# CENTRAL INFORMATION COMMISSION
# YEARLY DIGEST 2006

## IMPORTANT DECISIONS OF THE CENTRAL INFORMATION COMMISSION OF INDIA

## THE RIGHT TO INFORMATION ACT 2005

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The Central Information Commission (CIC) issued about 1364 Decision Notices in 2006
( between 5 January,2006 and 31 December,2006).
How do these Decisions influence our most important right … Right to Information? What is the essence of these Decisions? Everyone is concerned about the impact of these Decisions. This is an attempt to present the *ratio decidendi* (central core of meaning) of a few important Decisions given by the Central Information Commission, in a classified manner, for easy understanding . Few decisions from other Countries have been included.
I hope few unavoidable repetitions will be excused.
The text in this document may be used for academic purposes provided the source is acknowledged.
If you wish to add more important decisions, you are welcome.
Send your contributions and comments to : *madhavsmadhav@yahoo.co.in*
*A right click enables you to 'search' this document Sectionwise or topicwise.*

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**THE RIGHT TO INFORMATION ACT, 2005**

**[No. 22 of 2005]**

**[15th June, 2005]**

**An Act to provide for setting out the practical regime of right to information for citizens to secure access to information under the control of public authorities, in order to promote transparency and accountability in the working of every public authority, the constitution of a Central Information Commission and State Information Commissions and for matters connected therewith or incidental thereto.**

**Whereas the Constitution of India has established democratic Republic;**
**And whereas democracy requires an informed citizenry and transparency of information which are vital to its functioning and also to contain corruption and to hold Governments and their instrumentalities accountable to the governed;**
**And whereas revelation of information in actual practice is likely to conflict with other public interests including efficient operations of the Governments, optimum use of limited fiscal resources and the preservation of confidentiality of sensitive information;**
**And whereas it is necessary to harmonise these conflicting interests while preserving the paramountcy of the democratic ideal;**
**Now, therefore, it is expedient to provide for furnishing certain information to citizens who desire to have it.**
**Be it enacted by Parliament in the Fifty-sixth Year of the Republic of India as follows:—**

## CHAPTER I
### Preliminary

**1 Short title, extent and commencement:–**

**(1) This Act may be called the Right to Information Act, 2005.**

**(2) It extends to the whole of India except the State of Jammu and Kashmir.**

**(3) The provisions of sub-section (*1*) of section 4, sub-sections (*1*) and (*2*) of section 5, sections 12, 13, 15,16, 24 , 27 and 28 shall come into force at once, and the remaining provisions of this Act shall come into force on the one hundred and twentieth day of its enactment.**

**2 Definitions:– In this Act, unless the context otherwise requires,—**

**(a) "*appropriate Government*" means in relation to a public authority which is established, constituted, owned, controlled or substantially financed by funds provided directly or indirectly—**

**(i) by the Central Government or the Union territory administration, the Central Government;**

**(ii) by the State Government, the State Government;**

**<u>Appropriate Government</u>**

[M]erely because a public authority is established under an Act of Parliament, Central Government need not necessarily be the appropriate Government. To determine the appropriate government, recourse to Section 2(a) is necessary. This Section reads: *"appropriate Government means in relation to a public authority, which is established, constituted, owned, controlled or substantially financed by funds provided directly or indirectly (i) by the Central Government or the Union territory administration, the Central government (ii) by the State government, the State government".*
From this Section, it is evident that, there are more than one criteria to determine the appropriate Government… even though these [Indian Red Cross Society, Punjab State Branch] Branches derive authority from the Main Act, in view of the funding by the State Government and as the Managing Committees comprises of

the Governor as President of the State Committee and the Dy. Commissioner being the President of District Committees, I am of the view that for State and District Branches of the Society, the State government should be the appropriate government and consequently, it is the State Information Commission which will have jurisdiction to entertain appeals. 152/ICPB/2006-9.11.2006.

**(b) "*Central Information Commission*" means the Central Information Commission constituted under sub-section (*1*) of section 12;**

**(c) "*Central Public Information Officer*" means the Central Public Information Officer designated under sub-section (*1*) and includes a Central Assistant Public Information Officer designated as such under sub-section (*2*) of section 5;**

**(d) "*Chief Information Commissioner*" and "Information Commissioner" mean the Chief Information Commissioner and Information Commissioner appointed under sub-section (*3*) of section 12;**

**(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;**

**(f) "*information*" means any material in any form, including records, documents, memos, e-mails, opinions, advices, press releases, circulars, orders, logbooks, contracts, reports, papers, samples, models, data material held in any electronic form and information relating to any private body which can be accessed by a public authority under any other law for the time being in force;**

**<u>File notings</u>**

The Commission noted with serious concern that some public authorities were denying request for inspection of file notings and supply copies thereof to the applicants despite the fact that the RTI Act, 2005 does not exempt file notings from disclosure. The reason they were citing for non-disclosure of 'file notings' was the information posted on the DOPT website [www.righttoinformation.gov.in] to the effect that 'information' did not include file notings. Thus the DOPT website was creating a lot of unnecessary and avoidable confusion in the minds of the public authorities.
The Commission hereby directs the Secretary, Ministry of Personnel & Public Grievances, in exercise of powers conferred on it under Section 19(8) of the Right to Information Act, 2005 to remove the instruction relating to non disclosure of file notings from the website within 5 days of the issue of this order failing which the Commission shall be constrained to proceed against the Ministry of Personnel.
CIC/OK/A/2006/00154 – 13 July,2006

**<u>File notes</u>**

Information under RTI Act includes 'file notings' and the public authority is bound to disclose them, if sought for.
36/ICPB/2006 - 26 June,2006

**<u>Language</u>**

*Jai Kumar Jain applied to Delhi Development Authority (D.D.A) asking for information about the details of the lease area of all the shops of the DDA market of sector 8, in*

*Hindi, as he has applied to the PIO in Hindi. Should DDA provide the information in Hindi* ?

- Yes. The CIC directed DDA to provide the requested information in( translated into) Hindi within 25 days of the issue of its decision.
  Decision No. CIC/WB/A/2006/00117- 13 June,2006.

**Form of access**
If the requested information is not available in electronic form as required by the requester, it does not have to be created for the appellant.
CIC/MA/A/2006/0002 - 27 June,2006.

**Form of access**
If the information is not available in the particular form requested, the citizen may be allowed -if he desires- to inspect the original record at the office and information specifically asked for provided in the form of printouts / copies of original documents / records duly certified.--10/01/2005-CIC 25 February,2006.

**Data base of telephone customers**
The appellant vide his application dated 26.5.2006 addressed to the CPIO has requested for a soft copy (in DVD/C) of data base of telephone customers (telephone directory) of all telecom operators.
CIC held:.. In terms of Section 2(f) of RTI Act, information includes "information relating to any private body which can be accessed by a public authority under any law for the time being in force". In the present case, the public authority is TRAI, which is governed by TRAI Act of 1997. Whether under the said Act, it could have access to the data base of telephone subscribers is the question to be decided. Sections 11 to 13 of the Act deal with powers and function of TRAI from which I do not find any specific powers conferred on TRAI to have access to the data base of the customers of telecom operators.
157/ICPB/2006-13.11.2006

**How Much Secrecy is Appropriate for a Draft Audit Report?**

A journalist made a request to the Canada Revenue Agency (CRA) for access to a copy of the report (or draft report) of an internal audit of travel and hospitality expenses. At the time of the request, the report of the audit had not been approved by the CRA's management, so it was considered to be a draft report. CRA decided to refuse access to any portion of the report relying on paragraphs 21(1)(a) and (b) of the *Access to Information Act* to justify its decision. The requester did not accept that every portion qualified for exemption, and he complained to the Information Commissioner.

Paragraph 21(1)(a) authorizes refusal to disclose internal advice or recommendations; paragraph 21(1)(b) authorizes refusal to disclose accounts of internal consultations or deliberations. CRA argued that the very purpose of audit reports is to provide senior management with advice and recommendations and that such reports contain accounts of consultations and deliberations among public officials. Moreover, the CRA argued, the very process of getting approval for a draft audit report is itself a "consultation and deliberation" – a process which should be kept confidential. According to CRA, it fully intended to publicly disclose the final report, but did not

consider it appropriate to disclose a draft version which might contain misleading, incorrect or incomplete information.

The Information Commissioner reminded CRA of its obligation, set out in section 25 of the Act, to avoid blanket secrecy in favor of a page-by-page, line-by-line analysis into specific portions which may deserve secrecy. For example, the Information Commissioner reminded CRA that factual and background information would not qualify for exemption and should be disclosed.

The department agreed that it should not have decided to withhold the entire draft audit report; it agreed that portions could have been severed and disclosed without revealing advice, recommendations or accounts of consultations or deliberations.

The requester suggested that, rather than asking the CRA to prepare and release a severed version of the draft report, the CRA be asked to give him an advance copy of the final version, when it was ready. CRA agreed, and, on that basis, the complaint was considered resolved.

*Conclusion*

In most institutions there is concern about disclosure, under the Act, of draft audit reports or audit reports in the approval process. Some of this concern relates to the integrity of the audit process (i.e. concerns about incomplete, inaccurate, or misleading content); some of the concern relates to a perceived need to "manage the message". Most government institutions do not wish to disclose audit reports until the institution's head, its public affairs branch, and, in some cases, central agencies have been fully informed, and until a communications "plan" or "line" has been developed. No matter what the concern, however, it is rarely justifiable to withhold a draft report in its entirety. By their nature, audit reports contain descriptive and factual information that will not qualify for section 21 exemptions. (source: Office of the Information Commission of Canada, Annual report 2005,2006)

**(g) "*prescribed*" means prescribed by rules made under this Act by the appropriate Government or the competent authority, as the case may be;**

**(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;**

**DISCOMs are public authorities**

Both from the point of view of their being created by a government notification and the finances received directly or indirectly from Government of

NCT of Delhi, DISCOMs[ M/s. North Delhi Power Limited, BSES
Rajdhani Power Limited, BSES Yamuna Power Limited (Hereinafter referredto as DISCOMs)] are public authorities within the meaning of Right to
Information Act and, because the matter was raised in appeal before us and has been closely argued in this hearing they are so declared by this Commission in the present proceedings….The DISCOMs will however proceed to set up the necessary infrastructure for servicing applications under the RTI Act, 2005, to be fully operational within sixty days from the date of issue of this decision.
CIC/WB/A/2006/00011-30.11.2006

**Whether a Cooperative Society is a public authority?**

Whether the Cooperative Society in question falls within the definition of public authority or not u/s 2(h) (d) or not is for the Office of Registrar to decide. However, the application in this case has been made to the public authority, the office of Registrar Cooperative Societies. It has been agreed by all parties in the hearing that the information sought, even if the Cooperative Society in question is deemed a private body, it falls within the definition of information u/s 2(f) of the Act, because it is accessible to the public authority, Registrar Cooperative Societies, under the Delhi Cooperative Societies Act, 2003… Registrar Cooperative Societies is advised to use his authority under the DCS Act 2003 to ensure that the East End Cooperative Group HousingSociety Ltd. is brought in compliance with the existing law on the subject and make that information available to appellant.
CIC/WB/C/2006/00080-9.10.2006

**Cooperative Societies**

Shri Sanjiv Kumar of Rohini, Delhi applied to the PIO in the Office of the Registrar, Cooperative Societies, NCT, Delhi on 5.12.2005 requesting information on nine points relating to the New Arya Group Housing Society Limited.
CIC held :
The kind of information sought, including audit reports of cooperative societies should normally have found place on the website of the Public Authority as mandated u/s 4. We are satisfied that there is reasonable ground to **enquire** into the matter. The Additional Registrar will visit the Office of the Registrar, Cooperative Societies NCT Delhi, as required u/s 18 (2) of the Act,
identify the shortcomings in attending to duties enjoined upon it under the RTI Act, 2005, after which detailed directions will be given to the Public Authority on improving its responsiveness in keeping with the spirit of the Act.
CIC/WB/A/2006/00029 -20 July,2006

**NGOs**

NGO's substantially financed by the appropriate Government are covered even if no specific notification is issued by the appropriate Government. There is no need of separate notification or order listing all NGOs to be covered under the Act. s.2(h)(d) mentions two separate categories, one of which is notified the Government and others which are mentioned in the inclusive definition. Both the categories are separated by a comma and the conjunction "and";
Goa SIC Decision dt. -22 June,2006

**(i) "*record*" includes—**

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

**(b) any microfilm, microfiche and facsimile copy of a document;**

**(c) any reproduction of image or images embodied in such microfilm (whether enlarged or not); and**

**(d) any other material produced by a computer or any other device;**

**Unsigned documents**

…being part of the record as defined u/s 2(i)(a), even copies of unsigned documents can be provided certifying that they are in fact unsigned documents**.**
CIC/WB/A/2006/00270-9.10.2006

**(j) "*right to information*" means the right to information accessible under this Act which is held by or under the control of any public authority and includes the right to—**

**(i) inspection of work, documents, records;**

**(ii) taking notes, extracts or certified copies of documents or records;**

**(iii) taking certified samples of material;**

**(iv) obtaining information in the form of diskettes, floppies, tapes, video cassettes or in any other electronic mode or through printouts where such information is stored in a computer or in any other device;**

**Videography**

If an applicant wishes to make copies of records/ samples given to him for inspection at his own expenses, it is not for the Public Authority to object to the form in which the copies are being made, provided it is restricted to the information permissible under the Act. There is no provision in the Act disallowing Videography, and therefore, cannot be excluded unless it violates the parameters of any information sought and agreed to be provided.
CIC/WB/A/2006/OO144 -- 3 Aug,2006

**Information Held**

In a case-'Records of the court martial trial' were destroyed after a retention period of 10 years under Army Rule 146. Information did not exist, it was physically impossible to provide it. There is no liability under RTIA of a public authority of supply non-existent information.
CIC/AT/A/2006/20 - 23 March,2006.

**Information Held - untraceable records**

We notice that the Ministry of Defence and the Department of Defence Accounts have made a diligent search to trace if any information about Govt. decision on the equivalence between the ranks of the civilian employees and their counterparts in the Armed Forces exists. Their search yielded no result. They have accordingly informed the complainant that they could not trace the information requested by him.
We have no option but to sail along with the CPIOs of the Ministry of Defence as well as the Deptt. of Defence Accounts in their conclusion that their search failed to unearth the information requested by the complainant. They were not in a

position to confirm or deny that such information existed. Their dilemma is for anyone to see. It would be fair to assume that the information as requested by the complainant is “untraceable” rather than “non-existent.”
CIC/AT/A/2006/00073 – 4 July,2006.

**Information Held**
U.K. Information Tribunal decision No. EA/2005/0001
*Paul Harper v. the information commissioner and Royal mail plc.:*
A Royal Mail employee, had asked how often his personal file had been requested during a particular period. The Royal Mail explained that the database which would have contained this information was **deleted** periodically in order to prevent system crashes and that the information was no longer held at the time of his request.
The Tribunal went on to consider what the position would be if such deleted information could still be **retrieved** from the computer. The FOI Act provides a right of access to information which is "held" by a public authority's such information still "held"?

- The Tribunal pointed out that information which has been deleted from a computer, can usually still be **retrieved** so long as it has not been overwritten by new data. Retrieving the information will sometimes be a relatively simple matter. In other cases it might involve the use of specialized techniques.
- What if restoring the data required something more than "simple" measures? The Tribunal stated that: "Any attempted restoration that would involve the use of specialist staff time, or the use of **specialist software**, would have cost implications, which could be significant.
- This makes it clear that the test of how far to go in attempting to retrieve deleted information depends on the **cost** involved, rather that the form in which the information Is held or the kind of measures needed to recover it.
- Under the Act, authorities can refuse a request if the cost of locating and retrieving information would be more than 600 Pounds, in the case of a government department, or 450 Pounds in the case of other authorities. If the cost of retrieving deleted information took these costs over the appropriate limit, the request could be refused.
- The Tribunal, however, made it clear that information on a back-up system is "**held"** for the purposes of the FOI Act. "Instructing a computer to delete a particular item may not result in the item being destroyed immediately. At least for a period, the information might still be retrievable albeit with substantial cost and disruption to the system.
- The Tribunal's decision suggests that the authority's "intention" That data should be permanently deleted, and this is not achieved only because the technology will not permit it, does not affect the decision on whether it is in fact held.

