the Supreme Court Registry, stayed the CIC Decision until next hearing.

Whether the Supreme Court of India is outside the purview of the RTI Act?

"It has been contended before us that the RTI Act applies only to the executive Government and the Supreme Court of India being a constitutional body is outside the purview of the RTI Act. In this context, it would be pertinent to refer to the provisions of Section 2(h) of the RTI Act, which defines a "Public Authority" as under:

[1] *Subhash Chandra Agrawal v. Supreme Court of India,* Appeal No. CIC/WB/A/2008/00426, 06.01.2009

"2(h) "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 financed, directly or indirectly by funds provided by the appropriate Government;"

11. The term "Public Authority" as defined u/s 2(h) of the Right to Information Act, therefore, means any authority or body or institution of self Government established or constituted by or under the Constitution. The 1st Para of the Preamble to the Act also states that the Act seeks to promote transparency in the working of **every** Public Authority. In this context, it would also be pertinent to refer to Article 124 of the Constitution of India clause (1) of which reads as under:

"Article 124: Establishment and constitution of Supreme Court.
(1) There shall be a Supreme Court of India consisting of a Chief Justice of India and, until Parliament by law prescribes a larger number, of not more than seven other Judges.

12. The Supreme Court of India is an institution created by the Constitution and is, therefore, a Public Authority within the meaning of Section 2(h) of the Right to Information Act.

13. The status and position of the Chief Justice of India is unique under the RTI Act. The Chief Justice of India is also designated as "Competent Authority" under Section 2(e) of the Right to Information Act, which reads as under:
"2(e) "Competent authority" means—
(i) the Speaker in the case of the House of the People or the Legislative Assembly of a State or a Union territory having such Assembly and the Chairman in the case of the Council of States or Legislative Council of a State;
(ii) the Chief Justice of India in the case of the Supreme Court;
(iii) the Chief Justice of the High Court in the case of a High Court;
(iv) the President or the Governor, as the case may be, in the case of other authorities established or constituted by or under the Constitution;
(v) the administrator appointed under article 239 of the Constitution;"

14. The Chief Justice of India in case of Supreme Court of India and the Chief

Justice of High Court in case of High Court are also thus designated as "Competent Authority" within the meaning of Section 2(e) of the RTI Act and Section 28 of the Right to Information Act empowers them to frame Rules to carry out provisions of Right to Information Act. Section 28 of the Act is reproduced below:

"Section 28:

(1) The competent authority may, by notification in the Official Gazette, make rules to carry out the provisions of this Act.

(2) In particular, and without prejudice to the generality of the foregoing power, such rules may provide for all or any of the following matters, namely:—

(i) the cost of the medium or print cost price of the materials to be disseminated under sub-section (4) of section 4;

(ii) the fee payable under sub-section (1) of section 6;

(iii) the fee payable under sub-section (1) of section 7; and

(iv) any other matter which is required to be, or may be, prescribed."

15. It may further be mentioned that while the Rules made by the Central Government under Section 27 are required to be laid before each House of Parliament and the Rules made by the State Governments are required to be laid before each House of Legislature, there is no such requirement in respect of the Rules framed by the Chief Justice of India in case of Supreme Court and Chief Justice of a High Court in case of a High Court u/s 28 of Right to Information Act.

16. The rule making power has been explicitly given for the purpose of carrying out the provisions of the RTI Act. The Act, therefore, empowers the Supreme Court and the other Competent Authorities under the Act and entrusts upon them an additional responsibility of ensuring that the RTI Act is implemented in letter and spirit. In view of this, the contention of the respondent Public Authority that the provisions of Right to Information Act are not applicable in case of Supreme Court cannot be accepted.

Information obtained voluntarily

… argued that the information concerning the declaration of assets by the judges is provided to the Chief Justice of India in his personal capacity and it is "voluntary" and "confidential".

From what was presented before us, it can be inferred that the declaration of assets are filed with the Chief Justice of India and the office of the Chief Justice of India is the custodian of this information. The information is maintained in a confidential manner and like any other official information it is available for perusal and inspection to every succeeding Chief Justice of India. The information, therefore, cannot be categorized as

"personal information" available with the Chief Justices in their personal capacity.

Whether the Chief Justice of India and the Supreme Court of India are two distinct Public Authorities?

In this context, it would be pertinent to refer again to the provisions of Section 2(h) of the Right to Information Act, the relevant part of which reads as under:
"2(h) ***"public authority" means any authority or body or institution of self-government established or constituted…"***
19. The Public Authority, therefore, can only be an "authority", "body" or an "institution" of self-government, established or constituted, by or under the Constitution or by any other law, or by an order made by the Appropriate Government.

20. The words "authority, "body" or "institution" has not been distinctly defined in the Act. The expression "authority" in its etymological sense means a Body invested with power to command or give an ultimate decision, or enforce obedience or having a legal right to command and be obeyed. *Webster's Dictionary* of the English language defined "authorities" as "official bodies that control a particular department or activity, especially of the Government". The expression `other authorities' has been explained as `authorities entrusted with a power of issuing directions, disobedience of which is punishable as an offence, or bodies exercising legislative or executive functions of the State' or `bodies which exercise part of the sovereign power or authority of the State and which have power to make rules and regulations and to administer or enforce them to the detriment of the citizens.' In the absence of any statutory definition or judicial interpretation to the contrary, the normal etymological meaning of the expression, has to be accepted as the true and correct meaning.

21. According to the dictionary meaning, the term "institution" means a body or organization or an association brought into being for the purpose of achieving some object. Oxford Dictionary defines an "institution" as an establishment, organization or an association instituted for the promotion of some objects especially one of public or general utility, religious, charitable, educational etc. The definition of the "institution", therefore, includes an authority as well as a body. By very implication, the three terms exclude an "individual". Even the Hon'ble Apex Court in **Kamaraju Venkata Krishna Rao Vs. Sub-Collector, Ongole – AIR 1969 SC 563** has observed that it is by no means easy to give definition of the word "institution" that would cover every use of it. Its meaning must always depend upon the context in which it is found.

22. If the provisions of Article 124 of the Constitution are read in view of the above perspective, it would be clear that the Supreme Court of India, consisting of the Chief Justice of India and such number of Judges as the Parliament may by law prescribe, is an institution or authority of which the Hon'ble Chief Justice of India is the Head. The institution and its Head cannot be two distinct Public Authorities. They are one and the same. Information, therefore, available with the Chief Justice of India must be deemed to be available with the Supreme Court of India. The Registrar of the Supreme Court of India, which is only a part of the Supreme Court cannot be categorized as a Public Authority independent and distinct from the Supreme Court itself.

…Each of the sections or department of a Public Authority cannot be treated as a separate or distinct Public Authority. If any information is available with one section or the department, it shall be deemed to be available with the Public Authority as one single entity. CPIO cannot take a view contrary to this.

What he [the requester] is seeking cannot be held to attract exemption under Sections 8(1)(e) or 8(1)(j).

…the CPIO of the Supreme Court is directed to provide the information asked for by the appellant in his RTI application as to whether such declaration of assets etc. has been filed by the Hon'ble judges of the Supreme Court or not within ten working days from the date of receipt of this Decision Notice.

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8. Exemption from disclosure of information:-

8(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;

U.K. Information Tribunal in *Ms P Reith v Information Commissioner and London Borough of Hammersmith and Fulham,*,[Appeal Number EA/2006/0058, 1st June 2007] provided guidelines on 'prejudice' test:

"The law set out by the Tribunal (differently constituted) in *Hogan and Oxford City Council v Information Commissioner* EA/2005/0026 and 30.
• "First, there is a need to identify the applicable interest(s) within the relevant exemption"…
• "Second, the nature of the 'prejudice' being claimed must be considered. An evidential burden rests with the decision maker to be able to show that some causal relationship exists between the potential disclosure and the prejudice and that the prejudice is… "real, actual or of substance".
[as Lord Falconer of Thoronton has stated, "real, actual or of substance" (Hansard HL, Vol. 162, April 20, 2000, col. 827)]
If the public authority is unable to discharge this burden satisfactorily, reliance on 'prejudice' should be rejected. … "
• "A third step for the decision-maker concerns the likelihood of occurrence of prejudice. A differently constituted division of this Tribunal in *John Connor Press Associates Limited v Information Commissioner* (EA/2005/0005) interpreted the phrase "likely to prejudice" as meaning that the chance of prejudice being suffered should be more than a hypothetical or remote possibility; there must have been a real and significant risk"."

Income Tax Scrutiny Policy and economic interests of the State

Central Board of Direct Taxes (CBDT), Ministry of Revenue ,Department of Finance has
withheld Copies of Scrutiny Policy, instructions, directions and clarifications issued for non-corporate Income Tax assessee during Financial Year 2006-07 - requested by Sri Kamal Anand [appellant] - saying that the disclosure would prejudicially affect the

economic interests of the State, claiming exemption under Section 8(1) (a) though broad parameters of the Scrutiny Guidelines were disclosed.
[*Kamal Anand , People for Transparency* v *Central Board of Direct Taxes (CBDT);*[2]

The appellant cited a particular case where unsecured loans of a large amount have escaped scrutiny and whereas secured loans of smaller amount have been taken up for scrutiny and the disclosure of scrutiny policy is in larger public interest.

First Appellate Authority reasoned that if detailed guidelines are made public, it would defeat the very purpose of such a verification for any unscrupulous tax paper could then adjust his declaration of income in such a manner that his return would never come up for verification by the Income Tax Officers. Therefore, if the scrutiny guidelines are made public it would tantamount to giving a free hand to the tax evaders. It needs hardly to be emphasized that tax evasion is prejudicial to the economic interests of the State.

The appellant contended that he sought to obtain the scrutiny policy for the year 2004-2005 which relates to the Assessment Year 2005-2006 and hence it is rarely possible for any taxpayers to adjust his transaction in such a way so as to enable him to escape any clause of the scrutiny policy. He, therefore, disputed the Department's contention that the disclosure of the scrutiny policy would in any way prejudicially affect the economic interests of the State.

On 1.8.2007, the Single Bench of this Commission has directed the Department of Revenue to have the matter considered by the highest level in the Public Authority and come up to the Commission with Department's viewpoints. The case was finally heard by the Full Bench on 18.12.2007.

At the time of hearing before the Full Bench, the following submissions were made on behalf of the Public Authority:

Every year the Department of Income Tax receives a large number of returns of Income from the taxpayers. In order to ensure that the taxpayers have declared their full income and not claimed any excessive deduction etc. these returns are required to be checked by the Assessing Officers. However, as the Income Tax Department does not have the wherewithal to verify all the returns, only a small percentage of them are taken up for scrutiny each year. During the financial year 2006-07, about 3.98 lakh returns – approximately 2% of the total number of returns received were selected for scrutiny. The scrutiny guidelines are issued towards the beginning of the financial year and they

[2] CIC/AT/A/2007/00617 Date of Decision 11.02.2008

are applicable to all the pending returns as well as those filed during remaining part of the financial year. Under the law, a taxpayer can file his return till the last date of the Assessment Year. Thus, a return for the Assessment Year 2007-08 which is required to be filed by 31.07.2007 (by individuals) and 31.10.2007 (by firms and companies etc.) can still be filed by a taxpayer till 31.3.2008 subject to payment of penal interest. Therefore, if the guidelines for selection of cases are made public, these are liable to be misused by some unscrupulous taxpayers to evade tax at will. Once the various parameters are known, the returned income may be adjusted by any unscrupulous taxpayer in a manner, which would allow him to stay out of the scrutiny basket and avoid detailed examination by the Department.

CIC decided that *the Public Authority at the highest level has analyzed the whole issue at its behest and has given its considered opinion to this Commission about the possible effect of the disclosure on economic interest of the State…. implications of disclosure have been put to the closest scrutiny. The Commission cannot enter into the adequacy or otherwise of the criteria taken into account by the concerned Public Authority. It cannot surpass an objective consideration and place its own subjective consideration thereon. When a denial is covered by an exemption clause under Section 8 of the Right to Information Act, so long as such application of exemption is based on objective criteria and is not arrived at in a mechanical or arbitrary manner, this Commission does not intend to interfere in such issues.*
The Commission can only look into as to whether the determination by the Department about the probable effect of a particular policy disclosure is based on objective criteria or not or as to whether the Department has arrived at a particular conclusion in a reasoned, or in a mechanical or arbitrary manner.

Comment: Applicant complained that a copy of the said scrutiny policy is available on internet and if this is true copy of the scrutiny policy, then the CBDT should find out as to who had leaked the information which is prejudicial to the economic interests of the State. But neither the public authority nor the CIC answered this question. If this is not true, the public authority could have simply issued a clarification to that effect. Now people may conclude that CBDT withheld the policy because the disclosure would confirm the authenticity of the information which is already in public domain. This is dangerous! CBDT should immediately take action because the leakage might have already affected economic interests of the State as feared by the CPIO.