**Creation of information**
Under sec. 2(j) of the R.T.I. Act 2005 only information as held by or under the control of any public authority can constitute a right to information for which a citizen can claim access. This cannot be construed to demand creation of information as has been sought in the first case in this matter, asking measurements to be taken. Here too, even if Chief architect is to considered custodian of information it is not clear how he can be asked to take create information if not in his possession

CIC/WB/A/2006/00379; 00380 & 00381-21.12.2006

**Information held by a citizen himself**

The purpose of the RTI Act is to allow access to a citizen to information held by a public authority. The key element is provision of information. Insofar as an information is held by a citizen himself, it must be construed that he already had access to such information and his seeking the same from a public authority is a wholly infructuous exercise.

In such cases, it shouldsuffice if the public authority intimates to the appellant whether or not his/her letters/petitions had been received by that public authority and the dates thereof. If he wants to have copies of his own letters written to the public authority, he better looks up his own records. In all such cases, the key information to be transmitted to an information-seeker, when such information pertains to the copies of letters he himself might have written to public authority, is that the public authority was or was not in possession of those letters/petitions. The public authority has no obligation beyond supplying the above-mentioned information to the information-seeker.

CIC/AT/A/2006/00411-5.12.2006

**Destruction of records**

The respondents claimed that the documents asked for by the complainant had been destroyed as per the procedure for destruction of records.

The respondents are directed to provide to the appellant the rules / information regarding destruction of records / files and the particulars about the destruction of the documents requested by the complainant.

CIC/AT/C/2006/00111-20.11.2006

**To compile or not to compile?**

Transparency in functioning of public authorities is expected to be ensured through the exercise of right to know, so that a citizen can scrutinize the fairness and objectivity of every public action. This objective cannot be achieved unless the information that is created and generated by public bodies is disclosed in the form in which it exists with them. Therefore, an information is to be provided in the form in which it is sought, u/s 7(9) of the Act. And, if it does not exist in the form in which it is asked for and provided to the applicant, there is no way that proper scrutiny of public action could be made to determine any deviations from the established practices or accepted policies.

In the instant case, the appellant has not asked for the copies of records/documents, as they exist with the public authority i.e. RBI. He has broadly mentioned them and asked for data for examination of the alleged 'wrong payments' to officers of the Bank. The CPIO has therefore compiled and tabulated the relevant expenditure data and furnished to the appellant. In effect, thus, a fresh exercise was taken up to meet the requirements of the applicant.

Compilation of data for ten years with respect to eleven officers and that under different expenditure categories would indeed imply a huge resource cost to the Bank. Yet, the goal of transparency and accountability in functioning of public bodies would hardly be achieved. Reason! The disclosure of information, reflecting public action, has been manipulated though un-intentionally, for which

the information seeker as well as the information provider i.e. CPIO are held in violation of the provisions of the Act.

Ignoring this aspect of RTI objective, even the appellate authority had ordered for compilation of information from other offices located in different parts of the country so as to comply with the request for information from the appellant. While a generous view of the appellate authority with respect to the appellant's application is highly appreciated, a CPIO should be responsible to furnish information that are available in his office. For the information which is not available in his office, the application should be transferred u/s 6(3)(1) to the CPIO who has them. The appellant could also be accordingly informed.

In brief, an information seeker should specify the required information and it should be provided in the form in which it is sought, provided of course it exists in that form. Any attempt to manipulate the information in any manner would defeat the purpose of disclosure of the information for scrutinizing public action. The CPIO should not have done what he has done in compiling the huge data. Indeed, the relevant copies of bills and other related documents should have been considered for disclosure after the clear identification of information by the appellant.
216./IC(A)/2006-31.8.2006

**To compile or not to compile?**
PIO of any public authority is not expected to create and generate a fresh, an information because it has been sought by an appellant. The appellant is, therefore, advised to specify the required information, which may be provided, if it exists, in the form in which it is sought by him.
285/IC(A)/2006-20.9.2006

**To compile or not to compile?**
Information is to be provided in the form in which it is sought, provided of course the information is available in that form. The appellant should therefore ascertain whether the information that he needs are available in the form required by him. The appellant, for instance, has sought certain statistical information, such as the number of disputed cases settled under different schemes, which should be given, provided it exist in the form in which the appellant has asked for. They ought not be manipulated in any form, lest the purpose of scrutinizing of public action by the civil society should get defeated.
225/IC(A)/2006-31.8.2006

**Certified copy**
…it has to be presumed that certified copy of any document shall be the true copy of the original. In case it is not so, it is open to the appellant to bring in a proper proceeding against those responsible.
CIC/AT/A/2006/00409-30.11.2006

**Certified Copies**
…attested copies that had been supplied had the same dictionary meaning as 'Certified Copies'.

CIC/WB/C/2006/00152-30.10.2006

**Can a requester seek opinions of the authorities?**

The PIO is required to 'provide information' which is available in any form with her office rather than giving her ' personal opinion' on the questions asked by the requester.
CIC/MA/A/2006/00150-19 June,2006

**Information sought is available in the Gazette**

…even if information sought is available in the Gazette,[PIO] is bound to furnish the information and cannot ask the information seeker to search for the same elsewhere.
F.No.PBA/06/136-4.10.2006

**Information :**

Citizens can ask for copies of documents containing the information. But they can not seek **opinions** through a questionnaire.
CIC/OK/A/2006/00049 - 2 May, 2006.

**Information in the memory**

The appellant is under an erroneous impression of that not only he has a right to information,he also has aright to the information in the memory of a public authority.There is no obligation to disclose such information.
CIC/AT/A/2006/00296-20.11.2006

**Judgements of the courts**

The sum-total of the facts which emerged during the hearing of the case is that the IVRI was not a party to the three court cases, in which judgements were passed whose copies the appellant now seeks from the IVRI. Since these are court judgements, it is for the appellant to approach the appropriate courts to obtain the copies of those judgements. There is no reason why anyone else including the parties to those cases,who might come to possess copies of those judgements, should be obliged under the RTI Act to provide those copies as 'information' to the appellant. The request for information has to be addressed to the public authority legitimately and authorizedly holding that information, which in this case are the courts of law.

A court order is a decision of the court and, as such, it is the court as public authority which should be construed as holding the information as its custodian. Others including other public authorities, may come to possess the copies of these orders through their own actions and effort, but cannot for that reason alone, be said to be the public authority required to act under the RTI Act. Any applicant for a court order as information under RTI Act, should therefore apply to the court where the order originated. He cannot seek it from others or other public authorities even if that public authority has come to possess a copy of that order under any specific condition.

That said, it should also be clarified that if a public authority initiates action on a given orders of a Court or a Tribunal, or is required by such an order to initiate certain actions, a citizen should be free to access such a court order even if it is with a public authority other than the court
CIC/AT/A/2006/00321-23.11.2006

**(k)** "***State Information Commission***" **means the State Information Commission constituted under sub-section (*1*) of section 15;**

**(l)** "***State Chief Information Commissioner***" **and "State Information Commissioner" mean the State Chief Information Commissioner and the State Information Commissioner appointed under sub-section (*3*) of section 15;**

**(m)** "***State Public Information Officer***" **means the State Public Information Officer designated under sub-section (*1*) and includes a State Assistant Public Information Officer designated as such under sub-section (*2*) of section 5;**

**(n)** "***third party***" **means a person other than the citizen making a request for information and includes a public authority.**

## CHAPTER II

**Right to information and obligations of public authorities**

**3** **Right to information:– Subject to the provisions of this Act, all citizens shall have the right to information.**

### Citizen -

Recently, this Commission has decided that even if information is sought by an office bearer of an Association/Union, the same should be treated as valid in terms of the provisions of the RTI Act- 139/ICPB/2006-25.10.2006

### Citizen

PIO can decline information under section 3, if the applicant applies as a managing Director of a company and not a citizen of India.
CIC\OK\A\2006\00121 - 27 June,2006.

### Political party and RTI

The Appellant in his reply stated that whereas he was the
General Secretary of the[political] party earlier, now he was its Vice-President. As
the Appellant continues to maintain his status as an office bearer of a
political party, the Commission agrees to the stand of the Respondents in
denying the information to the Appellant.
CIC/OK/A/2006/00149-20.12.2006

**4 (1)** **Obligations of public authorities:– Every public authority shall—**

**(a) maintain all its records duly catalogued and indexed in a manner and the form which facilitates the right to information under this Act and ensure that all records that are appropriate to be computerised are, within a reasonable time and subject to availability of resources, computerised and connected through a network all over the country on different systems so that access to such records is facilitated;**

### Record Management

Record Management system ought to be improved such that information which are to be disclosed to public could be easily provided, after delineating the information that is exempted under the Act.CIC/OK/A/2006/00016 - 15 June 2006

### Computerization of land records

…the Chief Secretary NCT of Delhi is directed to
ensure that vide the provisions of sec. 4(1) (a) the Land Acquisition
records may be duly collected and indexed in a manner and form which

facilitates the right to information under this Act and are within a reasonable time computerized and connected through a network on different systems so that access to such records is facilitated. The Govt. of NCT of Delhi is advised to make the necessary finances available to the Revenue Department, NCT Delhi to ensure compliance of these directions.
CIC/WB/A/2006/00435-28.11.2006

**(b) publish within one hundred and twenty days from the enactment of this Act,—**

- **(i) the particulars of its organisation, functions and duties;**
- **(ii) the powers and duties of its officers and employees;**
- **(iii) the procedure followed in the decision making process, including channels of supervision and accountability;**
- **(iv) the norms set by it for the discharge of its functions;**
- **(v) the rules, regulations, instructions, manuals and records, held by it or under its control or used by its employees for discharging its functions;**
- **(vi) a statement of the categories of documents that are held by it or under its control;**
- **(vii) the particulars of any arrangement that exists for consultation with, or representation by, the members of the public in relation to the formulation of its policy or implementation thereof;**
- **(viii) a statement of the boards, councils, committees and other bodies consisting of two or more persons constituted as its part or for the purpose of its advice, and as to whether meetings of those boards, councils, committees and other bodies are open to the public, or the minutes of such meetings are accessible for public;**
- **(ix) a directory of its officers and employees;**
- **(x) the monthly remuneration received by each of its officers and employees, including the system of compensation as provided in its regulations;**
- **(xi) the budget allocated to each of its agency, indicating the particulars of all plans, proposed expenditures and reports on disbursements made;**
- **(xii) the manner of execution of subsidy programmes, including the amounts allocated and the details of beneficiaries of such programmes;**
- **(xiii) particulars of recipients of concessions, permits or authorisations granted by it;**
- **(xiv) details in respect of the information, available to or held by it, reduced in an electronic form;**
- **(xv) the particulars of facilities available to citizens for obtaining information, including the working hours of a library or reading room, if maintained for public use;**
- **(xvi) the names, designations and other particulars of the Public Information Officers;**
- **(xvii) such other information as may be prescribed and thereafter update these publications every year;**

**(c) publish all relevant facts while formulating important policies or announcing the decisions which affect public;**

**(d) provide reasons for its administrative or quasi-judicial decisions to affected persons.**

## Voluntary Disclosure

A public authority, is required to make pro-active disclosure of all the relevant information as per provisions of s.4(1)(b), unless the same is exempt under the provisions of s.8(1). In fact an information regime should be created such that citizens would have easy access to information without making any formal request for it.

24/IC(A)/2006 - 16 April,2006.

**(2)** **It shall be a constant endeavour of every public authority to take steps in accordance with the requirements of clause (b) of sub-section (1) to provide as much information suo motu to the public at regular intervals through various means of communications, including internet, so that the public have minimum resort to the use of this Act to obtain information.**

## Voluntary disclosure

Section 4 (2) and (3) of the RTI Act calls for continuous improvement of publication of voluntary disclosures in keeping with the resources available. A citizen can complain - because the Department has not updated their information, thus causing damage and risk.
CIC/WB/C/2006/00081- 13 July,2006.

**(3)** **For the purposes of sub-section (1), every information shall be disseminated widely and in such form and manner which is easily accessible to the public.**

**(4)** **All materials shall be disseminated taking into consideration the cost effectiveness, local language and the most effective method of communication in that local area and the information should be easily accessible, to the extent possible in electronic format with the Central Public Information Officer or State Public Information Officer, as the case may be, available free or at such cost of the medium or the print cost price as may be prescribed.**

**Explanation.—For the purposes of sub-sections (3) and (4), "disseminated" means making known or communicated the information to the public through notice boards, newspapers, public announcements, media broadcasts, the internet or any other means, including inspection of offices of any public authority.**

**5** **Designation of Public Information Officers:–**

**(1)** **Every public authority shall, within one hundred days of the enactment of this Act, designate as many officers as the Central Public Information Officers or State Public Information Officers, as the case may be, in all administrative units or offices under it as may be necessary to provide information to persons requesting for the information under this Act.**

**(2)** **Without prejudice to the provisions of sub-section (1), every public authority shall designate an officer, within one hundred days of the enactment of this Act, at each sub-divisional level or other sub-district level as a Central Assistant Public Information Officer or a State Assistant Public Information Officer, as the case may be, to receive the applications for information or appeals under this Act for forwarding the same forthwith to the Central Public Information Officer or the State Public Information Officer or senior officer specified under sub-section (1) of section 19 or the Central Information Commission or the State Information Commission, as the case may be:**
**Provided that where an application for information or appeal is given to a Central Assistant Public Information Officer or a State Assistant Public Information Officer, as the case may be, a period of five days shall be added in computing the period for response specified under sub-section (1) of section 7.**

## Can an APIO sign a response letter?

- The Act has surely limited the APIO's rule only to receiving applications for information and appeals and transmitting the same to their proper destination. His responsibilities are not co-extensive with the P.I.O.S. However, this action of the APIO

should not create as special disability for the requester in exercising his rights under the Act.

- In the normal course an applicant for information has a right to receive the reply from the PIO and the PIO only. We, however, see no legal difficulty in the PIO using the services of an APIO to transmit the former's decision on the application for information through the APIO.
- In our understanding, this will not lead to any miscarriage of justice or place undue restriction on an information seeker's rights under the RTI Act.
- We, however, like to caution that any order issued by a APIO on behalf of PIO must clearly state that the former was only transmitting the orders of latter and should also state the name and the designation of the PIO on whose behalf the APIO might be acting. This will enable the information seeker to bring against the PIO any charge of delay etc. if that happens to be the case.

In this instant case, the order was, no doubt, signed by the Assistant PIO, Shri Ramesh Chand Sapra, but the order very clearly stated that this was from the "Office of the Public Information Officer-cum-Dy. Commissioner of Police: West Delhi" Quite obviously, therefore, the appellant was not handicapped in knowing the identity of PIO handling his case, even though the reply was signed by the APIO.
CIC/AT/A/2006/00059-5 May,2006.

**APIO**

It is only a PIO who is required to provide information to the requesters. When a request is received by an APIO he is required only to forward the same forthwith to a PIO of the public authority.—
10/01/2005 - CIC - 25 February,2006.

**(3) Every Central Public Information Officer or State Public Information Officer, as the case may be, shall deal with requests from persons seeking information and render reasonable assistance to the persons seeking such information.**

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

**PIO**

Under the Act, the CPIO may take the assistance of any other officer from his department. Therefore, the documents signed on his behalf by any other officer designated by him should be acceptable to the appellant.
111/IC(A)/2006 – 13 July,2006.

**PIO- Multiple PIOs**:

If multiple number of PIOs are appointed in the same public authority there is no scope to either ask the citizen to approach another PIO within the same public authority or send the request to another PIO within the same P.A. Only in a case where the information sought is held by another P.A. other than the one which has designated her as PIO, she can transfer the request to that P.A. for furnishing information to the applicant directly. ICPB/C1/CIC/2006 - 6 March, 2006.

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

**Other officers**

PIO, who has received the request form the requester is under obligation to seek information form his colleague and provide it to the requester. His colleague who was to provide the information as per s.5(5) would become deemed PIO and expected to provide the - PIO, who received the original request - the required information. CIC/AT/A/2006/00015 - 1 March ,2006.

**Other officers**

- The U.S.A.Court of Appeals for the D.C. Circuit found inadequate the efforts undertaken by the Coast Guard to search for s ship's logbook which was sought by an aircraft pilot who had been convicted in a drug conspiracy in connection with drugs recovered at sea.
- Noting that an agency must search all places that it has reason to know " may contain responsive documents," the D.C. Circuit held that the Coast Guard should have searched a federal records center where it believed the logbook may have been stored.
- In so ruling, it observed that records "stored at a federal records center are deemed to be maintained by the agency which deposited the record. "
- Next, it found that the Coast Guard failed to explain why the ship's **captain**, who referred to the logbook at the requester's criminal trial, was **not contacted** concerning its whereabouts, explaining that "agency personnel should be contacted if there is a close nexus between the person and the particular record."
- Finally, the court rejected the agency's argument that one of its manuals provided for the routine destruction of ship's logs, nothing that the manual contained **exceptions to the destruction** schedule that were not addressed.

*Valencia-Lucena v. United States Coast Guard,180 F.*3d 321 (D.C.Cir.1999)

6 **Request for obtaining information:–**

(1) **A person, who desires to obtain any information under this Act, shall make a request in writing or through electronic means in English or Hindi or in the official language of the area in which the application is being made, accompanying such fee as may be prescribed, to—**

(a) **the Central Public Information Officer or State Public Information Officer, as the case may be, of the concerned public authority;**

(b) **the Central Assistant Public Information Officer or State Assistant Public Information Officer, as the case may be,**

**specifying the particulars of the information sought by him or her:**

**Provided that where such request cannot be made in writing, the Central Public Information Officer or State Public Information Officer, as the case may be, shall render all reasonable assistance to the person making the request orally to reduce the same in writing.**

**Personal discussion with the requester**

The CPIO and the AA may, however, be well advised that in all matters such as this, it is better to call the petitioner over for a discussion about what precise information he seeks. In the present case, the petitioner had come all the way in appeal to the Commission in spite of the fact that the public authority was willing to share with him all the information which he had requested. A personal discussion would have avoided litigation.
CIC/AT/A/2006/00157 – 5 July,2006.

**<u>Personal discussion with the requester</u>**
If there was general confusion regarding the kind of information that has been called for and that could have been supplied , it could have been easily resolved by a personal sitting between the appellant and the respondents .
CIC /WB/A/2006/00180 – 5 July,2006

**<u>The *'ten rupee'* hurdle</u>**
Shri D S Negi of Dwarka, went to the office of the
Chief Engineer (Dwarka Project) to file an RTI application in connection with a
water crisis.

- The appellant was directed to meet the EA to Chief Engineer.
- The EA signed the application and marked it to PIO, SE (HQ) of the Organisation.
- The PIO asked the appellant to submit an amount of Rs. 10/- in cash, as the IPO
  will not be acceptable because of an accounting problem.
- The application was then marked to Sr. AO.
- He in turn marked it to the Accountant and then to the Receipt Clerk.
- The receipt Clerk simply refused to accept the application and asked applicant to bring a photocopy of the receipt for Rs. 10/- to be attached with the application as proof of payment of the requisite fee.

The process therefore took nearly 3 ½ hrs to simply file an RTI application.

CIC expressed deep concern over the careless attitude in
receiving an application under RTI and directed to make easily accessible arrangements for receiving RTIapplications over one window or centralized counter.
Complaint No. CIC/WB/C/2006/00178 -14.11.2006

**<u>Should the requests be typewritten</u>?-s.6(*1*):**
PIO rejected a request that it had not been typewritten.CIC condemned the PIO's action because the Act specifically provides for applications to be submitted "in writing"{Sec 6 (1)} and held:
If the refusal to receive the application is only because it is handwritten as alleged,the refusal
cannot be said to have been with reasonable cause as required u/s 20 (1) & (2).
CIC/WB/C/2006/00035

**<u>Mistreated requesters</u>**
During the hearing, the Appellant stated that when he had gone to
submit his RTI application in the Dehradun, he was mistreated. The
Commission takes a serious note of the complaint but since there is no

evidence of this, the Commission only issues a warning to the concerned office that in case there is any complaint in future, it will be taken very seriously
CIC/OK/A/2006/00288-18.12.2006

**Banker's cheque**
In a recent Decision the CIC held:
It is obvious that the complainant is under the impression that the 'Banker's cheque is a cheque that is issued from the personal account of the account holder. This is incorrect. Banker's cheque is a cheque issued by the Bank itself, which is commonly referred to as a 'pay order'.
Decision No.CIC/OK/C/2006/00118,Dated, the 4 December, 2006
[State Bank of Bikaner and Jaipur's Citizens Charter describes the Banker'sCheque(PayOrder):
Banker's Cheques are issued for making payments locally. Issuance/payment of Banker's Cheque for Rs.50,000/- and above is to be made only through the bank account. Validity period of Banker's Cheque is 6 months. This can be revalidated by the issuing branch on written request of the purchaser. State Bank of India's Service charges for issuing a bankers' cheque Up to 10000/-is Rs. 30/- .]

**(2)** **An applicant making request for information shall not be required to give any reason for requesting the information or any other personal details except those that may be necessary for contacting him.**

**Reasons for seeking information**
While the RTI Act does not allow questioning the intentions of the parties who seek information, when a matter of this nature reaches the Commission, it becomes important to highlight the same, so that such aberrations do not go unnoticed.
CIC/AT/A/2006/00353&CIC/AT/A/2006/00312-2.11.2006

**Address of the requester:**
The Commission could not agree with the PIO's contention that the information was sought on behalf of an institution. The Appellant had applied in his own name and had only given his address as that of an NGO for the purpose of correct delivery of post. Thus merely giving the address of an NGO does not imply that the institution was asking for the information.
CIC/OK/A/2006/OOO50 – 3 July,2006

**Can the Identity of a requester be disclosed ?**
NO. Unnecessary disclosures of requester identities should be avoided.
An anonymous letter was received by the Canada Information Commissioner, alleging improprieties within Citizenship and Immigration of Canada in the processing of access requests. The writer alleged widespread disclosure within the department of the identities of access requesters. Based on these allegations, the Information Commissioner initiated a complaint on his own motion and commenced an investigation.

- With respect to the issue of disclosure of requester identities, the investigation determined that care was taken by officials to disclose requester identities only to the extent necessary to process the request.

- For example, officials in operating areas who are tasked to find requested records are not informed of the requesters' identities; neither are identities disclosed to senior officials or the Minister's Office.

(source: Office of the Information Commission of Canada, Annual report 2005,2006)

**(3)** **Where an application is made to a public authority requesting for an information,—**

**(i)** **which is held by another public authority; or**

**(ii)** **the subject matter of which is more closely connected with the functions of another public authority,**

**the public authority, to which such application is made, shall transfer the application or such part of it as may be appropriate to that other public authority and inform the applicant immediately about such transfer:**

**Provided that the transfer of an application pursuant to this sub-section shall be made as soon as practicable but in no case later than five days from the date of receipt of the application.**

**Transfer of request**

Section 6 (3) requires the transfer of the application to the concerned public authority, not simply advice to the applicant to make a fresh application to that other authority. It is understandable that the DD would have been returned, because it was made in the name of Accounts Officer, President's Secretariat and therefore, uncashable by the requisite public authority, although it would have been possible for the President's Secretariat to encash the DD and transfer the funds, if required to the concerned Ministry. However, the application itself was required to be transferred under the law and not refused.
CIC/WB/C/2006/00067 – 12 July,2006

**7** **Disposal of request:–**

**(1)** **Subject to the proviso to sub-section (2) of section 5 or the proviso to sub-section (3) of section 6, the Central Public Information Officer or State Public Information Officer, as the case may be, on receipt of a request under section 6 shall, as expeditiously as possible, and in any case within thirty days of the receipt of the request, either provide the information on payment of such fee as may be prescribed or reject the request for any of the reasons specified in sections 8 and 9:**
**Provided that where the information sought for concerns the life or liberty of a person, the same shall be provided within forty-eight hours of the receipt of the request.**

**Life & Liberty**

On the question of life and liberty,Article 21 of the Indian Constitution reads as follows:
"No person shall be deprived of his life or personal liberty except
according to procedure established by law."
Similarly proviso to sec. 7(1) deals with information sought being described as one that concerns the life or liberty of a person. Whereas matters of an administrative nature may not necessarily be considered a threat to life or liberty, programmes for demolition of inhabited structures must surely be so construed. It is open to the CPIO to rule that [since structures are no longer inhabited] the application is of no concern for life & liberty, he or she must satisfy himself/herself of this fact before so ruling, while the applicant can do so by providing substantive evidence of this, as held by us in the above cited case.
CIC/WB/A/2006/00128-18 July,2006.

**Life & Liberty –s.7(*1*) :**
On the question of life and liberty, this Commission has ruled as follows in Appeal no CIC/WB/C/2006/00066 Of 19/4/2006,in *Shekhar Singh and Aruna Roy & Others Vs Prime Minister's Office:*
"Matter to be treated as one of life and liberty would require the following :

- The application be accompanied with substantive evidence that a threat to life and liberty exists (e.g. medical report)
- Agitation with the use of Ahimsa must be recognized as a *bonafide* form of protest, and therefore even if the claim of concern for life and liberty is not accepted, in a particular case by the public authority, the reasons for not doing so must be given in writing in disposing of the application".

**Life and liberty**

Name of the Appellant : Shri Manharlal D Shah,
**New Barek No.6**, **Sabarmati Central Jail,**
Sabarmati, Ahmedabad.

Name of the Public Authority: Punjab National Bank, 7, Bhikhaji Cama Place,
New Delhi – 110 066

**DECISION**

1. The appellant was asked to appear for a personal hearing on 11th December 2006. He, however, could not avail of this opportunity. The appeal is, therefore, examined on merit.

2. The appellant had sought certain information from the bank relating to the charge sheet and disciplinary proceedings initiated against him, on the basis of which major penalty was imposed.

3. The information sought are: "copy of CVCs advices and the copy of recommendations of disciplinary authority". The CPIO and the appellate authority have duly furnished the information sought and as such there is no denial of information.

4. The appellant was superannuated in 2003 and he sought the above information within 48 hrs. of the receipt of request invoking the provision of 'the life and liberty of a person'. In view of the nature of information sought which has already been furnished and that he **is freely living in the society**, there is absolutely no threat to his life and liberty. Therefore, the CPIO and the appellate authority have correctly interpreted the provision of the Act and furnished the information sought to the appellant.
440/IC(A)/2006 -12.12.2006

**(2)** **If the Central Public Information Officer or State Public Information Officer, as the case may be, fails to give decision on the request for information within the period specified under sub-section (1), the Central Public Information Officer or State Public Information Officer, as the case**

**may be, shall be deemed to have refused the request.**

**(3) Where a decision is taken to provide the information on payment of any further fee representing the cost of providing the information, the Central Public Information Officer or State Public Information Officer, as the case may be, shall send an intimation to the person making the request, giving—**

**(a) the details of further fees representing the cost of providing the information as determined by him, together with the calculations made to arrive at the amount in accordance with fee prescribed under sub-section (1), requesting him to deposit that fees, and the period intervening between the despatch of the said intimation and payment of fees shall be excluded for the purpose of calculating the period of thirty days referred to in that sub-section;**

**(b) information concerning his or her right with respect to review the decision as to the amount of fees charged or the form of access provided, including the particulars of the appellate authority, time limit, process and any other forms.**

**(4) Where access to the record or a part thereof is required to be provided under this Act and the person to whom access is to be provided is sensorily disabled, the Central Public Information Officer or State Public Information Officer, as the case may be, shall provide assistance to enable access to the information, including providing such assistance as may be appropriate for the inspection.**

**(5) Where access to information is to be provided in the printed or in any electronic format, the applicant shall, subject to the provisions of sub-section (6), pay such fee as may be prescribed: Provided that the fee prescribed under sub-section (1) of section 6 and sub-sections (1) and (5) of section 7 shall be reasonable and no such fee shall be charged from the persons who are of below poverty line as may be determined by the appropriate Government.**

**Fee**

Deposit towards further fees for providing information should be accepted form the requester in advance to minimize wastage of resources of the public authorities.
08/IC(A)/2006 - 8 March 2006

**Reasonable fees**

Kailash Mishra applied to BSNL Seeking information about the project completed by switching and installation with in high circle.
BSNL wrote back of him asking to deposit Rs. 9810/- which included Rs. 9732/- for the man hours utilized to collect the information.
CIC held: BSNL should have provided details of computation since all the information was available at one place, there was no reason for deployment of extra man power for supplying the information.
CIC/PB/A/2006/00063-19,June,2006.

**No extras please!**

…it is mandatory for all the public authorities to adhere to the principle of maximum disclosure, and furnish the information, as and when sought by the citizens, for which they do not have to charge any extra money, other than what has been prescribed by the Govt. under the RTI fees and costs rules. The CPIO has charged an extra amount of Rs.50/- for handling his letters, which is illegal.
204/IC(A)/2006-25.8.2006

**Reasonable fees**

U.K. Information Tribunal Decision No EA/2005/0014 - 25 March 2006:
Mr. David Markinson, inspected certain papers at the offices of the Kings Lynn and West Norfolk Borough Council ("the Council") the papers related to the original planning application for his house and he requested photocopies of some of them. A

Council representative drew his attention to its printed leaflet of fees and charges, under which it charged 6 Pounds for each building control or planning decision notice and 50pence for each other photocopy sheet contained in a planning file. Mr Markinson has given evidence to us to the effect that he found the documents in question complex and difficult to follow. He therefore wished to take copies away with him for review at home, but found that the level of the Council's charges meant that he could not afford to take copies of al those that he wanted. It is contested that 6 Pounds for a black and white A4 photocopy is an **excessive charge**.

U.K. Information Tribunal considered the following DCA guidelines:

- You could not charge for the time taken to locate, retrieve or extract the information or to write a covering letter to the applicant explaining that the information is being provided.

- You could charge for the cost of paper when photocopying or printing the information and printing the covering letter, as well as the cost of postage.

- Authorities can charge for the actual costs incurred, but charges are expected to be reasonable. For example, in most cases, photocopying and printing would be expected to cost no more than 10 pence per sheet of paper.

- " a **'reasonable'** charge would be similar to commercial rates at photocopying shops, that is, 10p for each sheet of A4. This also reflects the lease charge on most photocopier machines."

It directed the Council--in making that reassessment [of fees] the Council should adopt as a guide-- price the sum of 10p per A4 sheet ,as identified in the "Good practice guidance on access to and charging for planning information" published by the Office of the Deputy Prime Minister and as recommended by the DCA.