(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;

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CIC commented on Section 8 (1) (b) as follows:
"Section 8 (1) (b) therefore, exempts disclosure of information:—
(i) which has been expressly forbidden by any court of law or tribunal; or
(ii) the disclosure of which may constitute contempt of court.
It, therefore, follows that only that information which has been expressly forbidden by any court of law is exempted and mere pendency of a *lis* before a court does not signify its exemption. Thus, an explicit order from any court of law or tribunal forbidding publication of the information asked for is one of the prerequisite for application of Section 8(1) (b).
The RTI Act 2005 does not per-se define as to what may constitute 'contempt of court'. Section 2(a) (b) and (c) of the Contempt of Courts Act, 1971 defines as to what constitutes contempt of court in the following words:
2. Definitions:
In this Act, unless the context otherwise requires: (a) 'Contempt of court' means civil contempt or criminal contempt.
(b) 'Civil contempt' means willful disobedience to any judgment, decree, direction, order, writ or other process of a court or willful breach of an undertaking given to a court.
(c) 'Criminal contempt' means the publication (whether by words, spoken or written, or by signs, or by visible representation, or otherwise) of any matter or the doing of any other act whatsoever which:
(i) Scandalises or tends to scandalise, or lowers or tends to lower the authority of, any court, or (ii) Prejudices, or interferes or tends to interfere with the due course of any judicial proceeding, or (iii) Interferes or tends to interfere with, or obstructs or tends to obstruct, the administration of justice in any other manner.
From the above, it is clear that whereas for the civil contempt, there has to be either —
(i) willful disobedience of any judgment, decree or order; or other process of the court or
ii) willful breach of an undertaking given to a court;
the sine qua non of criminal contempt is publication of any matter or doing of any act which may either scandalize or lower the authority of any court, or interfere with the due course of any judicial proceedings or otherwise obstruct the administration of justice in any manner."[3]

Drafts of Judgments

The question of whether drafts of judgments can be disclosed was considered by the Full Bench of CIC in *Rakesh Kumar Gupta v Income Tax Appellate Tribunal (ITAT)*[4]
"[A]ll judicial proceedings are conducted in open and transparency is the hallmark in

[3] [Appeal No.CIC/WB/A/2007/00292 dated 29.2.2008]
[4] [CIC/AT/A/2006/00586,18 Sep. 2007]

case of all such proceedings. There is no element of secrecy whatsoever. But at the same time, it has to be borne in mind that the judiciary is independent and all judicial authorities including all courts and
tribunals must work independently and without any interference insofar as their judicial work is concerned. The independence of a judicial authority is all pervasive and any amount of interference is neither desirable nor should ever be encouraged in any manner.

44. The appellant in the instant case wanted the minutes of the proceedings maintained by the learned members of the Tribunal which can only be the notes prepared by them while conducting the hearing or otherwise.

45. The respondents have drawn our attention to the following observations made by Hon'ble Justice Vivian Bose in Surendra Singh v State of UP (AIR 1954 Supreme Court 194):

"Judges may, and often do, discuss the matter among themselves and reach a tentative conclusion. That is not their judgment. They may write and exchange drafts. Those are not the judgments either, however heavily and often they may have been signed. The final operative act is that which is formally declared in open court with the intention of making it the operative decision of the court. That is what constitutes the 'judgment'…"

46. Those observations, though made in a different context, highlight the status of the proceedings that take place before the actual delivery of the judgment. If according to the Supreme Court even the draft judgments, though heavily and often signed and exchanged, are not to be considered as final judgments but only tentative views liable to change, the jottings and notes made by the judges while hearing a case can never, and by no stretch of imagination, be treated as final views expressed by them on the case. Such noting cannot therefore be held to be part of a record 'held' by the public authority.

47. Any intrusion in regard to the judicial work even under the Right to Information Act is unnecessary. We are satisfied that at the level of appellate authority the appellant agreed not to press for this request.

49. It is our conclusion, therefore, that given that a judicial authority must function with total independence and freedom, should it be found that an action initiated under the RTI Act impinges upon the authority of that judicial body, the Commission will not authorize the use of the RTI Act for any such disclosure requirement. Section 8(1) (b) of the RTI Act is quite clear, which gives a total discretion to the court or the tribunal to decide as to what should be published.

An information seeker should, therefore, approach the concerned court or the tribunal if he intends to have some information concerning a judicial proceeding and it is for the concerned court or the tribunal to take a decision in the matter as to whether the information requested is concerning judicial proceedings either pending before it or decided by it can be given or not."

Court records

The information sought relates to certain affidavits filed in connection with a pending case in the Tribunal. Normally, each court has its own rules regarding furnishing of copies of documents connected with a case pending before it, to third parties. If the rules of the Tribunal permit furnishing copies of the affidavits or other documents connected with this pending case, or if the rules are silent on this aspect, the documents sought for be furnished to the appellant within 15 days, free of cost. However, if furnishing of the same is not permitted, the same may be communicated to the appellant quoting the relevant rules.[5]

***Sub-judice* matters**

…there has been a serious error by the respondents in assuming that information in respect of sub-judice matters need not be disclosed. The RTI Act provides no exemption from disclosure requirement for sub-judice matters. The only exemption in sub-judice matter is regarding what has been expressly forbidden from disclosure by a Court or a Tribunal and what may constitute contempt of Court: Section 8(1) (b). The matter in the present appeal does not attract this exemption. Presence of a different provision in the Cantonment Act about supply of documents in sub-judice matters to a requester has had no bearing on the disclosure requirement under the RTI Act. Seen purely from the stand-point of the RTI Act, the right of the appellant to access the information requested by him is unimpeachable.[6]

Matter which is under adjudication by a Court of Law

The Respondents tried to link this proviso to the conditions of admissibility of questions in Parliament. According to them a question asking for information on a matter which is under adjudication by a Court of Law having jurisdiction in any part of India would not be admitted for answer. Since the Appellant has gone to the High Court in his appeal against the judgement of Central Administrative Tribunal (CAT) relating to discharge from service, they argued that information could not be given as the matter is sub-judice. It appears to the Commission that in this case two unrelated matters are being linked artificially: the proviso that extends the scope of disclosure of information and does not restrict it, and the Parliament Rule which circumscribes the scope of questions. Were it the intention of Parliament to restrict the scope of this proviso, it would have stated that information which cannot be asked through a parliament question could not be given to the applicant. So there is no direct link between conditions of admissibility of Questions as prescribed by the Rules of Procedure and Conduct of Business in the Lok Sabha/Rajya Sabha and the said proviso.

[5] 190/ICPB/2006-December 11, 2006.
[6] CIC/AT/A/2006/00193-18.9.2006.

That the proviso is not restrictive but expands the scope of access to information is borne by sub-Section 2 of Section 8 of the Act which makes it abundantly clear that a public authority may allow access to information, if public interest in disclosure outweighs the harm to the protected interests notwithstanding the Officials Secrets Act or any of the exemptions mentioned with sub-section 8(1). That clearly shows that the Act gives paramountcy to the public interest and the exemptions do not constitute a bar to providing information. If it were the intention that no aspect of matters sub-judice can be considered under the Act, this would have been expressly incorporated in clause (b) of sub-Section 1 of Section 8 along with other matters prescribed in this clause… it does not stand to reason that a person who has gone to court against an alleged arbitrary decision of a public authority concerning him should be denied information about himself on the pretext that it is personal information or the matter is sub-judice on a case filed by himself.[7]

(c) information, the disclosure of which would cause a breach of privilege of Parliament or the State Legislature;

Whether disclosure of report of a Committee appointed by Government before presentation to the Parliament constitutes a breach of privilege of the Parliament?

The Commissions of Inquiry Act 1952,s3 provides for appointment of Commission:
"(1) The appropriate Government may, if it is of opinion that it is necessary so to do, and shall ,if a resolutions is passed by each House of Parliament or, as the case may be, the Legislature of the State
by notification in the official Gazette, appoint a Commission of Inquiry for the purpose of making an inquiry into any definite matter of public importance and performing such functions and within such time specified in the notification,…
..
(4) The appropriate Government shall cause to be laid before each House of Parliament or, as the case may be, the Legislature of the State the report, if any, of the Commission on the inquiry made by the Commission under sub-section (1) together with a Memorandum of the action taken thereon, within a period of six months of the submission of the report by the Commission to the appropriate Government."
A Commission can be appointed if:

- A resolution is passed by Parliament ; or
- the Government is of the opinion that it is necessary;

Parliament would expect reports- submitted by the commissions appointed by

[7] CIC/OK/C/2006/00010, A/2006/00027 & A/2006/00049-30.8.2006

Government in pursuance of a resolution and not independently-should be disclosed to itself first.
Reports of Commissions appointed by the Government can be disclosed as there is no obligation on Government to place the same before Parliament. There is no breach of privilege involved in this matter.
Though decided prior to commencement of the Commissions of Inquiry Act, following case illustrates above principle:
Ganganath Committee was appointed by the Minister of Food and Agriculture to enquire into allegations regarding the import of sugar, the report of which was released to the press by Government.
A member sought to raise a question of privilege regarding that action of Government, who contended that the release of the report to the press, before it was laid on the Table of the House, constituted a breach of privilege.
On 5 April,1951,the Deputy Speaker observed as follows:
"…this was not a committee appointed by the House and it had no obligation therefore to submit its report to the House. It is open to the Government to appoint any number of Committees, whether on a statement made in this House or otherwise. But that will not mean that the Committee is appointed by this House. Therefore, I do not find that there is any breach of privilege involved in this matter. No doubt, if any committee is appointed by Government in pursuance of any resolution or otherwise and not independently, while the House is sitting, naturally the House would expect such committee's proceedings should be disclosed to itself first. Subject to this observation, there is no breach of privilege in the present case."[*Privileges Digest*,388 LOK SABHA(1951)]

Breach of the privilege of Parliament

...[A]ll submissions made before a Parliamentary Standing Committee by the Departments of the Government are treated as confidential as per parliamentary practice. Documents and other
submissions handed over to the Committee become property of the Parliament.
It is not open to a Department to disclose any information in respect of those submissions unless authorized by the Committee. It is, therefore, obvious that the information sought by the appellant, besides being confidential, is also a property of the Parliament.[8]

(d) information including commercial confidence, trade secrets or intellectual property, the disclosure of which would harm the competitive position of a third

[8] CIC/AT/A/2006/00195-25.09.2006

party, unless the competent authority is satisfied that larger public interest warrants the disclosure of such information;

Contract

Ramesh chand applied to NISCAIR (National Institute of Science Communication and Information) information on terms of conditions and their implementation regarding a contract with another firm.
CIC held: A contract with a P.A is not 'confidential' offer completion.
Quotations, bid, tender, prior to conclusion of a contract can be categorized as trade secret, but once concluded, the confidentiality of such transactions cannot be claimed. Any P.A claims exemption must be put to strictest proof that exemption is justifiably claimed. P.A was directed to disclose the list of employees.[9]

Whether disclosure of various documents submitted by the bidders is a trade secret or commercial confidence or intellectual property?

Division Bench of the Jharkhand High Court in *State of Jharkhand & Anr.v.Navin Kumar Sinha & Anr.* AIR 2008 JHARKHAND 19, held as follows:

"*Prima facia*, 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 a decision has been taken. If tenders are invited by the public authority and on the basis tender documents, the eligibility of a tender or a bidder is decided, then those tender documents cannot be kept secret, that too after the tender is decided and work order is issued on the ground that it will amount to disclosure of trade secret or commercial confidence. If the authorities of Government refuse to disclose the document, the very purpose of the Act will be frustrated. Moreover the disclosure … cannot and shall not be a trade secret or commercial confidence; rather disclosure of such information shall be in public interest, inasmuch as it will show the transparency in the activities of Government.
..
Since the tender process is completed and contract has been awarded, it will not influence the contract. Besides the above, a citizen has a right to know the genuineness of a document submitted by the tenderer in the matter of grant of tender for consultancy work or for any other work…. In our considered opinion a contract entered into by the public authority with a private person cannot be treated as confidential after completion of contract."(Date of judgment:8 Aug.2007)

[9] CIC/WB/C/2006/00176-18 April, 2006.

Commercial Secrets protected by Law

A request was received by Chief Commissioner of Customs, for 'names of importer / exporter' in the daily list of import and export which are being published from the custom houses. But a notification No.128/2004 - Cus (NT) dt.19.11.2004 forbids the disclosure of the names requested.

CIC held: The [notification containing] rules are in the nature of subordinate legislation and have the legal force of parliament. Hence exemption from disclosure of information is appropriate under s.8 (1) (d) of the RTIA. [10]

Contracts and PAN

The Commission hereby directs the Respondents to provide all information regarding the contracts entered into by the Railway during the period asked for by charging the Applicant Rs.2/- per photocopies as prescribed in the Act. However, they may not disclose the Income Tax details like the PAN and TAN numbers of these contractors to the Applicant.[11]

Agreement between a public authority and a third party

Any commercial agreement between a public authority and a third party is a public document available for access to a citizen. No party to an agreement with a public authority could raise any objection for supplying a copy of the agreement, except on the grounds of commercial confidentiality and the like which is specifically exempted in Section 8(1)(d).

Appeal No.[12]

Details of security and surety submitted to the Bank

The complainant had sought certain information relating to the facility of bank guarantee availed of by an organization, particularly the details of security and surety submitted to the Bank.

The CPIO responded and mentioned that "information sought for are queries; the same will not be answered under RTI Act. Bank has also duty to maintain secrecy about the affairs of its constituents under Section 13(1) of Banking Companies (Acquisition & Transfer of Undertakings) Act, which is consistent keeping in view the Right to Privacy under Section 8(1) (j) of RTI Act, 2005."

CIC held: CPIO is … justified in informing the complainant that queries are not to be answered by him. The Bank is also obliged to maintain secrecy of the details of its

[10] 9/IC (A)/2006- 10 March, 2006.
[11] CIC/OK/A/2006/00284-26.12.2006
[12] 77/ICPB/2006 -August 21, 2006

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NIA A GoI-UNDP Initiative

clients. He could have also informed that information sought relate to third party, the disclosure of which is barred u/s 8(1) (d) of the Act.
Moreover, the complainant has not indicated as what is public interest in disclosure of the information sought.[13]

(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;

PRACTITIONER GUIDELINES provided by The Information Commissioner, Queensland state that :

A fiduciary relationship arises where the parties are in a relationship of trust. Generally, one of the parties is obliged to, or undertakes to, acts in the interests of the other party and has power to affect those interests. The party whose interests are entrusted to the other may be in a vulnerable position such as to warrant protection from the law. The party entrusted with the power (the 'fiduciary') becomes subject to a duty of good faith and loyalty to the interests of the other. Examples of relationships where courts have imported fiduciary obligations of confidence include partners, principal/agent, employer/employee, husband/wife, guardian/ward, director/shareholder, doctor or psychologist/patient, solicitor or barrister/client, and social worker/client.