**(6)** **Notwithstanding anything contained in sub-section (5), the person making request for the information shall be provided the information free of charge where a public authority fails to comply with the time limits specified in sub-section (1).**

**<u>Fee</u>**

If the information was not provided within time limits specified under **s.7(*1*),** it shall be provided free of charge as per **s.7*(6*)**.
CIC/AT/A/2005/00004 - 27 January 2006

**(7)** **Before taking any decision under sub-section (1), the Central Public Information Officer or State Public Information Officer, as the case may be, shall take into consideration the representation made by a third party under section 11.**

**(8)** **Where a request has been rejected under sub-section (1), the Central Public Information Officer or State Public Information Officer, as the case may be, shall communicate to the person making the request,—**

**(i)** **the reasons for such rejection;**

**(ii) the period within which an appeal against such rejection may be preferred; and**

**(iii) the particulars of the appellate authority.**

**Reasons for rejection of requests**

Through this Order the Commission now wants to send the message loud and clear that quoting provisions of Section 8 of the RTI Act ad libitum to deny the information requested for, by CPIOs/Appellate Authorities without giving any **justification** or grounds as to how these provisions are applicable is simply unacceptable and clearly amounts to malafide denial of legitimate information attracting penalties under section 20(1) of the Act.
CIC/OK/A/2006/00163 – 7 July,2006.

**Reasons for rejection of requests**

The PIO has to give the reasons for rejection of the request for information as required under Section 7(8)(i). Merely quoting the bare clause of the Act does not imply that the reasons have been given. The PIO should have intimated as to how he had come to the conclusion that rule 8(1)(j) was applicable in this case .
CIC/OK/C/2006/00010 – 7 July,2006.

**Rejecting a request**

- the PIO has to give the reasons for rejection of the request for information as required under Section 7(8)(i). Merely quoting the bare clause of the Act does not imply that the reasons have been given. The PIO should have intimated as to how he had come to the conclusion that rule 8(1)(j) was applicable in this case
  CIC/OK/C/2006/00010 – 7 July,2006.

- PIO should indicate clearly the **grounds** of seeking exemptions form disclosure of information while rejecting a request.
  27/IC(A)/06 - 10 April. 2006

- PIO should give his own name, name of appellate officer in his communications.CIC/OK/A/2006/00016 - 15 June 2006.
- The requester should be entitled to receive clear-cut replies to all his queries.
  CIC/AT/A/2006/00144 – 14 July,2006.

**(9) An information shall ordinarily be provided in the form in which it is sought unless it would disproportionately divert the resources of the public authority or would be detrimental to the safety or preservation of the record in question.**

**Diversion of substantial resources**

The respondents' plea that compilation of the information as requested by the appellant would lead to diversion of substantial resources of the public authority is quite obviously over-stated. This appears to be an information which must be maintained in ordinary course of business and no additional efforts appear necessary to collect and collate it. In any case, the cost of any such exercise can be charged to

the appellant as further fee prescribed under Section 7(3) of the RTI Act and its corresponding Rules.
CIC/AT/C/2006/00471-21.12.2006

**Village wise data of Muslim population**
Mr.Hayat requested from the Office of the Registrar General, India-
city wise and village wise data of Muslim population in the State of U.P. and Uttaranchal in the census report 2001.
There is, no doubt, merit in the appellant's argument that once an information is known to be held by a public authority, unless it is shown that it attracts any of the exemptions of Section 8(1) or Section 9, its disclosure cannot be prevented. Very clearly, the village-wise data of Muslim population in Uttar Pradesh and Uttaranchal is held by the office of the Registrar General, India and it cannot be said to attract any of the exemptions under Section 8(1) or Section 9. The information requested by the appellant should, in ordinary course, be allowed to be disclosed, but for certain other provision of the RTI Act. That provision is sub-section 9 of Section 7 of the Act.

Merit of the case notwithstanding, the appellant's request for information is to be evaluated against the provision of sub-section 9 of Section 7 of the RTI Act, which states that *"An information shall ordinarily be provided in the form in which it is sought unless it would disproportionately divert the resources of the public authority or would be detrimental to the safety or preservation of the record in question."*

The requirement of this sub-section would be satisfied if it can be proved by the respondents that the information requested by an appellant if supplied would involve diversion of disproportionately large resources apart from the other conditions mentioned in the sub-section.
The respondents convincingly argued before the Commission during the hearing that the census operation is a very large, detailed and complex operation, which is carried out with substantial budgetary support by the State. The resources made available for the operation are proportionate to the requirement of data collection, tabulation and publication as pre-determined by a Committee, which is assigned this task. Any further activity for tabulation and disclosure of data is bound to involve large financial deployment. To tabulate the data for the villages of a large State like Uttar Pradesh and another State like Uttaranchal will unavoidably involve diversion of substantial resources. This provision, therefore, decidedly comes between the appellant and the information requested by him.
The logic of the argument of the respondents is compelling. The spirit and the letter of sub-section 9 of Section 7 of the Act is that even when it is established that a given information is to be disclosed, it may still not be given to the appellant if it can be shown that its disclosure would involve disproportionately large diversion of resources of the public authority. The information now requested by the appellant, undoubtedly, falls in this category.
I am, therefore, constrained to hold that disclosure of the information urged by the appellant could not be authorized in view of the provision of Section 7(9) of the RTI Act.
CIC/AT/A/2006/00300-13.12.2006

# s8. Exemption from disclosure of information:-

8 **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;**

**(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;**

**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.
190/ICPB/2006-December 11, 2006.

***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 have 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.
CIC/AT/A/2006/00193-18.9.2006.

**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.

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 alongwith 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.

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

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

**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.

CIC/AT/A/2006/00195-25.09.2006

**(d) information including commercial confidence, trade secrets or intellectual property, the disclosure of which would harm the competitive position of a third party, unless the competent authority is satisfied that larger public interest warrants the disclosure of such information;**

**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.
9/IC(A)/2006- 10 March ,2006.

**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.
CIC/WB/C/2006/00176-18 April,2006.

**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.
CIC/OK/A/2006/00284-26.12.2006

**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.77/ICPB/2006 -August 21, 2006

**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 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.
218/IC(A)/2006-29.8.2006

**(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;**

## 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.
CIC/AT/A/2006/00113 – 10 July,2006.

**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).
22/IC(A)/2006 - 30 March.

**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.
174/IC(A)/2006-17th August, 2006

**Answer sheets and *fiduciary* relationship**

[A full bench is reconsidering the position on answer sheets-author]
Ms. Treesa Irish, employed as a Postman (Post woman) in Ernakulam North Post Office, Kerala, appeared for a departmental examination on 24.4.2005 for promotion as LGO. On declaration of the results of the examination, she noted that none from Ernakulam Division was successful.
When she requested for her mark sheet, the same was denied and, therefore, she filed a case before the Central Administrative Tribunal (CAT). During the pendency of the said proceedings, she was supplied with a copy of the mark sheet from which she found that she had failed to secure minimum of 40 marks (she secured 37 marks) in Paper III of the examination. Therefore, she applied to the CPIO on 21.10.05 for a photocopy of her evaluated answer sheet of that paper.
CPIO rejected her request on the ground that no public interest was involved in her case and in terms of the Postal Rules, she could apply for re-totaling and verification of the fact that all answers written were duly assessed.

CIC held : It is true that there is no provision in Section 8 of the Act specifically exempting disclosure of information relating to examination papers.
When answer papers are evaluated, the authority conducting the examination and the examiners evaluating the answer papers stand in a fiduciary relationship between each other. Such a relationship warrants maintenance of confidentiality by both of the manner and method of evaluation. That is the reason why while mark sheets are made available as a matter of course, copies of the evaluated answer papers are not made available to the candidates

Therefore, we find that in case of evaluated answer papers the information available with the public authority is, in his fiduciary relationship, the disclosure of which is exempt u/s 8(1)(e). In addition, when a candidate seeks for a copy

of the evaluated answer paper, either of his/her own or others, it is purely a personal information, the disclosure of which has no relation to any public interest or activity and this has been covered u/s 8(1)(j) of the Act. We, as a Commission, are not satisfied that the larger public interest justifies the disclosure of the information sought for by the appellant to direct that the CPIO to comply with the request of the appellant and as a matter of fact we are of the opinion that furnishing copies of the evaluated answer papers would be against public interest as has been rightly opined by the appellate authority that supply of a copy of the evaluated answer paper would compromise the fairness and impartiality of the selection process.

ICPB/A-2/CIC/2006- February 6, 2006

**Cut-off marks**

The appellant desired to know the marks obtained by him in the written examination as well as interview in the 'S.O. (Audit) Exam-2005' conducted by Staff Selection Commission (SSC). He also asked for the cut-off marks for OBC in the said examination.
The CPIO declined to furnish the information sought, without specifying the reason for denial of information.
In a number of appeals / complaints received from the examinees against the CPIO of the SSC, the Commission has directed that the marks sheets should be furnished to the candidates along with cut off marks for various categories of candidates. In pursuance of those decisions, the SSC is expected to comply with the requests for mark sheet. In the instant case, the CPIO of SSC is directed to furnish the information.
180 /IC(A)/2006 - 17th August, 2006

**Marks secured by candidates:**
A Division Bench of this Commission has decided in Neeraj Kumar Singal (Appeal No.11/53/2006-CIC dt.2 May,2006 that conduct of examinations are for identifying and short listing the candidates in terms of technical competence, the right attitude is highly confidential activity and therefore answer sheets should not be disclosed.
But marks secured by candidates are not to be kept secret and should not be furnished.

**Orders appointing the examiners**
The Commission directed the PIO,University of Delhi, to provide the Applicant the certified copies of the order appointing the examiners and of the file dealing with his application for re-totaling of the answer sheets as requested for by him in his application.
CIC /OK/A/2006/00051 – 4 July,2006.

**Examiner's Comments**
*Minning and Griffith University*
(S 237/01, 21 May 2002)
The applicant, who was enrolled as an undergraduate at the University's School of Applied Psychology in 2000, made complaints to the University

about the delivery of one of the subjects she studied, the assessment of her work in that subject, ad her final grading. The University investigated the applicant's complaints, but the applicant was not satisfied with the outcome. She subsequently applied for access to all documents relating to her complaints and the University's investigation. The University refused access to some documents and parts of documents but, in the course of the review, the matter in issue was reduced to one segment of information - a brief comment by the applicant's supervisor in the disputed subject, made in the margin of a document written by the applicant. The University contended that the matter in issue was exempt matter under s.41(1) of the FOI Act. Assistant Commissioner Shoyer decided that, although the matter in issue was part of a deliberative process of the University (determining how to deal with the applicant's complaints), he was not satisfied that its disclosure to the applicant would, on balance, be contrary to the public interest.
[Office of the Information Commissioner (Queensland) Informal Decision Summaries 2005/2006.

**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 order disclosure or not, and only then it will issue appropriate directions to the public authority.
CIC/MA/A/2006/00121-8 Aug,2006.
[*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.463/IC(A)/2006,Dated, the 20thDecember, 2006

**File notings and fiduciary relationship**
File notings are that part of the file in which an officer records his observations andimpressions 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 thisinformation has to be completed in terms of the provision of Section 11(1) of theRTI 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.
CIC/AT/A/2006/00363-3.11.2006

**(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**
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). CIC/AT/A/2005/0003-12 July,2006.

**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 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.
298/IC(A)/2006-21.9.2006

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

**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 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) ofthe 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.
  157/IC(A)/2006- 1 Aug,2006.

**Process of investigation**

**…**the Department can not take a plea of continuing investigation when the charge sheet has been served on the appellant.
CIC/MA/C/2005/2006-4 July,2006.

**Process of investigation**
Delhi Police received a request for :

- 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.
CICAT/A/2006/00071 - 11 May, 2006.

**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.
CIC/AT/A/2006/00314--9.10.2006

**Enquiry**
…[I]f a complaint is under enquiry, information/documents connected with the enquiry could be
withheld till the enquiry is completed in term of Section 8(1)(h).
127/ICPB/2006-17.10.2006

**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.
PBA/06/108--9.10.2006

**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)
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. (CIC/80/2006/ 00039 dated 1.6.2006)*. 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.121/ICPP/ 2006 dated 9.10.06)***,** 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 information sought in relation to such an inquiry can be denied in terms of Section 8(1)(h) of the Act".*
243,244/ICPB/2006-December 27,2006

**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 RTIAct.
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 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.
CIC/AT/A/2006/00039-1.6.2006

**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.252/IC(A)/2006 -7.9.2006

**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.

250/IC(A)/2006-7.9.2006

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

**Provided that the decisions of Council of Ministers, the reasons thereof, and the material on the basis of which the decisions were taken shall be made public after the decision has been taken, and the matter is complete, or over:**
**Provided further that those matters which come under the exemptions specified in this section shall not be disclosed;**

**<u>Cabinet papers</u>**
Shri. Arvind Kejriwal sought from the CPIO, Ministry of Commerce & Industry,information in respect of the policy for allowing FDI inretail 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.
132/ICPB/2006-19.10.2006

**<u>Cabinet papers</u>**-
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 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. CIC/AT/A/2006/00145-13 July,2006.

**<u>Cabinet papers</u>**-

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 decision 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.
76/IC(A)/2006-3 July,2006.

**<u>Cabinet papers</u>**

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.
**-** 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.**

## <u>Personal information</u>

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."
80/ICPB/2006-28.8.2006

**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 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 outstrips the argument for its disclosure.
CIC/AT/A/2006/00069-13 July,2006

**Departmental Promotion Committees**

The Departmental Promotion Committees (DPCs) prepare their minutes and make recommendations after examining ACRs of the employees due for promotion. Disclosure of the complete proceedings of the DPC and the grades given by various officers to their sub-ordinates may lead to disclosure of the ACRs. As ACRs themselves, according to us,are barred from disclosure, we hold, that by inference the DPC proceedings should be similarly barred. However, in all such cases, the CPIO and the Appellate Authorities should apply the doctrine of severability and should provide him the information, which can be provided under sub-section (2) of Section 10 of the Right to Information Act,2005.

CIC/AT/A/2006/00069-13.7.2006

**DPC minutes**

In the present case, the appellant has sought for the decision of the review DPC. The appellant has relied on the decision of this Commission in Anand Akhila's case to contend that DPC minutes can be disclosed, while the public authority has relied on the decision in Shri Gopal Kumar case, wherein this Commission has decided that DPC minutes are exempt from disclosure. The facts of Anand Akhila's case are different as in that case, the rating was on the basis of marks and there was no grading and therefore, this
Commission directed disclosure of the marks. In so far as DPC minutes are concerned, in Shri Gopal Kumar case, this Commission has decided that disclosure of complete proceedings in the DPC and grades given by officers to their subordinates may lead to disclosure of the ACRs and as ACRs themselves are barred from disclosure, by inference the DPC proceedings should be similarly barred. PBA/06/195-9.10.2006.

**Proceedings of DPC**

the CPIO is directed to furnish a copy of the proceedings of the DPC held on 18.1.2006 for the post of Deputy Director (Handicrafts) which contain such details as

- the composition of the DPC committee,
- details of vacancies,
- background of the review of the DPC
- and names of the officers recommended for the above post. …after due application of section 10(1) of the Act.

396/IC(A)/2006-28.11.2006

**D.P.C.**

With a view to ensuring transparency in selection and promotion of officers, the CPIO is directed to furnish a copy of the proceedings of the DPC held on 18.1.2006 for the post of Deputy Director (Handicrafts) which contain such details as the composition of the DPC committee, details of vacancies, background of the review of the DPC and names of the officers recommended for the above post.This should be disclosed, within 10 working days from the date of issue of this decision, after due application of section 10(1) of the Act.
396/IC(A)/2006-28.11.2006

**Selection Committee**

…the names of the persons who were there in the Selection Committee may not be disclosed.
CIC/OK/A/206/00413-416-16.11.2006

**List of recommended candidates**

DPC minutes are exempt from disclosure…. However, this exemption is not available in giving a list of recommended candidates.
165/ICPB/2006-29.11.2006

**Annual property returns and privacy**

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.
CIC/AT/A/2006/00134-10 July, 2006.

**Investigating officer and privacy**

A citizen had requested from RBI for certain information relating to the findings of an inspection of the 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.
177/IC(A)/2006 - 17th August, 2006.

**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.
CIC/AT/A/2006/00317-10.10.2006

**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, upheld.
167/IC(A)/2006 -14th August 2006

**Roster/vacancy position of employees**

Information related to the Roster/vacancy position of employees,which are neither confidential nor personal information.
196/IC(A)/2006-23 Aug,2006.