The nature and scope of fiduciary relationships was discussed in *Breen v. Williams* (1996) 138 ALR 2593. It was acknowledged that, while duties of a fiduciary nature might be imposed on a doctor *vis-à-vis* a patient, they are confined in scope. Although they might extend to protecting the confidentiality of information provided by the patient, they do not oblige the doctor to provide the patient with access to the patient's medical records.

If the parties to a disclosure of confidential information stand in a fiduciary relationship and if information is obtained by the fiduciary in the capacity of fiduciary, this will be relevant to determining the existence of an obligation of confidence. Thus, medical practitioners employed by government authorities will come under an obligation of confidence in respect of information communicated by a patient, and information concerning the patient which the doctor learns from other sources (e.g., reports received by a doctor about a patient from other medical specialists or from paramedical services). The obligation can be released with the express or implied

[13] 218/IC(A)/2006-29.8.2006

consent of the patient.

[SOURCE-OFFICE OF THE INFORMATION COMMISSIONER QLD PRACTITIONER GUIDELINES No.4 - MATTER COMMUNICATED IN CONFIDENCE (S. 46) of the Freedom of Information Act 1992 Qld]

CIC has earlier held that the authority conducting the examination and the examiners evaluating the answer papers stand in a fiduciary relationship with each other. Such a relationship warrants maintenance of confidentiality by both of the manner and method of evaluation. [Decision No. [14]However the Full Bench has reconsidered and overturned this argument on disclosure of answer sheets.

Information on Transfers

An employee of Canara Bank, in his RTI application addressed to the PIO, Canara Bank,Trivandrum sought for the following information pertaining to the period 1.1.2002 to 31.7.2006 :
(i) Posting/transfer of clerical staff of the Canara Bank to other branches
(ii) Officials promoted and posted to other branches in Ernakulam district.
(iii) Clerical staff transferred in Ernakulam district on temporary basis .
(iv) Details of appointment/promotion of clerical staff other than mentioned in (i) and (ii) above in district Ernakulam.
(v) Furnish copies of transfer guidelines pertaining to clerical staff .

CIC ordered the disclosure commenting that "When a citizen seeks details regarding transfers/postings etc of employees of a public authority, the same cannot be denied by applying either Section 8(1) (e) or (j) as this information relates to the affairs of the public authority and not in relation to any individual in his personal capacity." [15]

Canara Bank approached the Kerala High Court, which upheld the Decision of CIC (*Canara Bank v. The Central Information Commission, Delhi & Anr.*)[16]

Extracts from the landmark judgment given by Justice S.Siri Jagan:
"The dictionary meanings of the word, "fiduciary" are as follows:-

[14] ICPB/A-3/CIC/2006 – 10th February, 2006]
[15] [Mr. C.S. Shyam, Kochi v. Canara Bank, Trivandrum, 360/ICPB/2006,February 26, 2007]
[16] AIR 2007 KERALA 225,11 July 2007

Capacity Building for Access to Information
NIA A GoI-UNDP Initiative

1.Of a trust, trustee, or trusteeship;
2.held or given in trust;
3.depending for its value on public confidence or securities.

Black's Law Dictionary (Seventh Edition) gives the meanings of 'fiduciary' as,

1.One who owes to another duties of good faith trust, confidence and candor.
2. One who must exercise a high standard of care in managing another's money or
property.

The information relating to posting, transfer and promotion of clerical staff of a bank do not pertain to any fiduciary relationship of the bank with its employees and therefore cannot be exempted under this sub-section[section 8(1)(e)]. In fact, without knowing this information, one employee cannot know his rights vis-à-vis other employees. In this connection, it has to be noted that one of the information requested for is transfer guidelines pertaining to clerical staff. Any member of the staff of the bank is, as of right, entitled to know what are those guidelines, even apart from the Right to Information Act. Therefore, the information requested for by the 2nd respondent enumerated above cannot be denied … relying on Section 8(1)(e). Further, these informations have necessarily to be divulged if we are to have an informed citizenry and transparency of information which are vital to the functioning of the Bank and to contain corruption so as to hold the Bank which is an instrumentality of the State, accountable to the people, which are avowed objects of the Act, as proclaimed I the preamble of the Act.

The next exemption claimed by the petitioner is on the ground that the information sought for by the second respondent relates to personal information pertaining to the employees of the Bank, disclosure of which has no relationship with any public activity or interest of the Bank or its employees and it would cause unwarranted invasion of the privacy of those employees, details of whose transfers are requested for by the 2nd respondent. I am of opinion that if this contention on the basis of Section 8(1)(j) is upheld, it would run counter to the very object of the Right to Information Act itself.
..
In fact, if that contention is accepted then information relating to any person in respect of his illegal activities, especially corruption or misconduct could be withheld on the basis of the said section which is not what is contemplated under the Right to Information Act. I am of opinion that the information mentioned in Section 8(1)(j) is personal information which are so intimately private in nature that the disclosure of same would benefit any other person ,but would result in the invasion of the privacy of that person. In the present case without the information requested for the 2nd respondent would be in apposition to effectively pursue his claim for transfer in preference to others. On the other hand, the disclosure of such information would not cause

unwarranted invasion of privacy of the other employees in any manner insofar as that information is not one which those employees can keep themselves. If the 2nd respondent is to contest that the transfers made in violation of his rights fro preferential transfer ,he necessarily should have the information which cannot be withheld from him by resort to Section 8(1)(j) ."

Consultation between the President and the Supreme Court

The appellant has made a request for some specific information viz. "Copy of Recommendation/Consultation (any one during past ten years) submitted to the President of India under Article 124(2) of the Constitution on appointment of judges of various ranks in Supreme Court and High Courts." This request for information needs to be examined in the context of the provisions of the RTI Act, specially Section 7 (7), Section 11 (1) and Section 8 (e). It is not in dispute that the President of India appoints the judges of the High Courts and the Supreme Court on the advice rendered by the Chief Justice of India as per the 1993 judgement of the Apex Court. The information given by the Chief Justice to the President has been shielded from the public gaze over all these years. Coming into force of the RTI Act has raised a question mark over the confidentiality of the process of consultation between the Supreme Court and the President of India. It is to be examined whether the confidentiality of this process contributes to its integrity, which is sensitive enough to merit "preservation of confidentiality" as stated in the **preamble** of the RTI Act. Arguably, there is merit in the contention that certain processes are best conducted away from the public gaze, for that is what contributes to sober analysis and mature reflection, unaffected by competing pressures and public scrutiny. If there is one process which needs to be so protected, the process of selecting the judges of the High Courts and the Supreme Court must qualify to be one such.

In the context of the provisions of the RTI Act, it is instructive to examine the consultation process for the selection of the judges in the light of the provisions of section 11 (1) and section 8 (e) of the RTI Act. In my view, the type of information which is provided by the persons contending to be judges as well as the information collected from various other sources by the Hon'ble Supreme Court in order to equip the Apex Court to discharge its constitutionally ordained role of advising the President of India regarding who to appoint as Judges in the nation's highest judicial bodies, is in the nature of personal information provided by the third party and thus attracts section 11 (1). It also attracts the exemptions under section 8(1)(e) being information given to the charge of the Chief Justice of India by those under consideration for selection as judges, in trust and in confidence. It does create a fiduciary relationship between the Apex Court and those submitting the personal information to its charge. Disclosing any such information will be violative of a

fiduciary relationship (section 8(1) (e) RTI Act) as well as the confidence and the trust between the candidates and the Supreme Court. Disclosure of the list of candidates prepared by the Highest Court for the purpose of consultation with the President of India, attracts the exemption of section 8(1)(e) as well as the provision of section 11(1) of the RTI Act.

It is my conclusion, therefore, that this entire process of consultation between the President of India and the Supreme Court must be exempted from disclosure. [17]

I.T. Returns

Income Tax Returns filed by an assessee are confidential information which include details of commercial activities and that it relates to third person. These are submitted in fiduciary capacities. There is no public action involved in the matter. Disclosure is exempted under s.8 (1) (j).[18]

Tax Evasion Petition

An appellant had filed a Tax Evasion Petition (TEP) against Sh. J.P.Gupta and, on the basis of this TEP, investigations were carried out by the Income Tax Department. The proceedings initiated by the income-tax department, in pursuance of the tax evasions petition (TEP), and its outcomes should be disclosed, even without asking for such information by the petitioners.[19]

The High Court of Delhi in *Bhagat Singh Vs. Chief Information Commissioner and Ors.*[WP(C) No. 3114/2007,Decided On: 03.12.2007] partially overturned the Decision of the CIC by holding that disclosure of investigation report on TEP need not wait till entire process tax recovery, if any, is complete in every respect.

Facts:

'The petitioner was married in 2000 to Smt. Saroj Nirmal. In November 2000 she filed a criminal complaint alleging that she had spent/paid as dowry an amount of Rs. Ten Lakhs. Alleging that these claims were false, the Petitioner, with a view to defend the criminal prosecution launched against him, approached the Income Tax Department with a tax evasion petition (TEP) dated 24.09.2003. Thereafter, in 2004 the Income Tax Department summoned the Petitioner's wife to present her case before them. Meanwhile, the Petitioner made repeated requests to the Director of Income Tax

[17] CIC/AT/A/2006/00113 – 10 July, 2006.
[18] 22/IC (A)/2006 - 30 March
[19] 174/IC(A)/2006-17th August, 2006

(Investigation) to know the status of the hearing and TEP proceedings. On failing to get a response from the second and third Respondents, he moved an application under the Act in November, 2005. He requested for the following information:
(i) Fate of Petitioner's complaint (tax evasion petition) dated 24.09.2003
(ii) What is the other source of income of petitioner's wife Smt. Saroj Nimal than from teaching as a primary teacher in a private school '
iii)What action the Department had taken against Smt. Saroj Nimal after issuing a notice u/s 131 of the Income 'tax Act, 1961, pursuant to the said Tax Evasion Petition.

The petitioner filed a second Appeal on 1st March, 2006, before the Respondent No. 1, the Central Information Commission (hereafter 'the][20]

The CIC, on 8th May 2006 allowed the second appeal and set aside the rejection of information, and the exemption Clause 8(1) (j) cited by Respondents No. 2and3. The CIC further held that-
as the investigation on TEP has been conducted by DIT (Inv), the relevant report is the outcome of public action which needs to be disclosed. This, therefore, cannot be exempted u/s 8(1) (j) as interpreted by the appellate authority. Accordingly, DIT (Inv) is directed to disclose the report as per the provision u/s 10(1) and (2), after the entire process of investigation and tax recovery, if any, is complete in every respect.

The petitioner in this writ petition requests this Court to partially quash the order of the first Respondent dated 8th May 2006 in so far as it directs disclosure after the entire process of investigation and tax recovery is completed;’

Extracts from the judgment of Hon'ble Judge S. Ravindra Bhat:

“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 is to 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 the haven for dodging demands for information.

[20] CIC') [35/IC(A)/06

A rights based enactment is akin to a welfare measure, like the Act, should receive a liberal interpretation. The contextual background and history of the Act is such that the exemptions, outlined in Section 8, relieving the authorities from the obligation to provide information, constitute restrictions on the exercise of the rights provided by it. Therefore, such exemption provisions have to be construed in their terms; there is some authority supporting this view (See Nathi Devi v. Radha Devi Gupta 2005 (2) SCC 201; B. R. Kapoor v. State of Tamil Nadu 2001 (7) SCC 231 and V. Tulasamma v. Sesha Reddy 1977 (3) SCC 99). Adopting a different approach would result in narrowing the rights and approving a judicially mandated class of restriction on the rights under the Act, which is unwarranted.

..

In the present case, the orders of the three respondents do not reflect any reasons, why the investigation process would be hampered. The direction of the CIC shows is that the information needs to be released only after the investigation and recovery in complete. Facially, the order supports the petitioner's contention that the claim for exemption made by respondent Nos. 2 and 3 are untenable. Section 8(1)(j) relates only to investigation and prosecution and not to recovery. Recovery in tax matters, in the usualcircumstances is a time consuming affair, and to withhold information till that eventuality, after the entire proceedings, despite the ruling that investigations are not hampered by information disclosure, is illogical.

..

As to the issue of whether the investigation has been complete or not, I think that the authorities have not applied their mind about the nature of information sought. As is submitted by the Petitioner, he merely seeks access to the preliminary reports investigation pursuant to which notices under Sections 131, 143(2), 148 of the Income Tax have been issued and not as to the outcome of the investigation and reassessment carried on by the Assessing Officer. As held in the preceding part of the judgment, without a disclosure as to how the investigation process would be hampered by sharing the materials collected till the notices were issued to the assesse, the respondents could not have rejected the request for granting information. The CIC, even after overruling the objection, should not have imposed the condition that information could be disclosed only after recovery was made.

In view of the foregoing discussion the order of the CIC dated 8th May 2006 in so far as it withholds information until tax recovery orders are made, is set aside. The second and third respondents are directed to release the information sought, on the basis of the materials available and collected with them, within two weeks.

..

This Court takes a serious note of the two year delay in releasing information, the lack of adequate reasoning in the orders of the Public Information Officer and the Appellate

Authority and the lack of application of mind in relation to the nature of information sought. The materials on record clearly show the lackadaisical approach of the second and third respondent in releasing the information sought."