**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.
CIC/MA/A/2006/00505-6.10.2006

**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).
ICPB/A-18/CIC/2006- 10 May, 2006.

**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 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 ad 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 ad 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.

**Can bio-data forms be accessed?**
Bhagwan Chand Saxena asked for copies of the bio-data submitted by four candidates at the time of their appointment as Assistant Directors and also copies of their medical reports submitted by the medical authorities declaring these candidates as fit / unfit.

- CIC held that when a candidate submits his application for appointment to a post under a P.A., the same becomes a public document and he cannot object to the disclosure on the ground of invasion of privacy and directed the PIO to provide copies of the bio-data.

- As far as medical reports are concerned, they are purely personal to the individuals and furnishing of the copies of medical reports would amount to invasion of privacy of the individuals and need not be furnished. However PIO will disclose to the requester the information whether all the four candidates had been declared medically fit or not .
  ICPB/A-9/CIC/2006-3 April,2006.

**Traveling expenses** :
The traveling expenses were charged to the public account,disclosure if the information can not be denied on the ground sof ‘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.
63/ICPB/2006- 4 August,2006

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

07/IC(A)/CIC/2006/00011 - 3 January 2006

**Leave records and Privacy**

A request for supply of the leave record of Dr. Vidya Sinha, Reader in Hindi Department since July 2004 war received by Delhi University.

CIC felt that it was purely a personal matter with no public interest involved. Hence, theinformation 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.

CIC/OK/A/2006/00189-3 November, 2006

**Leave records**

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.

CIC/OK/A/2006/00187-190 & 329-3.11.2006

**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;

170/ICPB/2006-4.12.2006

**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 with out 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;

174/ICPB/2006-4.12.2006

**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)
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.

CIC/AT/A/2006/00311-3.11.2006

**(2) 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 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.

CIC/WB/A/2006/00274-22.9.2006

**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: CIC/WB/C/2006/00063 & CIC/WB/C/2006/00064- 30 May,2006.

**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.37/IC(A)/2006-12 May,2006.

**public interest and consumer protection:**
Mahendra Gaur gought 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 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. 61 /IC(A)/2006-14 June,2006.

**public interest**

P.A. should not deprive the citizens of their rights to access information that could be utilized for societal benefits.
CIC/OK/A/2006/00016 - 15 June 2006

**public interest**

Requester should indicate the *bonafide* public interest in seeking the information which is personal in nature.
CIC/MA/A/2006/00219—18 May,2006.

**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 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**.

**more Decisions on 'public interest'**

Appeal No.ICPB/A-1/CIC/2006 dt.31.01.2006

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

Appeal 05/IC(A)/CIC/2006,dt.03.03.2006

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.

Appeal No. 12/IC(A)/2006,dt.14.03.2006

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.

Appeal No. 15/IC(A)/2006,dt.22.03.2006

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.

Appeal No. 16/IC(A)/2006,dt. 28.03.2006

The appellant was involved in a 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.

Appeal No. 17/IC(A)/2006,dt.28.03.2006

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 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).

Appeal No. 22/IC(A)/2006,dt.30.03.2006

***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.

Appeal No. 23/IC(A)/2006,dt.10.04.2006

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.

Appeal No.27/IC(A)/06,dt.10.04.2006

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

from the 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.

Appeal No.32/IC(A)/06,dt.02.05.2006

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.

Appeal: No.CIC/OK/A/2006/00046,dt.02.05.2006

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.

**(3)** **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, eve 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. 37/ICPB/2006 - 26 June 2006

**9** **Grounds for rejection to access in certain cases:– Without prejudice to the provisions of section 8, a Central Public Information Officer or a State Public Information Officer, as the case may be, may reject a request for information where such a request for providing access would involve an infringement of copyright subsisting in a person other than the State.**

**10 Severability:–**

**(1) Where a request for access to information is rejected on the ground that it is in relation to information which is exempt from disclosure, then, notwithstanding anything contained in this Act, access may be provided to that part of the record which does not contain any information which is exempt from disclosure under this Act and which can reasonably be severed from any part that contains exempt information.**

**(2) Where access is granted to a part of the record under sub-section (1), the Central Public Information Officer or State Public Information Officer, as the case may be, shall give a notice to the applicant, informing—**

**(a) that only part of the record requested, after severance of the record containing information which is exempt from disclosure, is being provided;**

**(b) the reasons for the decision, including any findings on any material question of fact, referring to the material on which those findings were based;**

**(c) the name and designation of the person giving the decision;**

**(d) the details of the fees calculated by him or her and the amount of fee which the applicant is required to deposit; and**

**(e) his or her rights with respect to review of the decision regarding non-disclosure of part of the information, the amount of fee charged or the form of access provided, including the particulars of the senior officer specified under sub-section (1) of section 19 or the Central Information Commission or the State Information Commission, as the case may be, time limit, process and any other form of access.**

**11 Third party information:–**

**(1) Where a Central Public Information Officer or a State Public Information Officer, as the case may be, intends to disclose any information or record, or part thereof on a request made under this Act, which relates to or has been supplied by a third party and has been treated as confidential by that third party, the Central Public Information Officer or State Public Information Officer, as the case may be, shall, within five days from the receipt of the request, give a written notice to such third party of the request and of the fact that the Central Public Information Officer or State Public Information Officer, as the case may be, intends to disclose the information or record, or part thereof, and invite the third party to make a submission in writing or orally, regarding whether the information should be disclosed, and such submission of the third party shall be kept in view while taking a decision about disclosure of information:**
**Provided that except in the case of trade or commercial secrets protected by law, disclosure may be allowed if the public interest in disclosure outweighs in importance any possible harm or injury to the interests of such third party.**

**(2) Where a notice is served by the Central Public Information Officer or State Public Information Officer, as the case may be, under sub-section (1) to a third party in respect of any information or record or part thereof, the third party shall, within ten days from the date of receipt of such notice, be given the opportunity to make representation against the proposed disclosure.**

**(3) Notwithstanding anything contained in section 7, the Central Public Information Officer or State Public Information Officer, as the case may be, shall, within forty days after receipt of the request under section 6, if the third party has been given an opportunity to make representation under sub-section (2), make a decision as to whether or not to disclose the information or record or part thereof and give in writing the notice of his decision to the third party.**

**(4) A notice given under sub-section (3) shall include a statement that the third party to whom the notice is given is entitled to prefer an appeal under section 19 against the decision.**

**Third party**

The RTI Act does not give a third party an automatic veto on disclosure of information. PIO and A.O are required to examine the third party's case in terms of provisions of section 8(1)(j) or Section 11(1) as the case may be and arrive at a finding by properly assessing the facts and the circumstances of the case. A speaking order should threafter be passed.
CIC/AT/A/2006/00014-22 May,2006.

**Third party**
It is possible that the PIO and the AA didn't consider invoking the provision of Section 7(7) because they had, in any case, reached a decision not to disclose the information requested by the appellant; and Section 11(1) which Section 7(7) refers, is to be invoked only when a PIO "intends" to disclose any confidential information or record supplied by a third party, and not otherwise. This approach excludes the other possibility that the third party may have no objection to the disclosure of the information, in which case disclosure can be authorized even when an information is prima-facie a personal information, and if it does not attract any other exemption. In my view Sections 7(7), 11 and 7(1) have to be read together. The combined reading of these Sections leaves a clear impression, that when the information sought by an applicant have had a third party link,then "before taking any decision" (Section 7, sub-section 7) under sub-section (1) of Section 7, viz. "either provide the information or … reject the request", the PIO will need to consult / hear the third party. Section 11(1) adds another dimension to the protection of third party interest, viz. giving a hearing to the 3rdparty if the PIO intends to disclose any information entrusted to the public authority by the third party and "which has been treated as confidential" by such 3rdparty. The requirement of hearing the representation of the 3rdparty in respect of an ordinary as well as a confidential information relating to that 3rdparty, is a common thread linking these Sections and sub-sections, and should therefore be construed as an invariant procedural as well as a substantive requirement of the RTI Act.
CIC/AT/A/2006/00306-16.10.2006

**Third party**
The case pertains to one Dr. Vankayalpati Sri Venkateswar Prasad who had studied in AIIMS and got an MBBS degree in the year 1986 and later opened a deluxe hospital, the 'Krishna Institute of Medical Science (KIMS)' in Hyderabad. Dr. Prasad treated Shri Sanjeev Kumar Jain's son who allegedly died at his hands. Shri Sanjeev Jain and his wife Smt. Anju Jain, a lecturer in Zoology, felt that Dr. Prasad was not a competent doctor and according to them on further enquiries, they discovered several discrepancies in the certificates the doctor had earned not only during his term of education, but even later. There were also discrepancies in the details of the passport that he had used to go to America. The couple, Shri Jain and Mrs. Anju Jain delved further into the matter and were convinced that this is a case of a fake doctor. To strengthen their case, as also to procure documents to pursue the matter further, they applied to AIIMS to provide them with photocopies or certified copies of the degrees and certificates that the AIIMS has in possession regarding this doctor. They also applied to the Regional Passport office, New Delhi for details of the passport number as well as the photograph on Dr. Prasad's passport in order to find out whether he was using more than one passport. The AIIMS supplied them some documents which according to the couple were not only incomplete but unsatisfactory. The Passport Office too refused to entertain their request on the ground that the request was an "invasion of the privacy" of the individual in question and, therefore, they could not disclose the information under Section 8(1)(j) of the Right to Information Act, 2005. The couple then approached this Commission for help in getting the requisite documents from AIIMS as well as the Passport Office.

**Decision**:

The Commission heard the case in detail and also examined several documents

produced by the Appellants and came to the conclusion that the case had prima facie evidence of **forgery, impersonation** and falsification of documents. To establish the truth, therefore, it was necessary that all the documents regarding Dr. Vankayalpati be made available to the Appellants. The Commission ordinarily would not have entertained the request of the Appellant as the information related to the third party and being personal, the third party should be given notice in the interest of equity but this is a case of a Doctor who already allegedly mishandled a case causing loss of life and is also the Director of an entire medical set up. Therefore, the matter is definitely in public interest and is covered by Section 8(2) of the Act and warrants a thorough investigation. The Commission, therefore, directs CPIO, AIIMS to make available to Shri Sanjeev Kumar Jain and Mrs. Anju Jain all the records regarding Dr. Prasad and also provide them photocopies of the documents they required without payment of fees. The Commission also directs the Passport Office to provide to Shri
Sanjeev Kumar Jain and Smt. Anju Jain a copy of the photograph of Dr.Prasad as in his passport and also the passport number without payment of any fee and allow them also to inspect any other passport carrying the same name but with different details. The information as directed above shall be provided without delay to the Appellants.
CIC/OK/C/2006/00048 – 3 July,2006.

**Third party**

*Stiller and Department of Justice and Attorney-General; "RDR"* (Third party); A Referee (Fourth party)
(S 113/02 [2/03], 12 January 2004)

The applicant sought access to certain documents concerning the prosecution and sentencing of the third party in the District Court in relation to offences committed against minors. The documents in issue comprised a psychiatrist's report about the third party, character references provided to the Court in support of the third party, and parts of statements by five police officers involved in the investigation of the third party.

Applying the principles stated in *Re Stewart and Department of Transport* (1993) 1 QAR 227, the Deputy Information Commissioner found that, with the exception of some matter contained in the psychiatrist's report concerning the psychiatrist's professional qualifications *et cetera*, the matter in issue was properly to be characterised as concerning the personal affairs of persons other than the applicant, and hence that it was *prima facie* exempt from disclosure to the applicant under s.44(1) of the FOI Act, subject to the application of the public interest balancing test incorporated in s.44(1).

The Deputy Information Commissioner discussed in detail the various public interest considerations weighing for and against disclosure of the matter in issue. As regards the psychiatrist's report, the Deputy Information Commissioner considered that, in respect of those parts of the report which had been reproduced in the transcript of the District Court hearing or in the Court of Appeal's judgment, the weight of the public interest in protecting the third party's privacy interests had been significantly reduced. Balancing the reduced weight of the third party's privacy interests against the public interest in open justice and accountability of the criminal justice system, the Deputy Information Commissioner was satisfied that the disclosure of the relevant parts of the report would, on balance, be in the public interest. However, as regards those parts of the report which had not been published in any other forum, the Deputy Information Commissioner found that disclosure of such information would not, on balance, be in the public interest, and that it was

therefore exempt under s.44(1) of the FOI Act.

As to the character references, the Deputy Information Commissioner considered that, with the exception of information relating to the third party's wife and other family members, disclosure of the references, including the authors' signatures, would enhance the public interest in scrutiny and accountability of the criminal justice system, such that disclosure would, on balance, be in the public interest. Accordingly, the Deputy Information Commissioner decided that the bulk of the information contained in the references did not qualify for exemption under s.44(1) of the FOI Act.

As to the matter in issue in the police statements, given the fact that the third party had pleaded guilty to the offences with which he was charged, together with the amount and type of information which was already publicly available in the form of the transcript of the District Court proceedings and the Court of Appeal's judgment, the Deputy Information Commissioner considered that the weight to be attributed to the public interest in protecting the third party's privacy in respect of the matter in issue was minimal. He considered that disclosure would enhance the accountability of the Queensland Police Service and the Director of Public Prosecutions regarding their investigation and prosecution of the third party. The Deputy Information Commissioner therefore decided that disclosure of the matter in issue in the police statements would, on balance, be in the public interest and that it did not qualify for exemption under s.44(1) of the FOI Act. [Office of the Information Commissioner (Queensland) Informal Decision Summaries 2005/2006.

## CHAPTER III

### The Central Information Commission

### 12 Constitution of Central Information Commission:–

**(1) The Central Government shall, by notification in the Official Gazette, constitute a body to be known as the Central Information Commission to exercise the powers conferred on, and to perform the functions assigned to, it under this Act.**

**(2) The Central Information Commission shall consist of—**

**(a) the Chief Information Commissioner; and**

**(b) such number of Central Information Commissioners, not exceeding ten, as may be deemed necessary.**

**(3) The Chief Information Commissioner and Information Commissioners shall be appointed by the President on the recommendation of a committee consisting of—**

**(i) the Prime Minister, who shall be the Chairperson of the committee;**

**(ii) the Leader of Opposition in the Lok Sabha; and**

**(iii) a Union Cabinet Minister to be nominated by the Prime Minister.**

**Explanation.—For the purposes of removal of doubts, it is hereby declared that where the Leader of Opposition in the House of the People has not been recognised as such, the Leader of the single largest group in opposition of the Government in the House of the People shall be deemed to be the Leader of Opposition.**

**(4) The general superintendence, direction and management of the affairs of the Central Information Commission shall vest in the Chief Information Commissioner who shall be assisted by the Information Commissioners and may exercise all such powers and do all such acts and things which may be exercised or done by the Central Information Commission autonomously without being subjected to directions by any other authority under this Act.**

**(5)** The Chief Information Commissioner and Information Commissioners shall be persons of eminence in public life with wide knowledge and experience in law, science and technology, social service, management, journalism, mass media or administration and governance.

**(6)** The Chief Information Commissioner or an Information Commissioner shall not be a Member of Parliament or Member of the Legislature of any State or Union territory, as the case may be, or hold any other office of profit or connected with any political party or carrying on any business or pursuing any profession.

**(7)** The headquarters of the Central Information Commission shall be at Delhi and the Central Information Commission may, with the previous approval of the Central Government, establish offices at other places in India.

## 13 Term of office and conditions of service:–

**(1)** The Chief Information Commissioner shall hold office for a term of five years from the date on which he enters upon his office and shall not be eligible for reappointment:
Provided that no Chief Information Commissioner shall hold office as such after he has attained the age of sixty-five years.