Correspondence exchanged between the President and the Prime Minister

- Shri. C. Ramesh submitted an appeal seeking a direction to direct the CPIO of Ministry of Personnel, Public Grievances and Pensions to disclose the contents of the correspondence exchanged between the former President Late Shri K.R. Narayanan and the former Prime Minister Shri A.B. Vajpayee between the period from 28.2.02 and 15.3.02.
- The Bench took into account the significance of the issues involved and decided to refer it to the **Full Bench**.
- In view of the fact that the appellant is a resident of Vellore it was decided to arrange the hearing through **video conferencing**.
- The Appellant himself argued his case through video conferencing and was also **assisted** by Sri Prashant Bhushan, Senior Advocate, Smt. Aruna Roy, and Prof. Shekhar Singh who were authorized by him.
- Both the appellant and the CPIO have earlier filed **written submissions**.

Issues:

1. Whether the Public Authority's claim of privilege under the Law of Evidence is justifiable under the RTI Act, 2005?
2. Whether the CPIO or Public Authority can claim immunity from disclosure under Article 74(2) of the Constitution?
3. Whether the denial of information to the appellant can be justified in this case under Section 8 (1) (a) or under Section 8(1) (e) of the Right to Information Act, 2005?
4. Whether there is any infirmity in the order passed by the CPIO or by the Appellate Authority denying the requested information to the Appellant?

Decision and Reasons:
The Commission decided to call for the correspondence in question and it will **examine** as to whether its disclosure will serve or harm the public interest. After examining the documents the Commission will first consider whether it would be in public interest to

Capacity Building for Access to Information
NIA A GoI-UNDP Initiative

order disclosure or not, and only then it will issue appropriate directions to the public authority.[21]
[*This is an interesting Decision which needs to be studied in detail. Full Decision is appended at the end*.]

Legal opinion and fiduciary capacity
…copy of the legal opinion, as asked for by the
appellant, was denied u/s 8(1)(e) of the Act, on the ground that the information
was available with the respondent in "fiduciary capacity"…
information pertain to a legal opinion obtained from an advocate, the disclosure
of which has been justifiably denied u/s 8(1)(d) and (e) of the Act.
No.[22]

File notings and fiduciary relationship
File notings are that part of the file in which an officer records his observations and impressions meant for his immediate superior officers. Especially when the file, in which the notings are contained, is classified as confidential, the entrustment of the file note by a junior officer or a subordinate to the next higher or superior officer assumes the character of an information supplied by a third party (in this case, the officer writing the note to the next higher officer). This being so, any decision to disclose this information has to be completed in terms of the provision of Section 11(1) of the RTI Act. When the file notings by one officer meant for the next officer with whom he may be in a hierarchical relationship, is in the nature of a fiduciary entrustment, it should not ordinarily be disclosed and, surely not without the concurrence of the officer preparing that note. When read together, Section 11(1) and Section 8(1) (e), unerringly point to a conclusion that notings of a "confidential" file should be disclosed only after giving opportunity to the third party, viz. the officer / officers writing those notes, to be heard.[23]

(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;

Physical safety of any person

[21] CIC/MA/A/2006/00121-8 Aug, 2006.
[22] 463/IC(A)/2006,Dated, the 20thDecember, 2006
[23] CIC/AT/A/2006/00363-3.11.2006

If the information about who visits a police officer, specially police officers dealing with crimes, is allowed to be disclosed, it will inevitably lead to serious consequences for crime prevention and law-and-order administration. While every visitor to a police officer dealing with crimes may not be carrying information or offering his assistance for law
enforcement, it would be extremely difficult, even impossible, to isolate such persons from the long list of daily visitors to the police crime offices. If the Visitor's Register of police officers dealing with crime is allowed to become openly accessible, the information therein may not only compromise the sources of information to the law enforcement officers, it may even lead to the "visitors'" life being endangered by criminal elements. Non-disclosure of the information about who visited whom as contained in the visitor's register at the police officer's office premises is, therefore, an imperative which is fully covered by the exemption under Section 8 (1)(g).[24]

Identity of a confidential source of information

Tanner and Gold Coast City Council

(231/04, 30 June 2004)

The applicant sought access to the identity of a person who complained to the respondent about the applicant's unregistered dog. (The dog was of a breed not allowed to be kept on the Gold Coast and was subsequently removed from the applicant's home.) The applicant stated during the course of the review that she did not want to pursue access to the identity of any genuine complainant. However, she maintained that the respondent was concealing the identity of an officer of the respondent who had visited the applicant's home, and whom the applicant believed was the real source of the complaint. AC Barker decided that the matter in issue, comprising the name and the initials of the complainant, was exempt matter under s.42 (1) (b) of the FOI Act. The name and initials were not those of any officer of the respondent who investigated the complaint or ordered the removal of the dog. [Office of the Information Commissioner (Queensland) Informal Decision Summaries 2005/2006.

Who participated in seizure of smuggled goods?

The information sought relate to the names of officials who participated in seizure of smuggled goods, name and address of informers, file notings of officers on the COFEPOSA proposal and letters written to various authorities.

CIC held:

The purpose of COFEPOSA is to check the violation of Foreign Exchange Regulation & Smuggling Activities. Therefore, the disclosure of the proposal containing all the relevant details for the smuggling activities would be detrimental to economic interest

[24] CIC/AT/A/2005/0003-12 July, 2006.

of the State. Hence, the exemption claimed u/s 8(1) (a) and (g) of the Act is justified. Moreover, the proceedings for prosecution against the above named persons are under progress in the Court of law and as such disclosure of the information sought would impede the process of prosecution of the case. Hence, the exemption u/s 8(1) (h) from disclosure of information has been correctly applied.[25]

(h) information which would impede the process of investigation or apprehension or prosecution of offenders;

List of corrupt civil servants

Shri Md. Shafiquzzaman, IAS, MD, A.P. State Warehousing Corporation, Hyderabad has filed a complaint against the Public Information Officer, GAD, AP Secretariat, Hyderabad.

He requested the Public Information Officer, GAD (General Administration Department), A.P. Secretariat, Hyderabad to furnish the list of IAS Officers against whom ACB (Anti Corruption Bureau) conducted enquiry and recommended for Departmental action/prosecution and the Government did not accept the recommendation of the ACB.

He was given a reply informing that the information sought for cannot be furnished as it is exempted under Section 8(1)(h) and 8(1)(j) of the RTI Act, 2005. The respondent stated that ACB matters are classified documents and they have not been furnished to any one so far.

The complainant disputed the respondent's claim and stated that RTI Act was promulgated to check corruption and usher transparency and, if ACB matters are not in public domain, the entire purpose of the Act will be defeated. The complainant also stated that as all such information which cannot be withheld from Parliament / Assembly, the same cannot be denied to him.

The Commission over-ruled the contention of the respondent and pointed out that Section 8(1) (h) cannot be invoked because the information sought for has to have, as a pre-requisite, connectivity with the three the ingredients mentioned i.e. "impede the investigation, apprehension or prosecution of the offender". In the instant case as action was already dropped by the State Government there is NO offender and, therefore, any invoking of 8(1)(h) is ipso-facto unsustainable. The Commission also pointed out that denial u/s 8(1)(j) can be invoked only if such denial serves the larger public interest and

[25] 298/IC(A)/2006-21.9.2006

in the present case cannot be invoked as officers against whom ACB has completed inquiries and recommend a course of action cannot be kept out of the public domain. The pleas of the complainant that as the RTI Act was essentially aimed at ushering in transparency, accountability and checking corruption, denial of such information will seriously impair the objectives for which the legislation was promulgated has considerable merit and is upheld.

Hence the Commission directed the Respondent to furnish the list of all such IAS Officers against whom ACB conducted enquiries and recommended for departmental action / prosecution and the Govt. did not accept the recommendation of the ACB and dropped further action within 30 days of the receipt of this and report compliance to the Commission. [A.P. Information Commission Appeal No.][26]

Even after the pronouncement of the above Decision, information was not disclosed. The requestor approached the A.P. High Court which passed an interim order directing the state to furnish the full list.

Process of investigation

ShriArunJaitley,M.P.(RajyaSabha) sought from CBI

- *All documents, manuscripts and files pertaining to the freezing of Bank Account Nos.5A5151516M and 5A5151516L maintained at London (UK) by Mr. Ottavio Quattrocchi (wanted by the Interpol vide Notice control No.A-44/2-1997) and his wife Mrs. Maria Quattrocchi, vide order dated 25.7.2003 passed by the Queen's High Court at London.*

- *All documents, manuscripts and files pertaining to the de-freezing of the said Bank Accounts of Mr. Quattrocchi and his wife, vide order dated 11.1.2006 passed by the said Court.*

The CPIO declined on the following ground:

- *"As the criminal case NO.RC.1(A)/90-ACU.IV/SIG against Mr. Ottavio Quattrocchi is pending in the Hon'ble Court of Chief Metropolitan Magistrate, Delhi and further, that some ongoing investigation is currently afoot, the documents and information asked for, can neither be provided nor allowed to be*

[26] 4186/CIC/2007, dt. 29-9-2007

inspected at present."

The case was heard on 31.7.2006. The appellant could not be present in the hearing nor there was any communication from him to this effect to the Commission, explaining the reasons for his absence. However, at least two persons, who claimed to be the appellant's representatives, without having proper authorization from the appellant, desired to attend the hearing. On the assurance that the representatives of the appellant would send post-facto authorization within a day and on their own personal undertakings, they were allowed, with the concurrence of the CPIO of CBI, to participate in the hearing.

CIC held:

- The fact that the appellant, a Member of Parliament (RS) and a former Minister has sought access to the public records surely adds to the credence of the successful implementation of RTI Act. In the instant case, the information sought is huge and that are available in a large number of files, which are housed in two large rooms and kept in several cupboards under the custody of the CBI. Any attempt to compile the voluminous information, so as to comply with the request of the appellant, may disproportionately divert the public resources, which is not permissible u/s 7(9) of the Act. The CBI is conducting further investigations under section 173(8) of the Cr.P.C. and, therefore, the issue of freezing and de-freezing of the accounts of Mr. Quattrocchi is not a closed matter, as contended by the appellant. In view of this, the exemptions claimed u/s 8(1)(h) by the CBI is justified.[27]

Process of investigation

…the Department cannot take a plea of continuing investigation when the charge sheet has been served on the appellant.[28]

Process of investigation

Delhi Police received a request for :

[27] 157/IC(A)/2006- 1 Aug,2006.
[28] CIC/MA/C/2005/2006-4 July, 2006.

- result / Status of a particular case
- date wise details of each and every investigational steps taken to solve the case

CIC accepted the merit of the police authority's contention, that :
An open ended order by CIC to disclose any information pertaining to details of investigation into a crime will have serious implications for law enforcement and will have potentiality for misuse by criminal elements.
Each case will have to be examined independently on the basis of facts specific to that case.
In RTI requests pertaining to the law enforcement authorities, it becomes necessary to strike a fine balance between the imperatives of the confidentiality of the sources of information witness protection and so on, with the right of the citizen to get information.[29]

Report of the Board of Enquiry
It is a matter of fact that the report was submitted by Shri S.K. Nafri[who headed the Board of Enquiry] as a confidential document to the OFB[OrdnanceFactory Board]. Insofar as Shri Nafri's report was submitted in the belief that it would be treated by the OFB as a confidential document, the AA was right in holding that the relationship between the Enquiry Officer and the authority ordering enquiry was one of trust and confidence and thus being fiduciary would attract the exemption under Section 8(1)(e).
Apart from the above, it is also to be noted that Shri Nafri, as the head of the Board of Enquiry, had examined several witnesses who had given their statements to him in the strictest confidence, in the belief that these would not be made public. In case, the enquiry report is divulged, it would not be possible to keep secret the names of the deponents who, besides being deeply embarrassed, could also face intimidation and threats to their personal safety. Disclosure of the entire report would also have the impact of interfering with the investigation which the public authority may consider launching. …
It is held that there is no obligation on the part of the PIO to disclose the entire Shri S.K. Nafri's BOE report dated 15.10.2005. However, only the conclusions part of the report, after deleting any names that might appear there, may be disclosed to the appellant.[30]

Enquiry
…[I]f a complaint is under enquiry, information/documents connected with the enquiry could be

[29] CICAT/A/2006/00071 - 11 May, 2006.
[30] CIC/AT/A/2006/00314--9.10.2006

withheld till the enquiry is completed in term of Section 8(1)(h).[31]

Enquiry

… [W]hatever enquiry had been conducted on the basis of the complaints of the appellant, copies of the enquiry reports, if action has been completed on them, to be given to the appellant.[32]

Law enforcement records

Records compiled for law enforcement purposes do not lose their exempt status when they are incorporated into records compiled for purposes other than law enforcement.
U.S. Supreme Court in *FBI v. Abrabson,* 456 U.S.615 (1982)

Terrorism and FOI

Since FOIA does not have a "terrorism" exemption per se, the government has cobbled together several different exemptions, particularly Exemption 2, which can be used to withhold information where disclosure would allow for circumvention of a law or regulation, and several subsections of Exemption 7, particularly 7(E), protecting information pertaining to investigative methods and techniques, and 7(F), which allows an agency to withhold records where disclosure could endanger the safety of an individual. The judge in Los Angeles accepted Customs' speculation, upholding its claims under both 7(E) and Exemption 2.

Living Rivers involved a request by a local environmental group for flood inundation maps for Hoover and Glen Canyon Dams, showing the potential consequences if either dam failed.

The Bureau of Land Reclamation provided an affidavit from its Director of Security, Safety and Law Enforcement (a position created after Sept. 11), in which he referred to a dam failure as a "weapon of mass destruction." Even though the judge was sympathetic to the government's concerns, she accepted Exemption 7(F), noting that the agency's "statements concerning risk assessment by terrorists demonstrate that release of the maps could increase the risk of an attack on the dams."