**(2)** Every Information Commissioner shall hold office for a term of five years from the date on which he enters upon his office or till he attains the age of sixty-five years, whichever is earlier, and shall not be eligible for reappointment as such Information Commissioner:
Provided that every Information Commissioner shall, on vacating his office under this sub-section be eligible for appointment as the Chief Information Commissioner in the manner specified in sub-section (3) of section 12:
Provided further that where the Information Commissioner is appointed as the Chief Information Commissioner, his term of office shall not be more than five years in aggregate as the Information Commissioner and the Chief Information Commissioner.

**(3)** The Chief Information Commissioner or an Information Commissioner shall before he enters upon his office make and subscribe before the President or some other person appointed by him in that behalf, an oath or affirmation according to the form set out for the purpose in the First Schedule.

**(4)** The Chief Information Commissioner or an Information Commissioner may, at any time, by writing under his hand addressed to the President, resign from his office:
Provided that the Chief Information Commissioner or an Information Commissioner may be removed in the manner specified under section 14.

**(5)** The salaries and allowances payable to and other terms and conditions of service of —

(a) the Chief Information Commissioner shall be the same as that of the Chief Election Commissioner;

(b) an Information Commissioner shall be the same as that of an Election Commissioner:

Provided that if the Chief Information Commissioner or an Information Commissioner, at the time of his appointment is, in receipt of a pension, other than a disability or wound pension, in respect of any previous service under the Government of India or under the Government of a State, his salary in respect of the service as the Chief Information Commissioner or an Information Commissioner shall be reduced by the amount of that pension including any portion of pension which was commuted and pension equivalent of other forms of retirement benefits excluding pension equivalent of retirement gratuity:

Provided further that if the Chief Information Commissioner or an Information Commissioner if, at the time of his appointment is, in receipt of retirement benefits in respect of any previous service rendered in a Corporation established by or under any Central Act or State Act or a Government company owned or controlled by the Central Government or the State Government, his salary in respect of the service as the Chief Information Commissioner or an Information Commissioner shall be reduced by the amount of pension equivalent to the retirement benefits:

Provided also that the salaries, allowances and other conditions of service of the Chief Information Commissioner and the Information Commissioners shall not be varied to their disadvantage after their appointment.

**(6)** The Central Government shall provide the Chief Information Commissioner and the Information Commissioners with such officers and employees as may be necessary for the efficient performance of their functions under this Act, and the salaries and allowances payable to and the terms and conditions of service of the officers and other employees appointed for the

purpose of this Act shall be such as may be prescribed.

14 **Removal of Chief Information Commissioner or Information Commissioner:–**

(1) Subject to the provisions of sub-section (3), the Chief Information Commissioner or any Information Commissioner shall be removed from his office only by order of the President on the ground of proved misbehaviour or incapacity after the Supreme Court, on a reference made to it by the President, has, on inquiry, reported that the Chief Information Commissioner or any Information Commissioner, as the case may be, ought on such ground be removed.

(2) The President may suspend from office, and if deem necessary prohibit also from attending the office during inquiry, the Chief Information Commissioner or Information Commissioner in respect of whom a reference has been made to the Supreme Court under sub-section (1) until the President has passed orders on receipt of the report of the Supreme Court on such reference.

(3) Notwithstanding anything contained in sub-section (1), the President may by order remove from office the Chief Information Commissioner or any Information Commissioner if the Chief Information Commissioner or a Information Commissioner, as the case may be,—

(a) is adjudged an insolvent; or

(b) has been convicted of an offence which, in the opinion of the President, involves moral turpitude; or

(c) engages during his term of office in any paid employment outside the duties of his office; or

(d) is, in the opinion of the President, unfit to continue in office by reason of infirmity of mind or body; or

(e) has acquired such financial or other interest as is likely to affect prejudicially his functions as the Chief Information Commissioner or a Information Commissioner.

(4) If the Chief Information Commissioner or a Information Commissioner in any way, concerned or interested in any contract or agreement made by or on behalf of the Government of India or participates in any way in the profit thereof or in any benefit or emolument arising there from otherwise than as a member and in common with the other members of an incorporated company, he shall, for the purposes of sub-section (1), be deemed to be guilty of misbehavior.

## CHAPTER IV

### The State Information Commission

15 **Constitution of State Information Commission:–**

(1) Every State Government shall, by notification in the Official Gazette, constitute a body to be known as the ......... (name of the State) Information Commission to exercise the powers conferred on, and to perform the functions assigned to, it under this Act.

(2) The State Information Commission shall consist of—

(a) the State Chief Information Commissioner, and

(b) such number of State Information Commissioners, not exceeding ten, as may be deemed necessary.

(3) The State Chief Information Commissioner and the State Information Commissioners shall be appointed by the Governor on the recommendation of a committee consisting of—

(i) the Chief Minister, who shall be the Chairperson of the committee;

(ii) the Leader of Opposition in the Legislative Assembly; and

(iii) a Cabinet Ministrer to be nominated by the Chief Minister.

Explanation.—For the purposes of removal of doubts, it is hereby declared that where the Leader of Opposition in the Legislative Assembly has not been recognised as such, the Leader of the single largest group in opposition of the Government in the Legislative Assembly shall be deemed to be the Leader of Opposition.

(4) The general superintendence, direction and management of the affairs of the State Information Commission shall vest in the State Chief Information Commissioner who shall be assisted by the State Information Commissioners and may exercise all such powers and do all such acts and things which may be exercised or done by the State Information Commission autonomously without being subjected to directions by any other authority under this Act.

(5) The State Chief Information Commissioner and the State Information Commissioners shall be persons of eminence in public life with wide knowledge and experience in law, science and technology, social service, management, journalism, mass media or administration and governance.

(6) The State Chief Information Commissioner or a State Information Commissioner shall not be a Member of Parliament or Member of the Legislature of any State or Union territory, as the case may be, or hold any other office of profit or connected with any political party or carrying on any business or pursuing any profession.

(7) The headquarters of the State Information Commission shall be at such place in the State as the State Government may, by notification in the Official Gazette, specify and the State Information Commission may, with the previous approval of the State Government, establish offices at other places in the State.

16 **Term of office and conditions of service:–**

(1) The State Chief Information Commissioner shall hold office for a term of five years from the date on which he enters upon his office and shall not be eligible for reappointment:

Provided that no State Chief Information Commissioner shall hold office as such after he has attained the age of sixty-five years.

(2) Every State Information Commissioner shall hold office for a term of five years from the date on which he enters upon his office or till he attains the age of sixty-five years, whichever is earlier, and shall not be eligible for reappointment as such State Information Commissioner:

Provided that every State Information Commissioner shall, on vacating his office under this sub-section, be eligible for appointment as the State Chief Information Commissioner in the manner specified in sub-section (3) of section 15:

Provided further that where the State Information Commissioner is appointed as the State Chief Information Commissioner, his term of office shall not be more than five years in aggregate as the State Information Commissioner and the State Chief Information Commissioner.

(3) The State Chief Information Commissioner or a State Information Commissioner, shall before he enters upon his office make and subscribe before the Governor or some other person appointed by him in that behalf, an oath or affirmation according to the form set out for the purpose in the First Schedule.

(4) The State Chief Information Commissioner or a State Information Commissioner may, at any time, by writing under his hand addressed to the Governor, resign from his office:

Provided that the State Chief Information Commissioner or a State Information Commissioner may be removed in the manner specified under section 17.

(5) The salaries and allowances payable to and other terms and conditions of service of—

(a) the State Chief Information Commissioner shall be the same as that of an Election Commissioner;

(b) the State Information Commissioner shall be the same as that of the Chief Secretary to the State Government:

Provided that if the State Chief Information Commissioner or a State Information Commissioner, at the time of his appointment is, in receipt of a pension, other than a disability or wound pension, in respect of any previous service under the Government of India or under the Government of a State, his salary in respect of the service as the State Chief Information Commissioner or a State Information Commissioner shall be reduced by the amount of that pension including any portion of pension which was commuted and pension equivalent of other forms of retirement benefits excluding pension equivalent of retirement gratuity:

Provided further that where the State Chief Information Commissioner or a State Information Commissioner if, at the time of his appointment is, in receipt of retirement benefits in respect of any previous service rendered in a Corporation established by or under any Central Act or State Act or a Government company owned or controlled by the Central Government or the State Government, his salary in respect of the service as the State Chief Information Commissioner or the State Information Commissioner shall be reduced by the amount of pension equivalent to the retirement benefits:

Provided also that the salaries, allowances and other conditions of service of the State Chief Information Commissioner and the State Information Commissioners shall not be varied to their disadvantage after their appointment.

(6) The State Government shall provide the State Chief Information Commissioner and the State Information Commissioners with such officers and employees as may be necessary for the efficient performance of their functions under this Act, and the salaries and allowances payable to and the terms and conditions of service of the officers and other employees appointed for the purpose of this Act shall be such as may be prescribed.

### 17 Removal of State Chief Information Commissioner or State Information Commissioner:–

(1) Subject to the provisions of sub-section (3), the State Chief Information Commissioner or a State Information Commissioner shall be removed from his office only by order of the Governor on the ground of proved misbehaviour or incapacity after the Supreme Court, on a reference made to it by the Governor, has on inquiry, reported that the State Chief Information Commissioner or a State Information Commissioner, as the case may be, ought on such ground be removed.

(2) The Governor may suspend from office, and if deem necessary prohibit also from attending the office during inquiry, the State Chief Information Commissioner or a State Information Commissioner in respect of whom a reference has been made to the Supreme Court under sub-section (1) until the Governor has passed orders on receipt of the report of the Supreme Court on such reference.

(3) Notwithstanding anything contained in sub-section (1), the Governor may by order remove from office the State Chief Information Commissioner or a State Information Commissioner if a State Chief Information Commissioner or a State Information Commissioner, as the case may be,—

(a) is adjudged an insolvent; or

(b) has been convicted of an offence which, in the opinion of the Governor, involves moral turpitude; or

(c) engages during his term of office in any paid employment outside the duties of his office; or

(d) is, in the opinion of the Governor, unfit to continue in office by reason of infirmity of mind or body; or

(e) has acquired such financial or other interest as is likely to affect prejudicially his functions as the State Chief Information Commissioner or a State Information Commissioner.

(4) If the State Chief Information Commissioner or a State Information Commissioner in any way, concerned or interested in any contract or agreement made by or on behalf of the Government of the State or participates in any way in the profit thereof or in any benefit or emoluments arising therefrom otherwise than as a member and in common with the other members of an incorporated company, he shall, for the purposes of sub-section (1), be deemed to be guilty of misbehaviour.

## CHAPTER V

Powers and functions of the Information Commissions, appeal and penalties

### 18 Powers and functions of Information Commissions:–

(1) Subject to the provisions of this Act, it shall be the duty of the Central Information Commission or State Information Commission, as the case may be, to receive and inquire into a complaint from any person,—

(a) who has been unable to submit a request to a Central Public Information Officer or State Public Information Officer, as the case may be, either by reason that no such officer has been appointed under this Act, or because the Central Assistant Public Information Officer or State Assistant Public Information Officer, as the case may be, has refused to accept his or her application for information or appeal under this Act for forwarding the same to the Central Public Information Officer or State Public Information Officer or senior officer specified in sub-section (1) of section 19 or the Central Information Commission or the State Information Commission, as the case may be;

(b) who has been refused access to any information requested under this Act;

(c) who has not been given a response to a request for information or access to information within the time limit specified under this Act;

(d) who has been required to pay an amount of fee which he or she considers unreasonable;

**(e)** **who believes that he or she has been given incomplete, misleading or false information under this Act; and**

**(f)** **in respect of any other matter relating to requesting or obtaining access to records under this Act.**

**Complaint or Appeal ?**

Since applicant … has given no reason why he does not wish to make an appeal u/s 19(1), he is advised to first make that appeal before seeking further redress before this Commission.
CIC/WB/C/2006/00032-31.8.2006

**(2)** **Where the Central Information Commission or State Information Commission, as the case may be, is satisfied that there are reasonable grounds to inquire into the matter, it may initiate an inquiry in respect thereof.**

**(3)** **The Central Information Commission or State Information Commission, as the case may be, shall, while inquiring into any matter under this section, have the same powers as are vested in a civil court while trying a suit under the Code of Civil Procedure, 1908, in respect of the following matters, namely:—**

**(a)** **summoning and enforcing the attendance of persons and compel them to give oral or written evidence on oath and to produce the documents or things;**

**(b)** **requiring the discovery and inspection of documents;**

**(c)** **receiving evidence on affidavit;**

**(d)** **requisitioning any public record or copies thereof from any court or office;**

**(e)** **issuing summons for examination of witnesses or documents; and**

**(f)** **any other matter which may be prescribed.**

**(4)** **Notwithstanding anything inconsistent contained in any other Act of Parliament or State Legislature, as the case may be, the Central Information Commission or the State Information Commission, as the case may be, may, during the inquiry of any complaint under this Act, examine any record to which this Act applies which is under the control of the public authority, and no such record may be withheld from it on any grounds.**

**19** **Appeal:–**

**(1)** **Any person who, does not receive a decision within the time specified in sub-section (1) or clause (a) of sub-section (3) of section 7, or is aggrieved by a decision of the Central Public Information Officer or State Public Information Officer, as the case may be, may within thirty days from the expiry of such period or from the receipt of such a decision prefer an appeal to such officer who is senior in rank to the Central Public Information Officer or State Public Information Officer as the case may be, in each public authority:**

**Provided that such officer may admit the appeal after the expiry of the period of thirty days if he or she is satisfied that the appellant was prevented by sufficient cause from filing the appeal in time.**

**Appeal**

"Appeal" is defined in the Oxford Dictionary as the transference of a case from an inferior to a higher Court or tribunal in the hope of reversing or modifying the decision of the former. In the Law Dictionary by Bouvier an appeal is defined as the removal of a case from a Court of inferior jurisdiction to one of superior jurisdiction for the purpose of obtaining a review and re-trial. In the Law Dictionary by Sweet, the term "appeal" is defined as a proceeding taken to rectify an erroneous decision of a Court by submitting the question to a higher Court or Court of Appeal. It is a settled law that an appeal proceeding is a continuation of the original proceeding. A decision by an appellate authority after issue of a notice and after a full hearing, in presence of both

the parties, replaces the judgment of the lower court/ authority. The decision of the appellate authority is on merit and as such, it can vary, modify or substitute its own decision in place of the decision of the inferior authority. In appropriate cases, it can quash or set-aside the decision of the inferior authority and can pass its own decision, which may be altogether different from that of the original decision. An Appellate Authority may re-examine the matter and take fresh evidence, if required, or if considered necessary.

In view of the legal position as stated above, the first Appellate Authority was justified in setting aside the order of the CPIO. The first Appellate Authority was well with in its ambit while taking up a new ground and to deny the information u/s 8(2) of the Right to Information Act, 2005. On the same analogy, this Commission is perfectly justified in looking into and considering, not only what the first Appellate Authority decided but also what was decided by the CPIO. The submission of the first Appellate Authority that this Commission should only consider the decision of the first Appellate Authority and should not look into or consider the order of the CPIO, is without any merit and as such, cannot be accepted.

CIC/WB/A/2006/00274-22.9.2006

**Appeal procedures**

the Central Information Commission Appeal Procedure Rules 2005 are clear that an appellant may be present in person or through his duly authorized representative, or may opt not to be present in appeal before this Commission. Such a principle will apply *mutatis mutandis* to any appeal before any lower authority under the Right to Information Act.

**Whether PIO can intercept the first appeal and decide it himself ?**

No .In this case -Order on appeal to the First appellate authority was communicated to the requester under the signature of PIO .

CIC Condemning the PIO's action stated : PIO putting himself in the shoes of Appellate authority, is against the letter and spirit of the Act.