Living Rivers v United States Bureau of Reclamation, 272F. supp.2d1313(D.utah 2003)

Investigation

'RCH' and Queensland Police Service
(451/03, 31 May 2004)

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[31] 127/ICPB/2006-17.10.2006
[32] PBA/06/108--9.10.2006

The applicant sought access to a "running sheet" that was prepared by the respondent during its investigation into the death of the applicant's wife (the applicant was convicted of the murder of his wife and was serving a term of imprisonment). The matter in issue related mainly to persons whom the respondent had contacted, or obtained information from, in the course of its investigation. Applying the principles stated in *Re Pearce and Queensland Rural Adjustment Authority* (1999) 5 QAR 242 and *Re Stewart and Department of Transport* (1993) 1 QAR 237, AC Moss was satisfied that the matter in issue was properly to be characterised as information concerning the personal affairs of the relevant persons, and was *prima facie* exempt from disclosure under s.44 (1) of the FOI Act. AC Moss then considered the public interest arguments raised by the applicant in favour of disclosure of the matter in issue and decided that disclosure would not, on balance, be in the public interest. [Office of the Information Commissioner (Queensland) Informal Decision Summaries 2005/2006.

Price and Crime and Misconduct Commission

(411/03, 2 June 2004)

The applicant sought access to documents relating to an investigation by the respondent into allegations of official misconduct. The documents in issue comprised an investigation report, correspondence, and tape-recorded interviews and written summaries of interviews prepared during the investigation. With respect to matter in issue that would identify persons who had made complaints to the respondent, or who had provided the respondent with information during the course of its investigation, AC Moss decided that such matter concerned the personal affairs of those persons and therefore was *prima facie* exempt from disclosure under s.44 (1) of the FOI Act, subject to the application of the public interest balancing test incorporated within s.44 (1).

AC Moss considered that the public interest in protecting the privacy of the persons concerned, together with the strong public interest in protecting the continued flow of information to law enforcement agencies from concerned members of the community regarding allegations of possible wrongdoing, outweighed any public interest considerations weighing in favour of disclosure to the applicant of the matter in issue. AC Moss therefore decided that disclosure of the matter in issue would not, on balance, be in the public interest and that it therefore qualified for exemption under s.44(1) of the FOI Act. [Office of the Information Commissioner (Queensland) Informal Decision Summaries 2005/2006.

Investigation

According to the appellant, relying on Cr.P.C., the term "investigation" would mean criminal investigation which may result in apprehension or prosecution of offenders… and departmental proceedings cannot be considered to be investigation to deny documents sought for by him

applying the provisions of Section 8(1)(h) of the Act.

It is true that the term "investigation" has not been defined in the RTI Act. When a statute does not define a term, it is permissible to adopt the definition given in some other statute. If different definitions are given in different statutes for a particular term, then the one which could be more relevantly adoptable should be adopted taking into account the object and purpose of the Statute in which the definition is not available…the term "investigation" in respect of government officials could mean both investigation by the CBI, which could be termed as criminal investigation as well as investigation by the Department. …the Division Bench decision of this Commission in *Shri Gobind Jha Vs Army Hqrs.* [33]In that case, the appellant sought for various information including a copy of the report of investigation carried out on the basis of his complaint. The CPIO and AA declined to furnish a copy of the report applying the provisions of Section 8(1) (h) of the Act. Examining the provisions of Section 8(1)(h) of the Act, the Division Bench observed -

"While in criminal law, an investigation can be said to be completed with the filing of charge sheet in the appropriate court by an investigating agency, in cases of vigilance related inquiries, misconduct and disciplinary matters, the investigation can be said to be over only when the competent authority makes a determination about the culpability or otherwise of the person or persons investigated against. In that sense, the word 'investigation' used in Section 8(1)(h) should be construed rather broadly and should include all inquiries, verification of records, assessments and so on which may be ordered in specific cases. In all such matters, the inquiry or investigation should be taken as completed only after the competent authority makes a prima facie determination about the presence or absence of guilt on receipt of the investigation/inquiry report from the investigation/inquiry officer".

Thus, from this decision, it is apparent that this Commission has not viewed the term 'investigation' as used in Section 8(1)(h) to apply exclusively to criminal investigation as propounded by the appellant in the present case. Therefore, the contention of the appellant that only when criminal investigation is pending, the provisions of Section 8(1)(j) could be applied, has to fail.

In *Shri D.L.Chandhok Vs. Central Wharehousing Corporation (Appeal No.)*[34]**,** this Commission has held that -

"*the term 'investigation' would include inquiries/search/scrutiny which would be either departmental or criminal and therefore when a departmental inquiry is on, the*

[33] (CIC/80/2006/ 00039 dated 1.6.2006).

[34] 121/ICPP/ 2006 dated 9.10.06

information sought in relation to such an inquiry can be denied in terms of Section 8(1)(h) of the Act".[35]

Investigations in vigilance related cases

While in criminal law, an investigation can be said to be completed with the filing of the charge sheet in an appropriate court by an investigating agency, in cases of vigilance related enquiries, misconduct and disciplinary matters, the investigation can be said to be over only when the competent authority makes a determination about the culpability or otherwise of the person or persons investigated against. In that sense, the word investigation used in Section 8(1)(h) of the Act should be construed rather broadly and should include all enquiries, verification of records, assessments and so on which may be ordered in specific cases. In all such matters, the enquiry or the investigation should be taken as completed only after the competent authority makes a prima-facie determination about presence or absence of guilt on receipt of the investigation/enquiry report, from the investigation/enquiry officer.

There is another aspect to this matter. If for the sake of argument, it is agreed that the report of investigation in any matter can be disclosed immediately after the officer investigating the cases concludes his investigation and prepares the report which, let us assume, impeaches the conduct of a given officer. In case the competent disciplinary authority agrees with the findings of the investigating officer, disclosure of the report even before a final decision by the competent authority would be inconsequential. There shall be problem, however, if the disciplinary/appointing authority chooses to disagree with the findings of the investigating officer. Early disclosure of the investigation report in such a case, besides being against the norms of equity, would have caused irretrievable injury to the officer/person's (who would have been the subject of investigation) standing and reputation. His demoralisation would be thorough

In exempting from disclosure matters pertaining to an on-going investigation (Section 8 (1) (h)), the RTI Act besides other reasons, also caters to the possible impact of the disclosure of such information on the public servants' morale and their self-esteem. There are, thus, weighty reasons for such a provision in the exemption clauses of the RTI Act.

We are keenly aware that one of the purposes of the enactment of the RTI Act is to combat corruption by improving transparency in administration. This objective should be achieved without impairing the interest of the honest employee. Premature disclosure of investigation-related information has the potentiality to tar the employee's reputation, permanently, which cannot be undone even by his eventual exoneration. The balance of advantage thus, lies in exempting investigations/enquiries in vigilance, misconduct or disciplinary cases, etc. from disclosure requirements under the Act, till a decision in a given case is reached by the competent authority. This also conforms to the letter and

[35] 243,244/ICPB/2006-December 27,2006

the spirit of Section 8 (1) (h) of the RTI Act.

There is one other factor that also needs some reflection. Disclosure of an investigation/enquiry report (as demanded in this case by the appellant) even before its acceptance/rejection by a given competent authority will expose that authority to competing pressures which may hamper cool reflection on the report and compromise objectivity of decision-making.

…in investigations in vigilance related cases by CVOs or by departmental officers, as well as in all cases of misconduct, misdemeanour,etc., there should be an assumption of continuing investigation till, based on the findings of the report, a decision about the presence of a prima-facie case, is reached by a competent authority. This will, thus, bar any premature disclosure, including disclosure of the report prepared by the investigating officer, as in this case.[36]

Employees against whom CBI cases are pending investigation
The appellant had asked for *"a list of all the employees of ONGC Ltd. against whom CBI cases are pending investigation or trial since the year 1993, till date in the form and order as enclosed"*.
The disclosure of information relating to the investigation of the case or prosecution of offenders is barred u/s 8(1)(h) and (j) of the Act, as it does not serve the public interest.
Decision No.[37]
Statement made[to CBI]
…appellant has largely asked for copies of the recorded statement made [to CBI] by different persons, which in any case cannot be given unless their concurrence is obtained, as such statements are made in fiduciary capacity.
As the matter is pending before the trial court for adjudication, the appellant would surely get an opportunity to defend herself and she would be provided with all the required documents for her effective defense. The appellate authority has rightly observed that she can approach the court for any documents/information required by her for the purpose of defense. Thus, the CPIO and the appellate authority have correctly applied exemption u/s 8(1)(h) for disclosure of the information sought for by the appellant.[38]

(i) cabinet papers including records of deliberations of the Council of Ministers, Secretaries and other officers:

[36] CIC/AT/A/2006/00039-1.6.2006
[37] 252/IC(A)/2006 -7.9.2006
[38] 250/IC(A)/2006-7.9.2006

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;

Cabinet papers

Shri. Arvind Kejriwal sought from the CPIO, Ministry of Commerce & Industry, information in respect of the policy for allowing FDI in retail sector.
CIC held :In terms of Section 8(1)((i), Cabinet decisions, the reasons thereof and the material on which the decisions were taken shall be made public after the decision is taken and the matter is complete except those covered under any of the exemptions in Section 8. Since in the present case, decision on FDI in Single Brand Retailing has been taken and also notified and no exemption is sought under Section 8, the CPIO or the AA could have furnished that portion of the Cabinet note relating to this matter and also the decision of the Cabinet on the same, by applying the principle of severability as provided in Section 10(1). Therefore I direct the CPIO to provide, within 15 days, that portion of the Cabinet note dealing with FDI in Single Brand Retailing along with a copy of the file noting on the basis of which the same was included in the Cabinet note and the related decision of the Cabinet.
In so far as the information relating to FDI in retailing is concerned, as agreed to by the CPIO during the hearing, the appellant be given inspection of the relevant file/files at a mutually agreed time, with the liberty to the appellant to take copies on payment of usual fees.[39]

Cabinet papers-

Section 8(1)(i) of the RTI Act is under the heading “exemptions” and makes interesting reading. This sub-section provides for exemption to cabinet papers “including records of deliberations of the Council of Ministers, Secretaries and other officers”. Here the term “including”, may be construed to mean that the deliberations (a) of the Council of Ministers, (b) of the Secretaries and (c) of other officers are all exempted from disclosure-requirement, independent of each other, that is to say that not only the deliberations of the Secretaries and other officers pertaining to cabinet papers, but also their deliberations unconnected with the cabinet papers are exempted. Thus this exemption extends to (i) cabinet papers (ii) deliberations of (a) Council of Ministers (b) Secretaries and (c) other officers. This would effectively mean that all decisions of the Council of Ministers and the material related thereto shall be disclosed after the decision under the first proviso of this sub-section. But, the

[39] 132/ICPB/2006-19.10.2006

wordings of the first proviso makes no such disclosure stipulation for the deliberations of the Secretaries and other officers, whether connected or unconnected with the cabinet papers, or the decisions of the Council of Ministers.

A Public Authority shall be, arguably, within its right to take a view that all deliberations of Secretaries and other officers shall be barred from disclosure under this sub-section. The 'material' connected with the Council of Ministers' decision shall be disclosed but the deliberations of the officers, Secretaries etc. shall not be disclosed unless they answer affirmatively to the query "Are these material connected with a cabinet decision?"

The other interpretation is that this sub-section and the provisos deal only with the decisions of the Council of Ministers, cabinet papers and all official deliberations connected with the decisions of the Council of Ministers. Therefore, this sub-section cannot be invoked for exemption of official deliberations unconnected with cabinet papers or the decisions of the Council of Ministers. [40]

Cabinet papers-

On the question of disclosure of cabinet papers, particularly when the action has been taken and the matter is over, the contention of the CPIO and appellate authority that section 8(1) (i) of the Act is applicable as the matter is sub judice, is not tenable. The Act is clear on this issue, which states that:

"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".

In so far as action taken by the DOT, DOPT and ACC on the appointment of Shri Sinha, the matter is complete and over, the information sought may therefore be disclosed. [41]

Cabinet papers

If the relevant records and papers are available and the matter was dealt with by the Cabinet in 1991-92, it ought to be treated as the decision has been taken and the matter is complete, in which case all the relevant papers should be disclosed. Thus, the exemption u/s 8(1) (i) would not be applicable. [42]

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[40] CIC/AT/A/2006/00145-13 July, 2006.
[41] 76/IC(A)/2006-3 July,2006.
[42] 72 /IC(A)/2006-26 June,2006.

(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.

Personal information

The Full Bench in *G.R. Rawal v Director General of Income Tax (Investigation)* [43][,Decsion date 5 March 2008] provided guidelines on "personal information":

"In common parlance, the expression "personal information" is normally used for name, address, occupation, physical and mental status, including medical status, as for instance, whether a person is suffering from disease like diabetes, blood pressure, asthma, TB, Cancer etc. including the financial status of the person, as for instance, his income or assets and liabilities of self and other members of the family. The expression shall also be used with respect to one's hobbies like painting, music, sports etc. Most of these mentioned above are information personal to one and one may not like to share this with outsider. In this sense of the term, such information may be treated as confidential since one would not like to share it with any other person. However, there are circumstances when it becomes necessary to disclose some of this information if it is in larger public interest. Thus, for example, if there is a doubt about the integrity of any person occupying a public office, it may become necessary to know about one's financial status and the details of his assets and liabilities not only of the person himself but also of other close members of the family as well. Similarly, if there is an allegation about the appointment of a person to a public office where there are certain rules with regard to qualification and experience of the person who has already been appointed in competition with others, it may become necessary to make inquiries about the person's qualification and experience and these things may not be kept confidential as such.
20. It may not be possible to lay down exactly the circumstances in which personal information of an individual may be disclosed to others. This will depend on the facts of each case. No hard and fast rule can be laid down for this purpose. A case recently decided on 23.3.2007 by the Bombay High Court where the prisoner had to be admitted to Sir J.J. Hospital, Mumbai on the ground that he was suffering from diabetes and blood pressure may be referred to in this regard. The PIO did not order disclosure of his medical problem to those who thought that his admission

[43] CIC/AT/A/2007/00490

into the air-conditioned rooms of the hospital, as against the tough conditions prevailing in the jail, was unjustified, and there was public outcry, including in the media against his admission in an air-conditioned hospital. PIO had refused information u/s 8(1) (j) of the RTI Act and under Regulations of the Medical Council of India. However, the High Court did not accede to this viewpoint. The court ordered that the information relating to the convict patient be given after following procedure under Section 11 of the RTI Act.
21. The US Restatement of the Law, Second, Torts, § 652 define the intrusion into Privacy in the following manner:
"One, who intentionally intrudes, physically or otherwise, upon the solitude or seclusion of another or his private affairs or concerns, is subject to liability to the other for invasion of his privacy, if the intrusion would be highly offensive to a reasonable person."
22. The Law of Privacy although, not defined is, however, well recognized under the Indian legal system and it has all along been treated as a sacred right not to be violated unless there are good and sufficient reasons. Even under RTI, the normal rule should be of "non-disclosure of any information concerning one's private life" and disclosure should be ordered only when there is overriding public interest and in that case too, the procedure laid down under section 11 of the Act should be followed as held by the Bombay High Court in the above cited case.
23. Because we have no specific law on the subject, in such cases we have been guided by the UK Data Protection Act 1998 Sec 2 of which titled Sensitive Personal Data reads as follows:
In this Act "sensitive personal data" means personal data consisting of information as to:
a)The racial or ethnic origin of the data subject
b)His political opinions
c)His religious beliefs or other beliefs of a similar nature
d)Whether he is a member of a Trade Union
e)His physical or mental health or condition
f)His sexual life
g)The commission or alleged commission by him of any offence
h) Any proceedings for any offence committed or alleged to have been committed by him, the disposal of such proceedings or the sentence of any court in such proceedings.
If we were to construe privacy to mean protection of personal data, this would be a suitable reference point to help define the concept. In this context, as may be seen the information sought by appellant may fall within the definition of personal data as described in g) and h) above.
24. The interpretation of Section 8(1) (j) has been the subject of some dispute. The Section deals with excluding from the purview of the RTI Act (a) information of a personal nature which have had no relationship to a public activity or interest and (b) whose disclosure would lead to unwarranted invasion of the privacy.
25. In so far as (b) is concerned, there is very little doubt that there could be a set of information which may be said to belong to the exclusive private domain and hence not be liable to be disclosed. This variety of information can also be included as "sensitive and personal" information as in the U.K. Data Protection Act, 1998. Broadly speaking, these may include religious and ideological ideas, personal preferences, tastes, political beliefs, physical and mental

Capacity Building for Access to Information
NIA A GoI-UNDP Initiative

health, family details and so on.
26. But when the matter is about personal information unrelated to public activity, laying down absolute normative standards as touchstones will be difficult. This is also so because the personal domain of an individual or a group of individuals is never absolute and can be widely divergent given the circumstances. It is not possible to define “personal information” as a category which could be positively delineated; nevertheless it should be possible to define this category of information negatively by describing all information relating to or originating in a person as “personal” when it has such information has no public interface. That is to say, in case the information relates to a person which in ordinary circumstances would never be disclosed to anyone else; such information may acquire a public face due to circumstances specific to that information and thereby cease to be personal. It is safer that what is personal information should be determined by testing such information against the touchstones of public purpose. All information which is unrelated to a public activity or interest and, under Section 8(1) (j), if that information be related to or originated in person, such information should qualify to be personal information under Section 8(1) (j).”

Personal information

“Personal information” does not mean information relating to the information seeker, but about a third party. That is why, in the Section, it is stated “*unwarranted invasion of the privacy of the individual”*. If one were to seek information about himself or his own case, the question of invasion of privacy of his own self does not arise. If one were to ask information about a third party and if it were to invade the privacy of the individual, the information seeker can be denied the information on the ground that disclosure would invade the privacy of a third party. Therefore, when a citizen seeks information about his own case and as long as the information sought is not exempt in terms of other provisions of Section 8 of RTI Act, this section cannot be applied to deny the information.”[44]

Annual confidential report and Privacy

In regard to the annual confidential report of any officer, it is our view that what is contained therein is undoubtedly ‘personal information’ about that employee. The ACRs are protected from disclosure because arguably such disclosure seriously harm interpersonal relationship in a given organization. Further, the ACR notings represent an interaction based on trust and confidence between the officers involved in initiating, reviewing or accepting the ACRs. These officers could be seriously embarrassed and even compromised if their notings are made public. There are, thus, reasonable grounds to protect all such information through a proper classification under the Official Secrets Act.

No public purpose is going to be served by disclosing this information. On the contrary it may lead to harming public interest in terms of compromising objectivity of assessment – which is

[44] 80/ICPB/2006-28.8.2006

Capacity Building for Access to Information
NIA A GoI-UNDP Initiative

the core and the substance of the ACR, which may result from the uneasiness of the Reporting, Reviewing and the Accepting officers from the knowledge that their comments were no longer confidential. These ACRs are used by the public authorities for promotions, placement and grading etc. of the officers, which are strictly house-keeping and man management functions of any organization. A certain amount of confidentiality insulates these actions from competing pressures and thereby promotes objectivity.
We, therefore, are of the view that apart from being personal information, ACRs of officers and employees need not be disclosed because they do not contribute to any public interest. It is also possible that many officers may not like their assessment by their superiors to go into the hands of all and sundry. If the reports are good, these may attract envy and if these are bad, ridicule and derision. Either way it affects the employee as well as the organization he works for. On balance, therefore, confidentiality of this information serves a larger purpose, which far out-strips the argument for its disclosure.[45]

Whether an employee is entitled to have access to his Annual Confidential Reports?

Yes. The Supreme Court in *Dev Dutt v. Union of India and others* (Civil Appeal No. 7631 of 2002, decided on 12.5.2008),a case filed before the advent of the RTI Act, held as follows:

“We do not agree[with the submission of the learned counsel, that “a 'good' entry is not an adverse entry and it is only an adverse entry which has to be communicated to an employee.”]. In our opinion every entry must be communicated to the employee concerned, so that he may have an opportunity of making a representation against it if he is aggrieved.

12. Learned counsel for the respondent submitted that under the Office Memorandum 21011/4/87 [Estt.'A'] issued by the Ministry of Personnel/Public Grievance and Pensions dated 10/11.09.1987, only an adverse entry is to be communicated to the concerned employee. It is well settled that no rule or government instruction can violate Article 14 or any other provision of the Constitution, as the Constitution is the highest law of the land. The aforesaid Office Memorandum, if it is interpreted to mean that only adverse entries are to be communicated to the concerned employee and not other entries, would in our opinion become arbitrary and hence illegal being violative of Article 14. All similar Rules/Government Orders/Office Memoranda, in respect of all services under the State, whether civil, judicial, police, or other service (except the military), will hence also be illegal and are therefore liable to be ignored.

13. It has been held in Maneka Gandhi vs. Union of India & Anr. AIR 1978 SC 597 that arbitrariness violates Article 14 of the Constitution. In our opinion, the non-communication of an

[45] CIC/AT/A/2006/00069-13 July,2006

entry in the A.C.R. of a public servant is arbitrary because it deprives the concerned employee from making a representation against it and praying for its up-gradation. In our opinion, every entry in the Annual Confidential Report of every employee under the State, whether he is in civil, judicial, police or other service (except the military) must be communicated to him, so as to enable him to make a representation against it, because non-communication deprives the employee of the opportunity of making a representation against it which may affect his chances of being promoted (or get some other benefits).

Moreover, the object of writing the confidential report and making entries in them is to give an opportunity to a public servant to improve his performance, vide State of U.P. vs. Yamuna Shankar Misra 1997 (4) SCC

17. Hence such non-communication is, in our opinion, arbitrary and hence violative of Article 14 of the Constitution.

..

In our opinion, every entry (and not merely a poor or adverse entry) relating to an employee under the State or an instrumentality of the State, whether in civil, judicial, police or other service (except the military) must be communicated to him, within a reasonable period, and it makes no difference whether there is a bench mark or not. Even if there is no bench mark, non-communication of an entry may adversely affect the employee's chances of promotion (or getting some other benefit), because when comparative merit is being considered for promotion (or some other benefit) a person having a `good' or `average' or `fair' entry certainly has less chances of being selected than a person having a `very good' or `outstanding' entry."

Next week, the High Court of Punjab and Haryana in *State of Punjab and others v State Information Commission, Punjab and another* [C.W.P. No. 8396 of 2008,Decided on May 19, 2008] followed the Supreme Court's judgment while deciding on a petition filed under Article 226 of the Constitution
of India challenging order dated 5.11.2007 (P-1), passed by the State
Information Commission, Punjab holding that Shri Faquir Chand Sharma-respondent No. 2 is entitled to the information sought by him (copies of his ACRs for the period from 1.4.2000 to 31.3.2006).The court held as follows:

"The ACRs of a public servant are not private in character. In any case, when an employee asks for disclosure of his own ACR the demand cannot be declined because now all ACRs are required to be communicated to a public servant, whether adverse, good, very good etc. In paras 19 and 20 of the judgment rendered in the case of *Dev Dutt v. Union of India and others* (Civil Appeal No. 7631 of 2002, decided on 12.5.2008), Hon'ble the Supreme Court has observed as under:-

"19. In our opinion, every entry in the A.C.R. of a public servant must be communicated to him within a reasonable period, whether it is a poor, fair, average, good or very good entry. This is because non communication of such an entry may adversely affect the employee in two ways: (1) Had the entry been communicated to him he would know about the assessment of his work and conduct by his superiors, which would enable him to improve his work in future (2) He would have an opportunity of making a representation against the entry if he feels it is unjustified, and pray for its upgradation. Hence noncommunication of an entry is arbitrary, and it has been held by the Constitution Bench decision of this Court in Maneka Gandhi vs. Union of India [AIR 1978 SC 597] (supra) that arbitrariness violates Article 14 of the Constitution.
20. Thus it is not only when there is a bench mark but in all cases that an entry (whether it is poor, fair, average, good or very good) must be communicated to a public servant, otherwise there is violation of the principle of fairness, which is the soul of natural justice. Even an outstanding entry should be communicated since that would boost the morale of the employee and make him work harder."
In the light of the aforesaid view of Hon'ble the Supreme Court, it has now become obligatory to even communicate good or better reports to a public service or an employee of the Corporation, Board or judiciary. Therefore, the controversy has been settled by Hon'ble the Supreme Court."

Grading of officers basing on ACRs

A Bench consisting of Information Commissioners, Professor M.M. Ansari, Dr. O.P. Kejariwal and Ms. Padma Balasubramaniam in *Shri Arvind Kejriwal C/o Parivartan v Department of Personnel & Training* held that the chart which contained the grading of the officers and not their detailed ACRs can be disclosed.[46]

Last year, U.K. Information Commissioner gave a similar Decision:
London Borough of Southwark was asked for information about criteria used to determine staff grades within the Hay job evaluation scheme. The council refused the request on the grounds that it would prejudice the commercial interests of Hay Group. The Commissioner decided that the council had incorrectly withheld the information and that it should therefore be released. [Case Ref: FS50078603,Date: 05/06/2007 ,Public authority: London Borough of Southwark]

Annual property returns and privacy

There are four important Decisions on this topic, which gradually evolved the principle that Annual property returns can be disclosed. The Decisions are as follows:

[46] .[CIC/MA/A/2006/00204, 207 & 208,12 June,2008]

Capacity Building for Access to Information

NIA A GoI-UNDP Initiative

"The information in the annual property returns is retained by the public authority in sealed covers / or in some other mode under proper "secrecy" classification and used only when the public servant, whose return it may be, faces a charge or an enquiry. It is not held as a public information, but rather a safety valve – a deterrent to public servants that investments or transactions etc. In properties should not be done without the knowledge of the public authority.

While there may be an arguable case for disclosing all such information furnished to the various Public Authorities by the public servants, till such time the nature of this information remains a confidential entrustment by the public servant to the Public Authority, it shall be covered by section 8 (1) (j) and cannot be routinely disclosed. It will also attract the exemption under Section 8 (1) (e) and in certain cases the provisions of Section 11 (1), being an information entrusted to the public authority by a third person, i.e. the public servant filing property return. On the whole, property returns of public servants, which are required to be compulsorily filed by a set date annually by all public servants with their respective public authorities, being an information to be used exceptionally, must be held to serve no general public purpose whose disclosure the RTI Act must compel.
However, all public authorities are urged that in order to open the property returns of all public servants to public scrutiny, the public authorities may contemplate a new and open system of filing and retention of such returns. The public servants may be advised in advance that their property returns shall be open and no more confidential. The property return forms may be so designed as to give only such transactions and assets related details, which may not violate civil servants' right to privacy. These steps may bring the curtain down on the rather vexed question of how private is the information given in "property returns" or that it is a public information, which is not private at all." [47]

In a case involoving Kendriya Vidyalaya Sanghathan, CIC member O P Kejariwal ruled:
"This Bench, however, holds that Annual Property Returns by government employees are in the public domain and hence there seems to be no reason why they should not be freely disclosed. This should also be considered as a step to contain corruption in government offices since such disclosures may reveal instances where property has been acquired which is disproportionate to known sources of income. The Commission, therefore, directs the Respondents to provide copies of property returns asked for by the Appellant.[48]
In a recent case, CIC chief Wajahat Habibullah held on May 14,2008 as follows:

"In Writ Petition (Civil) 294/2001 Union of India vs. Association for
Democratic Reforms, the Apex Court has in its judgment of 2nd May, 2002 dealt

[47] CIC/AT/A/2006/00134-10 July, 2006.
[48] [CIC/OK/A/2007/01493 &CIC/OK/A/2008/00027,Dated: 20 March 2008]

primarily with the jurisdiction of the Election Commission wherein the requirement of a public servant to provide declaration of moveable and immovable property under Rule 16 of All India Service (Conduct) Rules, 1967 is also discussed. In *Peoples Union of Civil Liberties v. Union of India*, however, in his judgment of 13.2.2003 Shri P.V. Reddy J. has ruled as follows :

"When there is a competition between the right to privacy of an individual and the right to information of the citizens, the former right has to be subordinated to the latter right as it serves larger public interest. The right to know about the candidate who intends to become a public figure and a representative of the people would not be effective and real if only truncated information of the assets and liabilities is given."