CIC/OK/A/2006/00073 - 19 May, 2006

**(2) Where an appeal is preferred against an order made by a Central Public Information Officer or a State Public Information Officer, as the case may be, under section 11 to disclose third party information, the appeal by the concerned third party shall be made within thirty days from the date of the order.**

**(3) A second appeal against the decision under sub-section (1) shall lie within ninety days from the date on which the decision should have been made or was actually received, with the Central Information Commission or the State Information Commission:**

**Provided that the Central Information Commission or the State Information Commission, as the case may be, may admit the appeal after the expiry of the period of ninety days if it is satisfied that the appellant was prevented by sufficient cause from filing the appeal in time.**

**Can a PIO file an appeal with CIC against the order of an appellate officer?**

CIC held : PIO is the information provider not the seeker of information. There is no question of denial of information. There is no provision in the RTIA to consider such appeals or complaints by the PIO herself against the order of an appellate officer.

06/IC(A)/CIC/2006 - 3 March ,2006.

**Drafting an appeal :**
Appeal should be drafted in a simple and direct manner and be brief. It should not be unnecessarily long, too detailed and couched in legalese with several repetitions.
CIC/OK/A/2006/00069 - 18 May, 2006.

**Drafting an appeal :**
No fresh grounds for information can be allowed to be urged at appellate levels,unless found to be of a nature that would warrant their admittance,if the same has not been brought up at the primary level,i.e.the PIO.
CIC/AT/A/2006/00128 – 13 July,2006.

**Third party appeals**
The appellant is neither an information seeker nor provider. It is a third party, which has filed an appeal against the order passed by the appellate authority of the Directorate General (IT) allowing for the disclosure of documents,mainly Income Tax returns, to an information seeker, respondent 2, submitted by the appellant.
CIC held that I.T.returns and related documents filed by the assesses are personal information of third parties,which should not be disclosed, unless there is an overriding public interest.
327/IC(A)/2006-20.10.2006

**(4)** **If the decision of the Central Public Information Officer or State Public Information Officer, as the case may be, against which an appeal is preferred relates to information of a third party, the Central Information Commission or State Information Commission, as the case may be, shall give a reasonable opportunity of being heard to that third party.**

**(5)** **In any appeal proceedings, the onus to prove that a denial of a request was justified shall be on the Central Public Information Officer or State Public Information Officer, as the case may be, who denied the request.**

**(6)** **An appeal under sub-section (1) or sub-section (2) shall be disposed of within thirty days of the receipt of the appeal or within such extended period not exceeding a total of forty-five days from the date of filing thereof, as the case may be, for reasons to be recorded in writing.**

**Deemed refusal** :
If the appellate officer fails to pass an order within 45 days of the appeal, it was construed as a deemed refusal.
CIC/WB/A/2006/00011-3 January,2006

**(7)** **The decision of the Central Information Commission or State Information Commission, as the case may be, shall be binding.**

**Review :Can CIC review its own decision ?**

Yes .A review is permissible only:

- If there is a technical error in the decision
- If there was an omission to consider certain material facts relevant for the decision.
- If appellant was not given opportunity of being heard

- If PIO has not enclosed relevant supporting documents in his comments furnished to CIC.

Review Application No. 1/2006 - 16 May ,2006.

**Review *suo motu* :**

CIC decided to review the case *suo motu*,more for the purpose of clearing the doubts of the appellant than to alter or modify the decision.
43/ICPB/2006 – 7 July,2006.

**(8) In its decision, the Central Information Commission or State Information Commission, as the case may be, has the power to—**

**(a) require the public authority to take any such steps as may be necessary to secure compliance with the provisions of this Act, including—**

**(i) by providing access to information, if so requested, in a particular form;**

**(ii) by appointing a Central Public Information Officer or State Public Information Officer, as the case may be;**

**(iii) by publishing certain information or categories of information;**

**(iv) by making necessary changes to its practices in relation to the maintenance, management and destruction of records;**

**(v) by enhancing the provision of training on the right to information for its officials;**

**(vi) by providing it with an annual report in compliance with clause (b) of sub-section (1) of section 4;**

**CIC advises LIC to have training programs on RTI**

The CMD, LIC (Headquarters) is directed to plan and organize education and training programmes for the staff of LIC, as mandated u/s 25 of the Act, so that the CPIOs and appellate authorities of LIC do not repeat such mistakes as committed by the officials in the instant case. A compliance report should be submitted within 30 days to the Commission.
204/IC(A)/2006-25.8.2006

**CIC advises public authorities to have training programs**

[JIPMER] should have some training program conducted for those dealing with RTI applications /appeals.
236/ICPB/2006-21.12.2006

**CIC insists on training**

He[in charge of the RTI Act in the Ministry] may also ensure that proper training is given to the staff dealing with RTI applications. They may also be advised of the web site of this Commission( www.cic.gov.in)wherein most of the Decisions of the Commission are available for reference. The AA will also ensure that all pro active information which are useful to the public are updated periodically.
164/ICPB/2006-27.11.2006

**(b) require the public authority to compensate the complainant for any loss or other detriment suffered;**

**Compensation**
For the first time in its history, CIC in its decision No. 30/ICPB/2006, 13 June 2006- directed the public authority, CGHS ( Central Government Health Scheme, Pune) to pay a sum of Rs. 5000/- to the appellant Ms. M.N.Trival as compensation, and refund her the sum of Rs. 60/- paid by her as fee for –
non-application of mind by both the PIO and AO resulted in the appellant's having to interact with PIO and CIC repeatedly, causing mental harassment to her.

**Compensation**
Smt. Dasharathi of Lal Gumbad Camp, Panchshil Park, has submitted a complaint on 16.3.06 stating that when she approached the office of the Asstt. Commissioner (South) in the Food & Civil Supplies Deptt., Delhi, to ask for information regarding her application regarding Kerosene oil she was told that the officer was not present and her application could only be accepted after he returns. After waiting for 2 to 3 hours, she was told that the officer would not
return that day. She, therefore, complains that her time was wasted together with
Rs. 100/- in travel costs.
As we have held in other cases misbehaviour with applicants approaching public authorities under the R.T.I. is not acceptable and in direction violation of Sec 5 (3). In this case the PIO Shri Nand Lal will invite Smt. Dasharathi to visit his office and identify members of his staff who refused to provide her the information. Under Sec. 19(8)(b) the Public Authority will pay Rs. 100/- as damages suffered to the applicant Smt. Dasharathi. This may be either directly or through recovery from the erring officials, as deemed appropriate by the PIO.
CIC/WB/C/2006/00145 -10 August,2006.

**Compensation**
Because of not being provided with information which had already been collected by CPIO, and the latter's failure to attend two hearings necessitating adjournments, the appellant has during the hearing submitted an application for damages for expenses incurred by him amounting to Rs. 2685/- which amounts to Rs. 860/- per hearing u/s 19(8) (B), which requires the public authority to compensate the complainant for loss/damages suffered.
We find that damages in this case become due, in the case of two hearings which had to be adjourned without sufficient cause. However, we would like to satisfy ourselves regarding the authenticity of the amount claimed. Appellants may present before us the substantiation for the claim within one week of the date of issue of this decision notice.
Adjunct to Complaint No.: CIC/WB/C/2006/00042-24,Aug,2006

**Compensation**
The appellant shall be paid a sum of Rs.3,000/- by the public authority as compensation for the harassment and detriment that he has suffered. As the Appellate Authority and the CPIO should bear the full responsibility for the detriment suffered by the appellant due to their acts of omission and commission, it will be open to the public authority to recover this amount from the Appellate Authority and the CPIO.
Commission is forced to resort to these punitive measures as it feels that
officers in public authorities have been, often times, inadequately sensitive to their responsibilities under the RTI Act. This Act has been in force for over one year, and Government servants ought to have understood by now the duties the Act casts on them, especially in regard to disposing of petitions and first appeals well within time.

Failures to do so by CPIOs and AAs should be visited by penalties. The provision entitling the wronged petitioner to appropriate compensation is to be invoked whenever the reason for the officers' failures is manifestly insubstantial.
CIC/AT/A/2006/00305-31.10.2006

**Compensation**

The appellant was under no obligation to engage an advocate for filing an application to DDA or for appearing before the first Appellate Authority and before us. If the charges paid to the Counsel are deducted then the net claim, which may be allowed as "costs", comes to Rs. 939/00 only. However, as we have held in the appeal hearing it cannot be denied that appellant Shri Kundan Lal Uppal, aged & suffering from illness has been put to undue expenditure and effort by having been compelled to go through the appeal process in establishing the contradiction that he sought to establish in seeking the information in the first place. Therefore, he may be paid damages in the form of a Lump sum of Rs. 3000/- (Rupees three thousand only), which will cover his direct expenses and some of the inconvenience unnecessarily, caused to him. As clarified in the Decision Notice this amount is to be paid by the public authority, the DDA, as damages u/s 19(8)(b) of the RTI Act.
CIC/WB/A/2006/00345- 3.11.2006

**Compensation**

CIC directed the Dept. of Posts to compensate the appellant for the time he has wasted on sending the appeals to the tune of Rs.1000/-
247/ICPB/2006-28.12.2006

**Compensation**

…the claim of damages sought u/s 19(1)(b) will require to be established by the appellant.
CIC/WB/A/2006/00345-9.10.2006

**Compensation**

**…**compensation cannot be claimed from penalty imposed.That would require to be claimed separately u/s 19(8)(b) of the Act.
Adjunct to Appeal No.CIC/WB/A/2006/00305-18.12.2006

**(c)** **impose any of the penalties provided under this Act;**

**(d)** **reject the application.**

**(9)** **The Central Information Commission or State Information Commission, as the case may be, shall give notice of its decision, including any right of appeal, to the complainant and the public authority.**

**(10)** **The Central Information Commission or State Information Commission, as the case may be, shall decide the appeal in accordance with such procedure as may be prescribed.**

**20** **Penalties:–**

**(1)** **Where the Central Information Commission or the State Information Commission, as the case may be, at the time of deciding any complaint or appeal is of the opinion that the Central Public Information Officer or the State Public Information Officer, as the case may be, has, without any reasonable cause, refused to receive an application for information or has not furnished information within the time specified under sub-section (1) of section 7 or malafidely denied the request for information or knowingly given incorrect, incomplete or misleading information or destroyed information which was the subject of the request or obstructed in any manner in furnishing the information, it shall impose a penalty of two hundred and fifty rupees each day till application is received or information is furnished, so however, the total amount of such penalty shall not exceed twenty-five thousand rupees:**

**Provided that the Central Public Information Officer or the State Public Information Officer, as the case may be, shall be given a reasonable opportunity of being heard before any penalty is imposed on him:**

**Provided further that the burden of proving that he acted reasonably and diligently shall be on the Central Public Information Officer or the State Public Information Officer, as the case may be.**

**First CPIO to pay the penalty under the RTI Act**

KD Bansar created history of sorts,as she became the first Central government official to lose Rs.12,500 from her salary for violations under the RTI Act.The Central Information Commission (CIC) had found KD Bansor, an additional public information officer and an under-secretary in the National Commission for Scheduled Castes and Scheduled Tribes, and her colleague Tikam Singh, a section officer, guilty of delay in divulging information and harassing an applicant, Mukesh Kumar.

When the Commission failed to provide the relevant information even after a CIC order, Information Commissioner OP Kejriwal invoked the penalty clause in September against the two officials. They were fined Rs 25,000 — the maximum amount under the RTI Act.

Last week, the SC/ST Commission sent the CIC a cheque of Rs 12,500 that was deducted from Bansor's salary. But the fine could not be recovered from Singh's salary as he has since been transferred to the ministry of social welfare and justice. However, the Commission said they had asked Singh's new ministry to make sure they deduct his salary.

HindustanTimes.com-14.11.2006
CIC/OK/A/2006/00077-6.10.2006

**Penalty**

For the first time in its history of the CIC ,Sri Wajahat Habibullah Chief Information Commissioner imposed a penalty of Rs.25000/- on a P.I.O.- Complaint No: CIC/WB/C/2006/00040,5 June,2006. Vide Decision Notice dated: 23/5/'06 on the above cited complaint under the Right to Information Act, 2005, Section 18 (1) in the case of Shri Ajay Kumar *Goel v M.C.D.* we had decided as follows:

"Since the PIO has been held in violation of prescribed limits u/s 7(1), he may appear before this Commission on June 2, 2006 at 11.00 am to show cause why penalty u/s 20 (1) should not be imposed on him." Deputy Commissioner Shahdara (South) Zone, Delhi, PIO, has failed to appear before the Commission on the due date and time, despite a telephone reminder. Because the burden of proving that he acted reasonably and diligently is on the PIO under Proviso II to Sec 20(1), it is assumed that he has no reasonable cause to show why penalty should not be imposed. Under the aforementioned Section of the Act, penalty shall be imposed on any of the following

grounds:If PIO has

a) refused to receive an application
b) not furnished the information within the time frame specified in Sec 7(1)
c) malafidely denied the request for information or knowingly given incorrect information
d) obstructed in any manner in furnishing the information

By not supplying some of the information sought by the applicant as found by us in the Decision Notice of 23/5/'06, PIO/ Deputy Commissioner, Shahadara (South) Zone,M.C.D. is in violation of b) above, and by evading his responsibility to provide the information sought, also obstructed the complainant's access Since the time from which the information became due, i.e. 18/12/'05, he will therefore pay a penalty of Rs 250/- for every day subject to a maximum of Rs.25000/-

**Penalty**
CIC imposed penalty on employees of the National Commission for Scheduled Castes New Delhi ,held responsible for the delay in handling the matter.The Commission directed that a penalty of Rs. 25,000 may be imposed on both, the Section Officer, Shri Tikam Singh and APIO, Mrs. K.D. Bhansor to be shared equally.
CIC/OK/A/2006/00077-6.10.2006

**Penalty**
Commission imposed a penalty of Rs.13,750/- on Prof. Akhtar Majeed, Registrar, JamiaHamdard, New Delhi.The Commission further authorised and requested the Vice Chancellor,Jamia Hamdard, New Delhi to cause the recovery of the amount of penalty **from the salary** of Prof. Akhtar Majeed and remit the amount by Demand Draft/Banker's Cheque drawn in favour of Pay & Accounts Officer, DP&AR, payable at New Delhi, to Shri Pankaj K.P. Shreyaskar, Assistant Registrar,Central information Commission, 4th Floor, Block No. IV, Old J.N.U. Campus,New Delhi – 110067, by 15th September, 2006.
CIC/OK/C/2006/00042-28 July,2006.

**Penalty**
Appellant's attention is drawn to first proviso to Section 20 which reads ***"provided that CPIO shall be given a reasonable opportunity of being heard before any penalty is imposed on him".*** Therefore, the law mandates giving a show cause notice to the CPIO even in a case, when the Commission finds, while deciding an appeal, that there was delay in furnishing information.
To determine the period of default, this Commission does not act mechanically but uses its discretion, taking into account all circumstances as explained in the comments of the CPIO.
43/ICPB/2006 – 7 July,2006.