The judgment goes on to dwell at length not only with the requirement of disclosure of the property of candidates foe elections but to conclude that "It

cannot be denied that the family relationship and social order in our country is such that the husband and wife look to the properties held by them as belonging to the family for all practical purposes, though in the eye of law the properties may distinctly belong to each of them. By and large, there exists a sort of unity of interest in the properties held by spouses. The property being kept in the name of the spouse benami is not unknown in our country. In this situation, it could be said that a countervailing or paramount interest is involved in requiring a candidate who chooses to subject himself/herself to public gaze and scrutiny to furnish the details of assets and liabilities of the spouse as well."

Appellant Shri Upadhyaya has argued that when such rigorous norms are fixed for candidates for elections, who are in service for only the limited term of their office, the government servants, engaged in life long service cannot be exempt.

We moreover find that this Commission has, in *Shri Roshan Lal v. Kendriya Vidyalaya Sanghathan,* Appeal Nos. [49]
also ruled on the question of
disclosure of property returns wherein respondents had denied disclosure on the ground of Sec. 8(1)(j). In these cases Information Commissioner Dr. O.P. Kejariwal has held as below :

"The Bench, however, holds that Annual Property Returns by government employees are in the public domain and hence there seems to be no reason why they should not be freely disclosed. This should also be considered as a step to contain corruption in government offices since such disclosures may reveal instances where property has been acquired,

[49] CIC/OK/A/2007/01493 & CIC/OK/A/2008/00027 dated 20th March, 2008

which is disproportionate to known sources of income. The Commission, therefore, directs the Respondents to provide copies of property returns asked for by the Appellant to him by 10th April, 2008."
Under the circumstances, we see no reason to uphold exemption from disclosure sought by Shri R. K. Jha Section Officer (PR) and PIO u/s 8(1)(j) of the RTI Act. However, since the information held is without doubt of concern to a third party in this case Shri Shiva Basanth, a 1976 batch IAS Officer, CPIO,

Ministry of Personnel, Public Grievances & Pensions shall within five days from the receipt of this order give a written notice to Shri Basanth of the request, and of the fact that under the directions of this Commission he intends to disclose the information, and to invite the third party to make a submission in writing or orally regarding whether the information should be disclosed. CPIO will keep in view such submission in disclosing the information sought. Including the period required for the exchanges described above, the information sought will be provided within twenty working days of the date of issue of this Decision Notice.[50]

Wealth of IAS is covered under RTI

In a significant decision the Gujarat Information Commission has allowed access to annual property returns (APRs) of government officers to any citizen under the Right to Information (RTI) Act.

The ruling came after activist Harinesh Pandya sought details under the RTI of property of IAS officer Rajiv Gupta. Pandya wanted to know the details of Gupta's property since he assumed office. He had also sought to know the source of income for acquiring the property and whether any of property was sold. The Public Information Officer had refused to disclose the details on the ground that the information was available with them in "fiduciary relationship" and there was no larger public interest warranting disclosure.

Pandya filed appeal before the GAD and the appellate authority too upheld the PIO's decision. However the GIC noted that CIC's decisions on property disclosure were to bring transparency. But it directed the GAD to inform Gupta that the details of his property are being disclosed and to hear him.

[50] [CIC/WB/A/2007/00189 dated 14.5.2008]

[Wealth of IAS is covered under RTI
Gujarat Global News Network, Ahmedabad, 2008-06-11 http://www.gujaratglobal.com/nextSub.php? id=4103&catype= NEWS]

Investigating officer and privacy

A citizen had requested from RBI for certain information relating to the findings of an inspection of Memon Co-operative Bank Ltd, Mumbai, which was conducted on the basis of a complaint filed by him and a copy of the inspection report along with the name(s) of investigating officers.

CIC directed RBI to furnish a copy of the inspection report after due application of section 10(1) of the Act. Alternatively, the appellant should be provided a substantive response, incorporating the major findings of the inspection report and indicating the action taken on the findings of the report.

The name of the investigating officer may not be revealed as it would not serve any public interest. [51]

Information regarding LTC disbursals and privacy

The plea of such information [information regarding LTC disbursals] being entirely barred under Section 8(1) (j) should, therefore, fail.

However, I do agree with the contention of the third party, …, that parts of this information are personal information, and should not be disclosed. It is necessary, therefore, to sift the disclosable part of the information from its non-disclosable personal part. The details about the amounts claimed by Shri A. Roychoudhary as LTC, the block years for which the claim was made, number of persons for whom claim made, dates of filing the claim and disbursal, advance taken and adjustment if any, and the sanction for using the LTC should be disclosed to the appellant. However, other personal details such as the names of the family members of Shri A. Roychoudhary, their age, etc. which are personal in nature should be barred from disclosure. The PIO can use the provision of the Section 10 of the RTI Act to separate the information to be disclosed from that which is not to be disclosed.[52]

Whereabouts of an employee

An appellant sought the details of whereabouts of Mr. K.J. Joseph, who was an employee of the Public Authority.

The CPIO and appellate authority have observed that the appellant has sought the information, which is personal in nature and disclosure of such information would cause unwarranted invasion of the privacy of the individual. Hence the information was denied u/s 8(1) (j).

The decision of the appellate authority is fully justified and is therefore,

[51] 177/IC(A)/2006 - 17th August, 2006.
[52] CIC/AT/A/2006/00317-10.10.2006

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NIA A GoI-UNDP Initiative

upheld. [53]

Commission paid to an LIC agent

The appellant, an LIC agent, had asked for month-wise and policy-wise details of agency commission paid to her from 1995 to 28.2.2006. She has complained that she has not been paid her commission by the LIC.

CIC held: The information sought relate to the commission paid to the appellant herself, as per her entitlement in accordance with the norms and guidelines of the LIC. The information about her own entitlements cannot be treated as confidential.[54]

Privacy

A request was received by the Department of Posts for addresses, amount of pension paid of postal pensioners from post offices under Gaziabad H.P.O., which was rejected.

CIC held that the P.I.O. has rightly applied s.8 (1)(j).[55]

Privacy-

Karnataka State Information Commission ruled that ***assets and liabilities of a Government official*** is not a private or confidential document and, as such, may be requisitioned by any citizen.(The Indian Express, January 11, 2006)

Privacy

"RC " and Queensland Police Service

(316/05, 12 January 2006)

The applicant sought access to documents held by the Queensland Police Service relating to a complaint of assault made against him. The matter in issue contained the age, date of Birth, home and mobile telephone numbers and signature of the complainant, as well as the signature of the reporting officer.

The applicant asserted that when the alleged assault took place, the complainant was trespassing on the applicant's property and unlawfully entered his house, while serving court documents. The applicant said that the actions of the complainant outweighed any public interest in protecting the complainant's privacy, and the matter in issue should be released so that he could pursue any avenues of legal redress that might be available. AC Rangihaeata found that all of the matter in issue was properly characterized as the personal affairs of the complainant. She also found that the balance of the public interest was in favour of non-disclosure, as refusing the applicant access to the matter in issue would not prevent him from pursuing any legal remedy. [Office of the Information Commissioner (Queensland) Informal Decision Summaries

[53] 167/IC(A)/2006 -14th August 2006
[54] CIC/MA/A/2006/00505-6.10.2006
[55] ICPB/A-18/CIC/2006- 10 May, 2006.

Capacity Building for Access to Information
NIA A GoI-UNDP Initiative

2005/2006.

Privacy

McGrath and West Moreton Health Service District
(453/05, 28 February 2006)
The applicant sought access to the medical records of her maternal grandfather. The documents in issue were 2 folios of medical records relating to her grandfather, who had died in 1924. The applicant is researching her family history and also plans to produce a documentary which would focus, in part, on the life of her grandfather as an Aboriginal person in the early 1900's.
AC Barker determined that the matte in issue was properly characterized as concerning the personal affairs of the applicant's grandfather. AC Barker discussed the public interest considerations raised by the applicant, and accepted that a public interest consideration exists in making accurate historical and cultural research available to the public. However, AC Barker found that the documents in issue were not of a type that would assist the applicant's research and forthcoming documentary. AC Barker found that there were not sufficient public interest considerations to favour disclosure of the matter in issue, and that it qualified for exemption under s.44(1) of the FOI Act. [Office of the Information Commissioner (Queensland) Informal Decision Summaries 2005/2006.

Appointment Calender

Bloomberg, L.P. v. SEC, No 02-1582, 2004 U.S. Dist. LEXIS 15111 (D.D.C.July 28, 2004) -- "agency records"; ruling that former SEC chairman's appointment calendar was a "personal record" because it was created for the chairman's own use, contained business and personal entries, was accessed only by the chairman, his chief of staff, and his deputy chief of staff, and was not circulated to others in the agency, even though it was maintained on the agency's computer system.

Leave records and Public interest

Hermann and Department of Employment and Training; 'KLP' (third Party)
(384/03, 15 September 2003)
The applicant and the third party were both employees of the respondent. The applicant sought access to parts of two documents that contained details of the third party's hours of work and recorded leave. The applicant sought access to that information in connection with grievances which he had lodged against his manager. He wished to establish whether or not the third party was at work on a particular day in 2001 when the applicant had an altercation with his manager. The third party had provided evidence to the effect that she was at work that day, and has witnessed the altercation. The applicant contended that the third party was, in fact, absent from the office on sick leave on the day in question and could not have witnessed the altercation.
The relevant parts of the applicant's grievances were dismissed by the respondent, and the applicant then lodged a Fair Treatment Appeal with the Public Service Commissioner. The applicant's appeal, on the ground to which the matter in issue was relevant, was dismissed. The

applicant submitted that the information to which he sought access would support an appeal by him of the Appeal Tribunal's decision.
Applying the principles in *Re Stewart and Department of Transport* (1993) 1 QAR 227 and *Re Rynne and Department of Primary Industries* (Deputy Information Commissioner Q1d, Decision No. S.192/98, 11 January 2002, unreported), AC Moss found that the matter in issue concerned the personal affairs of the third party and was therefore *prima facie* exempt from disclosure under s.44(!) of the FOI Act. However, AC Moss decided that disclosure of the matter in issue would, on balance, be in the public interest. AC Moss considered that, given the conflicting information contained in the matter in issue surrounding the third party's presence at, or absence from, work on the day in question, and the possible relevance of that issue to the applicant's case, the applicant has a sufficient " need to know" such as to weigh in favour of giving him an opportunity to examine the matter in issue and to satisfy himself about what those records indicated (*see Re Pemberton and University of Queensland* (1994) 2 QAR 293 at pp. 368-377). [Office of the Information Commissioner (Queensland) Informal Decision Summaries 2005/2006.

Traveling expenses :
The traveling expenses were charged to the public account, disclosure if the information cannot be denied on the grounds of 'personal information',' not a public activity' and 'no public interest' etc. Travel had been performed as a part and in discharge of official duties and the records related the same are public records and therefore, a citizen has the right to seek disclosure of the same.[56]

Traveling expenses :
Information relating to the tour programmes and travel expenses of a public servant cannot be treated as personal information.[57]

Leave records and Privacy
A request for supply of the leave record of Dr. Vidya Sinha, Reader in Hindi Department since July 2004 was received by Delhi University.
CIC felt that it was purely a personal matter with no public interest involved. Hence, the information need not be disclosed. However, if the Appellant could prove to the satisfaction of the Commission that public interest was involved in the matter, then the Commission could re-examine the matter.[58]

Leave records

[56] 63/ICPB/2006- 4 August,2006
[57] 07/IC(A)/CIC/2006/00011 - 3 January 2006
[58] CIC/OK/A/2006/00189-3 November, 2006

The Commission felt that it was purely a personal matter with no public interest involved. Hence, the information [leave record] need not be disclosed. However, if the Appellant could prove to the satisfaction of the Commission that public interest was involved in the matter, then the Commission could re-examine the matter.[59]

Leave records

…the leave records of an official is a personal information, the disclosure of which has no public interest…In the absence of any material other than the bald allegation …, it is not possible to determine whether the disclosure of the information is in public interest or not;[60]

Leave records without names

By an application dated 19.7.2006, the appellant had sought for the following information:
i. The list of employees who were granted leave after 1.5.2006(their names, number of days of leave, dates of submission of leave applications)
ii. Pendency left out against the receipt, while proceeding on leave
iii. The cases where the leave has been recommended by the Head of the Department and not permitted to avail the leave.
iv. Names of staff members who have been permitted to visit abroad (presently out of India), actual number of days of leave applied at the first instance, extension requested and the stand of office for such cases.
v. Names of employees who opted for voluntary retirement and allowed to withdraw the same and what action proposed for such cases.
CIC held:
While I agree with the CPIO and the AA, that personal information, unconnected with the government affairs of an official, i.e., information relating to personal affairs of officials, need not be disclosed. However, information, which are purely official could be disclosed to the appellant. Therefore, in respect of serial No 1 above, the CPIO will furnish only the number of officials who had been granted leave without names etc; information sought in serial No2, being general in nature, need not be furnished; regarding serial Nos. 3, 4, and 5 the number of such cases, if any, be given without names; [61]

Employees' personal information

The information requested by the appellant from the PIO concerned a third person, Shri Arun Mishra, LDC, QMG's Branch, and include
1.Date of his appointment
2.His Address (Permanent)

[59] CIC/OK/A/2006/00187-190 & 329-3.11.2006
[60] 170/ICPB/2006-4.12.2006
[61] 174/ICPB/2006-4.12.2006

3.His Address (Local) (If there is any change in the address the periods with addresses must be indicated)
4.The name of his family members in CGHS Card and the name of Dispensary.
5. Whether he is married? And if married what is the name of his wife as per the records and the date on which he informed about his marriage.
6.What is the name of his nominee in the GPF, CGEIS and other documents with the dates on which the forms have been filled.
7.Basic Pay
8.Whether any disciplinary action is pending against him
CIC held:
The information which the appellant has solicited in respect of a third party,
Shri Arun Mishra, is clearly of a very personal nature in regard to items 4, 5, 6 and 8. There is no reason why any person should get information about a Government employee in respect of the family members listed on the CGHS Card, the name of the Dispensary, whether that employee is married, the name of his wife, the date of his informing the public authority about his marriage, the names of his nominees for the GPF and CGEIS and other documents, the dates on which the forms have been filled, and whether any disciplinary action is pending against him. Apart from being personal information, disclosure of such information serves no public purpose. It is quite possible that disclosure of such information may lead to unwarranted harassment and intimidation of the employee by other parties. The Commission has to exercise utmost caution in authorizing disclosure of personal information of employees of public authorities. Except when dictated by overwhelming public purpose, such information is better left undisclosed under the provision of exemption Section 8(1) (j) of the Act. Information at items 1, 2, 3 and 7 (at Para 3 above) can be disclosed after the third party is duly heard by the Appellate Authority.[62]

Notwithstanding anything in the Official Secrets Act, 1923 nor any of the exemptions permissible in accordance with sub-section (1), a public authority may allow access to information, if public interest in disclosure outweighs the harm to the protected interests.

Classification and s8(2)

…The appellate Authority has held that the matter has been classified "confidential" under the Official Secrets Act, 1923. However, in view of the provisions of the Section 22 of the Act *"The provision of this Act shall have effect notwithstanding anything inconsistent therewith contained in the Official Secrets Act, 1923, and any other law for the time being in force or in any instrument having effect by virtue of any law other than this Act*", the provisions of Official Secrets Act stands over-ridden.
Section 8(2) enables the public authority to disclose information notwithstanding anything in the Official Secrets Act, 1923 or any of the exemptions permissible under Section 8(1), if the public interest in disclosure outweighs the harm to the protected interests. Sec. 8(2) is, therefore, not a

[62] CIC/AT/A/2006/00311-3.11.2006.

ground distinct and separate from what has been specified explicitly under Section 8(1) of the Act for withholding information by the public authority.
The Appellate Authority, therefore, cannot withhold this information either on the ground that the information is classified as "confidential" under the Official Secrets Act or under Section 8(2) alone. However, Sec 22 as described above only overrides anything inconsistent with the Right to Information Act, 2005. The Official Secrets Act, 1923 stands neither rescinded nor abrogated. While a public authority may only withhold such information as could be brought within any of the clauses of Section 8(1), it is open to that authority to classify any of these items of information as "Confidential", thus limiting the discretion of any other authority in respect to these.[63]

Public interest and environmental protection:

Shri Piyush Mahapatra of Gene Campaign, Sainik Farms, New Delhi made two applications on 5/12/'06 at the Reception of the Ministry of Environment & Forests seeking information relating to i***) research and testing of a number of GM Crops and ii) studies and allergy/toxicity tests conducted on some GM crops***. CIC held: The CPIOs of Ministry of E&F and Department of Biotechnology, both public authorities being part of the Regulatory Regime are directed to cooperate to supply the information sought by the applicant. Both the Ministry of Environment & Forests and Department of Biotechnology have an informative website. Information on research, testing and studies, being of public interest may be placed on these as available in conformity with Sec 4 (1) to ensure ease of access. Decision No: [64]

Public interest and consumer protection:

Appellant has made the case of public interest on the grounds of ***adulteration in distribution of diesel and petrol***, he has however not substantiated his point as to how he would prove his allegations on the basis of disclosure of IT returns filed by the third party. Apparently there is no direct relationship between malpractices of petrol and diesel and IT returns, which is mainly the basis for seeking information. Decision No.[65]

public interest and consumer protection:
Mahendra Gaur sought from Minister of petroleum & Natural Gas and Bharat Petroleum's Corporation Ltd., information relating to off take of Petroleum products just 'before 3' days and after 3 days of the date of revision in prices for the period 1.4.2002 to 31.03.2005 with a view to estimating the loss of revenues to the Government. He has contended that just before 3 days of the date of revision in prices of petroleum products, off take rises substantially. And it steeply

[63] CIC/WB/A/2006/00274-22.9.2006
[64] CIC/WB/C/2006/00063 & CIC/WB/C/2006/00064- 30 May,2006.
[65] 37/IC(A)/2006-12 May,2006.

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NIA
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declines thereafter for 2, 3 days then it stabilizes.
He had asked for the following information from the Ministry of Petroleum & Natural Gas:
1. *The dates of price increase / decrease for petrol, diesel, kerosene, LPG since 1st April, 2002.*
2. *The off take of the products three days prior to the date of price increase, on the day of price increase, and three days after the date of price increase since 1.4.2002 for every price increase.*
3 *The names of dealers who have been given products in three days prior to price increase equivalent to their 30 days off take*
4. *The overtime paid by each oil company three days prior to price increase since 1.4.2002 for every price increase.*
5. *Number of malpractices observed by the oil companies about indiscriminate release of product and action taken thereof.*

During the hearing before the CIC, the CPIO of the MoP&NG agreed to provide data for a few PSU oil companies, relating to *off take of* petroleum products, before and after three days of revision in prices for the last three years from April 1, 2002 to March 31, 2005. The relevant information would be furnished within one month of the issuance of this decision. In view of confidential nature of information, only aggregative picture would be shown, while the names of oil companies and the quantity of *off take against* each of them should not be revealed, lest the information should be misused by the competitors. It was also agreed that no further question on this issue would be entertained from any requester Decision No.[66]

public interest

P.A. should not deprive the citizens of their rights to access information that could be utilized for societal benefits.[67]

public interest
Requester should indicate the *bonafide* public interest in seeking the information which is personal in nature.[68]

public interest
U.K. Information Commissioner in *Boston Borough Council* [Reference No. FS 50064581] made the following comments on public interest :
…Consider the public interest in disclosing the information against the public interest in maintaining the duty of confidence....The central tenet for the public interest in disclosing

[66] 61 /IC(A)/2006-14 June,2006.
[67] CIC/OK/A/2006/00016 - 15 June 2006
[68] CIC/MA/A/2006/00219—18 May, 2006.

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NIA | A GoI-UNDP Initiative

information, in this case, surrounds the creation of **transparency** and **accountability** of public bodies in their **decisions** and actions. This includes the **spending of public money** and the public interest in the disclosure of information which would highlight or inform issues of **public debate**.

Other Decisions on 'public interest'

Conscious of the fact that access to certain information may not be in the public interest, the Act also provides certain ***exemptions*** from disclosure.[69]

The appellant has not made a case of bonafide public interest for disclosure of ***PAN/TAN Numbers*** of 26 companies on grounds of submissions of their application for above purposes or filing of tax returns.[70]

The appellant has not indicated any bonafide public interest in having access to the ***Bank account*** of the Company, with, which he has no association or business relationship.[71]

The appellant has not indicated any bonafide public interest in seeking the information about the Company or its Partners. Moreover, he has ***no association*** or business relationship with the Company.[72]

The appellant was involved in litigation against the Company about which he sought the above information. He had also taken the matter with the ***High Court, Mumbai*** which observed that the issue raised by the appellant was not a bonafide public interest. The appeal is therefore not maintainable.[73]

The link between ***valuation of mortgaged properties*** of borrowers and NPA is not clear. There is therefore no bonafide public interest in disclosure of valuation reports submitted to the Bank by the borrowers. The appellant has sought the details of loans already sanctioned and disbursed to a particular Company. He has however not indicated the bonafide public interest in seeking the information.
The appellant authority of the Bank has contended that the details of properties and securities submitted by the borrowers are in the nature of commercial confidence, the disclosure of which is exempted under Section 8(d) of the RTI Act. Also, the information sought relate to collateral

[69] Appeal No.ICPB/A-1/CIC/2006 dt.31.01.2006
[70] Appeal 05/IC(A)/CIC/2006,dt.03.03.2006
[71] Appeal No. 12/IC(A)/2006,dt.14.03.2006
[72] Appeal No. 15/IC(A)/2006,dt.22.03.2006
[73] Appeal No. 16/IC(A)/2006,dt. 28.03.2006

and securities taken by the concerned Company and its directors, which are personal information. This has no relationship with any public activity or interest. Disclosure of such information would cause unwarranted invasion of privacy of individual / third party, as per Section 8(1) (j).[74]

Income Tax Returns filed by the assessee are confidential information, which include details of commercial activities and that it relates to third party. These are submitted in fiduciary capacity. There is also no public action involved in the matter
In the spirit of RTI Act, the public authority is required to adopt an open and transparent process of evaluation norms and procedures for assessment of tax liabilities of various categories of assessee. Every action taken by the public authority in question is in public interest and therefore the relevant orders pertaining to the review and revision of tax assessment is a public action. There is therefore no reason why such orders should not be disclosed. The Chief Commissioner of Income Tax is accordingly directed to supply relevant copies of the income tax assessment orders, if any, provided that such documents are not exempted under Section 8(1) of the Act.[75]

The appellant, while seeking a ***large quantity of data*** and information of different types and nature, has not indicated the bonafide public interest in seeking the information. An information seeker ought to keep in mind the cost effectiveness aspects of disclosure of information. The expected benefits from disclosure of information should invariably outweigh the costs of providing it. He is therefore directed to minimize and prioritize his information needs which can be provided without unduly jeopardizing the normal activities of the Bank, as the information is to be provided within the stipulated period of 30 days. The Commission is in possession of letters which the appellant, Mr. Kishur J. Aggarwal, Editor-in-Chief of a number of Daily Papers / Magazines has written to almost all the PSUs for eliciting their support for promotion of his business interests. His Company, named as NUURRIE Media Ltd. has launched thirty nine (39) websites covering the activities of all sections of the society. He has been asking for the favour of carrying out advertisements in his magazines / websites. Clearly, his modus operandi is to use RTI for influencing PSUs for promotion of his business, rather than serving the social interests such as ensuring transparency and efficiency in functioning of PSUs. This is indeed a blatant misuse of RTI Act which ought to be discouraged. As an enlightened citizen, every information seeker should resort to RTI Act responsibly, as most people are doing and reaping the benefits of this powerful Act.[76]

Having already examined a large number of appeals against several public authorities from the

[74] Appeal No. 17/IC(A)/2006,dt.28.03.2006
[75] Appeal No. 22/IC(A)/2006,dt.30.03.2006
[76] Appeal No. 23/IC(A)/2006,dt.10.04.2006

appellant for similar information, which he is not utilizing for public purposes, we are convinced that the appellant is ***mis-using the Act*** for promotion of his own business as mentioned elsewhere in decision No.23/IC(A)/06. There is no evidence of proper use of information that he has already been provided by several public authorities. As a media person, he could have highlighted if there was any malfunctioning in the organizations, which have supplied information to him. He is, therefore, warned to exercise restraint in seeking information that he is not making any use of it in the public interest. The appellant is seemingly using the tactics of seeking information from PSUs for furtherance of his own business.[77]

The Banks are under obligation to maintain the secrecy of the ***Bank accounts*** of its customers, including the accounts of public authorities. There is also no overriding public interest in disclosure of such information.[78]

The Commission was of the view that the information was in no way personal in nature and was in the public domain. It is, in fact, in the larger public interest to disclose the information pertaining to ***re-employment of staff*** to make decision-making process of the university transparent and accountable for its decision.[79]

Subject to the provisions of clauses (a), (c) and (i) of sub-section (1), any information relating to any occurrence, event or matter which has taken place, occurred or happened twenty years before the date on which any request is made under secton 6 shall be provided to any person making a request under that section:

Provided that where any question arises as to the date from which the said period of twenty years has to be computed, the decision of the Central Government shall be final, subject to the usual appeals provided for in this Act.

Period prior to 20 years

Section 8(3) is part of Section 8, which deals with 'exemption from disclosure of information". Section 8(1) specifies classes of information which are exempt from disclosure. What Section 8(3) stipulates is that the exemption under section 8(1) cannot be applied if the information sought related to a period prior to 20 years except those covered in Section clauses (a), (c) and (i) of sub-section 8(1). In other words, even if the information sought is exempt in terms of other sub-section (1) of Section 8, and if the same relates to a period 20 years prior to the date of application, then the same shall be provided.[80]

[77] Appeal No.27/IC(A)/06,dt.10.04.2006
[78] Appeal No.32/IC(A)/06,dt.02.05.2006
[79] Appeal: No.CIC/OK/A/2006/00046,dt.02.05.2006
[80] 37/ICPB/2006 - 26 June 2006