**Penalty**
CIC imposed penalty of Rs.3500 on PIO Sri Dharamvir Singh, Directorate of Education, NCT, Delhi for delay in furnishing information.[35 Appeal Nos. CIC/WB/A/2006/00221-32, 00233-46 & 00247-55,dt.4.10.2006]

**Penalty**

PIO Shri OP Mishra[DDA] liable to penalty u/s 20(1) of the RTI Act, 2005. He will, therefore, pay a penalty of Rs. 1750/- @ Rs. 250/- per day from 24.11.05 to 30.11.05, the date on which the response was sent to appellant purporting to be information sought.
CIC/WB/A/2006/00307 & 308-4.12.2006

**Penalty**
Shri P.R.Sethi, Dy. Commissioner, MCD Sadar Paharganj Zone, who was then Dy. Commissioner (S&JJ) has appeared before us as directed in our Decision of 1.12.2006. He has also shown us the file maintained on the subject and the noting. From the noting, it is clear that the file was actually seen and signed by him on 6.1.06 i.e. a day after the information sought had become due. Further, there was obviously non-application of mind on the time spent on the information required to be provided with the result that the response was only sent on 13.1.06. The admitted delay of nine days @ Rs.250/- per day amounts to Rs. 2250/-. This amount will be paid by the PIO Shri P.R.Sethi. The Commission directs the Commissioner, MCD to ensure payment, failing which cause recovery of the amount of penalty from the salary of Shri PR Sethi, made payable in the name of P&AO, DP & PR in New Delhi, under intimation to Shri Pankaj Shreyaskar, Assistant Registrar in this Commission by January 3, 2007
CIC/WB/A/2006/00305-18.12.2006

**Penalty**
[Appellant: Shri Bhik Ram
Respondent: A.D.M. (South, Govt. of NCT of Delhi)]
By our order of 7.12.2006, we had directed as follows :
“As held by us in our decision of 28.11.2006 the information supplied on 19.6.06 was only cursory and cannot be construed as an adequate response to the information sought by Appellant Shri Bhik Ram.
During the hearing Shri A.K.Choudhary, N.T.(LA) who is assisting Shri A.K.Singh argued that much of the information sought was not available in the office of D.C.(South) and would have to be obtained from other sources. He could not, however, explain why this was not brought to the notice of the applicant, much less the application transferred as was mandated u/s 6(3)(1) & (2). Shri Nitin Panigrahi, N.T. who supplied the information to PIO is guilty of having supplied incomplete information. He is, therefore, liable for penalty u/s 5(5).
Both Shri A.K.Singh and Shri Panigrahi are, therefore, in violation of sec. 7(1) of the R.T.I. Act and liable to penalty. Shri A.K.Singh will be liable till the date he handed over the charge of the position of ADM (South). He is, therefore, required to pay Rs. 13,250/- @ Rs. 250 per day from 1.6.06 when the information became due to 23.7.06 when he demitted office. Shri Panigrahi is also so liable because he provided the incomplete information which was forwarded by PIO and ADM (South) without application of mind to applicant Shri Bhik Ram. The DC (South) is, therefore, directed to determine the quantum of penalty each of the above two Officers is to be shared. The Commission further directs the DC(South) to cause recovery of the amount of penalty from the salary of S/Shri A.K.Singh and Panigarhi, made payable in the name of P&AO, DP & AR in New Delhi and submitted

to Shri Pankaj Shreyaskar, Assistant Registrar in this Commission by
January 3, 2006 for further depositing in the appropriate Account Head.
We have by our Decision Notice of 28.11.06 directed that information
sought be supplied within 15 days. The present ADM (South) and PIO
Shri S.K.Singh is, therefore, liable for penalty from 23.7.06 till the date
the information is supplied. He may show cause either in writing or by
personal appearance on 22.12.2006 at 10.00 a.m. as to why a penalty
@ Rs. 250/- a day should not be imposed upon him till such date as
the information sought is actually supplied, subject to a maximum of
Rs. 25,000/-"
Adjunct to Appeal No. CIC/WB/A/2006/00435-22.12.2006

**Penalty**

[Appellant: Prof. B.B.Lal
Respondent: Delhi Development Authority]
In our decision notice of 28-11-2006 in the above case, we have directed as
follows:
"The request for information stands acknowledged to have been
received on 10.11.06 as per cash receipt for the fee of Rs. 10/- No.
161480. PIO Shri O.P.Mishra shall explain why this information
was not supplied by 10.12.05 and Show Cause either in writing or
by personal appearance before us by 6.12.2006 at 10.00 a.m. why
a penalty of Rs. 25,000/- @ Rs. 250/- a day, till the information
sought is provided, subject to that maximum limit, should not be
imposed on him for his failure to do so".
Shri O.P. Mishra did not appear before us on the due date nor have we
received any response to the show cause notice issued to him. The dispatch
register of this Commission shows that the decision notice was dispatched to
respondent Shri OP Mishra at serial No.17046 of the Register by speed post. It
is presumed that this has been received by him. A penalty of Rs.25000/- is,
therefore, imposed on Shri O.P. Mishra, OSD (Lands) DDA to be recovered in
two installments from his salary of February and March, 2007. The Commission
further directs the Vice Chairman DDA to cause recovery of the amount of
penalty from the salary of Shri OP Mishra OSD (Lands), DDA made payable in
the name of P&AO, DP & PR in New Delhi, and submitted to Shri Pankaj
Shreyaskar, Assistant Registrar in this Commission starting March 3, 2007 for
further depositing in the appropriate Account Head.
Adjunct to Appeal No. CIC/WB/A/2006/00428-24.01.2007

**Shifting the burden of proof**

[Appellant:
Ms. Seema Bhattacharya
Respondent: Dy. Commissioner, Shahdara (North Zone), MCD]

In response to Show Cause Notice Shri A.K.Singh, at present Dy.
Commissioner, Shahdara (North Zone) appeared before us on 5.12.2006 and
submitted his explanation under a letter dated 28.11.2006. His explanation for
the delay in supply of information in response to the request of appellant Ms.
Seema Bhattacharya of 10.2.06 is as follows:
"The Superintending Engineer-XI was requested to send the

reply of said ID vide Assistant Commissioner's Office letter No. DC/Shah(N) 2006/166 dated 11.3.06, but the information was not received and, therefore, Department had to issue following reminders to obtain information:
Reminders/letters:
1) Letter No. DC/Shah(N)/2006/186 dated 17.3.06
2) Letter No. DC/Shah(N)/2006/201 dated 22.3.06
3) Letter No. DC/Shah(N)/2006/219 dated 10.4.06
However, the Superintendent Engineer XI Shahdara North Zone sent a consolidated reply on 17.7.06, which was sent to the applicant, vide this office letter No. DC/Shah(N) Zone/2006/436 dated 21.7.06 by speed post."
…However, since the PIO had forwarded the letter to Superintending Engineer-XI asking for the information requested within a day of receipt of the application, he cannot be held liable for penalty u/s 20 of the Act. On the other hand, we find that response from Superintending Engineer-XI was received only on 17.7.2006, which is in fact a violation of the time limit prescribed u/s 7(1) of the Act. Shri Devinder Singh, Superintending Engineer-XI, MCD Delhi will, therefore, show cause by 10.30 a.m. of 21-12-06, either in person or in writing why a penalty of Rs. 250/- per day for 129 days should not be imposed on him from the date the application was forwarded to him dated 11.3.06 to 17.7.06 i.e. the date when the information was supplied by his office, subject to a maximum of Rs. 25,000/-
Adjunct to Appeal No. CIC/WB/A/2006/00377 -5.12.2006

In his response to our Show Cause Notice, Shri Devinder Singh, Superintending Engineer has indeed expressed regret for the delay. The plea that the Division could not react to the ID or to the reminder sent as most of the staff was busy with the sealing/demotion operations being carried out in the light of orders of Hon'ble High Court and Supreme Court., could be cited as reasonable cause for delay, in case the delay was a matter of a few days. However, in this case the delay is of 129 days. This cause, therefore, cannot be accepted to be reasonable. Shri Devinder Singh SE, being liable for penalty u/s 5(5), the penalty will, therefore, require to be imposed to the maximum limit of Rs 25,000/- since the time taken for providing the information is in excess of 100 days. The Commission directs the Additional Commissioner (Engineering), MCD to cause recovery of the amount of penalty from the salary of Shri Devinder Singh in suitable instalments made payable in the name of P&AO, DP & AR in New Delhi, under intimation to Shri Pankaj Shreyaskar, Assistant Registrar in this
CIC/WB/A/2006/00377-21.12.2006

**Waiver of penalty**
[Appellant: Shri V.P.Singh
Respondent: Directorate of Audit, Govt. of NCT of Delhi]
In our Decision Notice of 8.11.06 in the above case, we had directed as follows:
"Even though the PIO Shri Gauba has not violated time limits in responding to the information sought, the manner of disposal of the application and appeal leaves ground for suspicion that the request for information has been either malafidely denied or

misleading information given knowingly. Shri S.C.Gauba will show cause by 10.30 a.m. 30.11.2006 either in person or in writing why a penalty should not be imposed on him from the date of issue of these orders till the information is received by the appellant upto a maximum of Rs. 25,000/- ".

Accordingly by letter of 16.11.06 Shri S.C.Gauba PIO and DCA (Audit) NCT Delhi has responded by indicating that the information sought has been sent to appellant Shri V.P. Singh by letter of 14.11.06 as directed, a copy of which has been attached with his explanation. He has explained the refusal of information in the first instance on the following grounds :

"Initially the request of the appellant was not accepted to under 8(1)(J) (wrongly) typed as 8(1)(f) treating the information as private. I request and assure your august honour that no malafide intention had been made. The information was denied only due to academic interpretation of sec. 8(1)(j)."

He has also noted the directions of this Commission.

Although as we have found in our Decision Notice the response to the application received from appellant Shri V.P.Singh by PIO Shri Gauba had not violated time limits having been supplied vide letter of 23.5.06 in response to an application dated 5.5.06,notice was issued to him on suspicion of malafide. Since the information has been supplied to appellant Shri V.P.Singh immediately on receipt of our Decision Notice and in light of the explanation of PIO Shri S.C.Gauba that the refusal was on grounds of sincere misinterpretation, the PIO Shri Gauba can be given benefit of doubt that he has acted with due diligence in this matter. The Show Cause Notice is disposed of accordingly.

Adjunct to Appeal No. CIC/WB/A/2006/00312-22.12.2006

**H.O.D.'s failure to assist the Commission**

The Commissioner, Municipal Corporation, Delhi has failed to assist the Commission which he was legally bound to do, and he has also failed to explain as to why the orders of this Commission were not executed. It also appears that he has thereby caused an interruption to the proceedings. He has, therefore, committed offences punishable u/s176, 187,188 and 228 of the Indian Penal Code.

NOW THEREFORE, it is ordered as follows:

i) That the Commissioner, MCD shall appear in person on 18thAugust, 2006 at 10:30 a.m. and show cause

a) as to why he be not prosecuted for committing the said offences and

b) as to why appropriate action be not recommended against him u/s 20(2) of the Right to Information Act; and

c) as to why such further action/ actions be not taken as this Commission may deem fit and proper.

ii) He is further directed to furnish the name and address of the concerned CPIO(s) who were responsible for not furnishing the information to the appellant, so as to enable initiation of appropriate proceedings against him.

CIC/WB/C/2006/ 00040, 9 August, 2006

**Chasing the PIO**

Adjunct to Appeal No.CIC/WB/A/2006/00423 -11.12.2006

Shri C.Arvind, ADM (NW) at the time when the application was received
and to whom Show Cause Notice for imposition of penalty of Rs.8500/- was
addressed by us in our decision notice of 27/11/'06 is on study leave to the USA.
Shri Krishan Kumar present ADM (NW) appeared before us and indicated that he
is ready to represent Shri C. Arvind. However, Shri C.Arvind is the SPIO liable for
penalty, since the delay in providing information took place under his watch**.** He
may either respond to the Show Cause Notice directly to this Commission
by E-mail or by FAX or authorize his successor to plead his case in the
matter.
The Show Cause notice together with this interim order may be forwarded to Shri
Arvind at the following EMail address :…He may proceed either in explaining the delay
through Email/FAX or he may authorize Shri Krishan Kumar, present ADM(NW) to
explain the reason for this delay.

**Due diligence**
[If the timelimits could not be adhered to] the CPIO could have taken the appellant into confidence and kept him periodically posted with the progress of the information gathering process.
CIC/AT/A/2006/00031 -10,July,2006.

**Due diligence**

- PIO has furnished details of the circumstances under which the information sought for by the appellant could not be furnished within the statutory period of 30 days : that the area of RTI was new to him and other officials were also not very familiar with it; that there was/is an acute shortage of administrative and faculty positions in the Institute; that the concerned dealing assistant was away on training from January to March; that there were two major activities in the Institute during that period, which, as the head of Department of Communication, he had to actively involve himself;
- that besides being the CPIO, he has various other major responsibilities in the Institute. Therefore, the delay was not intentional and as a matter of fact, since he has become familiar with RTI now, 49 out of 59 cases registered under RTI Act in the Institute, he has already disposed of 49 cases. He has also assured that in future no such delay would occur. Accordingly, he has sought for condonation of delay.

- CIC Held : I have considered the matter carefully and I am convinced that the delay on the part of the CPIO was neither intentional nor deliberate. In view of the fact that he has assured that such delays would not occur in future, I condone the delay
- 60/ICPB/2006 – 31 July,2006.

**Due diligence**
The PIO and the AA have taken the plea that they were engaged in some important work such as budget preparation, financial year closing, preparation of agenda etc. for high level meetings, elections and so on. **Pressed for time** as they were, they could not reply to the requestor within the stipulated time. Given the nature of the requestor's queries, **consultation** with the Legal Department also became necessary, which consumed a good lot of time. In any case, all care has been taken to provide

him with clear and accurate information. From the material before me, I am inclined to agree with the CPIO that the delay caused by him was not deliberate or without reasonable cause. As such, I am not inclined to invoke the penalty provisions against him. The complaint is, therefore, dismissed.
CIC/PB/A/2006/00074 - 28 June 2006

**Due diligence**

The CPIO has urged that the delay was caused by the logistic of collecting the information from several sources, his absence from office on leave and his relative lack of familiarity with the processes under the RTI Act as well as his precise role. Only after he attended a few training classes did he realize what his role was and how to discharge the same.

The CPIO, no doubt, could have done better. He could have taken the appellant into confidence and kept him **periodically posted with the progress** of the information gathering process. However, the reasons for delay seem to meet the test of "reasonable cause" under Section 20 of the RTI Act.
CIC/AT/A/2006/00031 -10,July,2006.

**Due diligence**

It may have been a lot better if the CPIO had kept the complainant periodically **informed** about the stages of the processing of his case and taken him into confidence about the possibility of some delay.
CIC/AT/A/2006/00066 – 4 July,2006.

**Can an appellate officer be penalized under the Act ?**

This Appellate authority is not covered under the penalizing provisions of the Act. [But in this case] he clearly failed to uphold the law or Act in the public interest .This decision may be sent to [the public authority] to consider disciplinary action under their (service) rules.
CIC/EB/C/2006/00040 - 24 April,2006.

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**(2) Where the Central Information Commission or the State Information Commission, as the case may be, at the time of deciding any complaint or appeal is of the opinion that the Central Public Information Officer or the State Public Information Officer, as the case may be, has, without any reasonable cause and persistently, failed to receive an application for information or has not furnished information within the time specified under sub-section (1) of section 7 or malafidely denied the request for information or knowingly given incorrect, incomplete or misleading information or destroyed information which was the subject of the request or obstructed in any manner in furnishing the information, it shall recommend for disciplinary action against the Central Public Information Officer or the State Public Information Officer, as the case may be, under the service rules applicable to him.**

**Disciplinary action**

CIC recommended disciplinary action against an appellate officer. This Appellate authority is not covered under the penalizing provisions of the Act. (But in this case) he clearly failed to uphold the law or Act in the public interest .This decision may be sent to [the public authority] to consider disciplinary action under their (service) rules.
CIC/EB/C/2006/00040 - 24 April,2006.

**Disciplinary action**

The handling of the application has, at the very least been singularly maladroit. There has been, therefore, a failure in the process of supply of information at several levels: at the level of CPIO for not having followed through, after initially supplying the information; at the level of Appellate Authority who did not hear the appeal. CPIO has during the hearing averred that Shri R.K.Singh the then Appellate Authority had demitted office in June. This, however, is of no consequence since the appeal mechanism is expected to be institutional and not individual. The failure is, therefore, of the public authority as a whole. The Vice Chairman, DDA is, therefore, directed to enquire into this matter and initiate disciplinary action u/s 20 (2) against those responsible for this lapse in responding to a simple request for information. 17.11.2006- CIC/WB/A/2006/00527

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## CHAPTER VI
### Miscellaneous

21 **Protection of action taken in good faith:–**

**No suit, prosecution or other legal proceeding shall lie against any person for anything which is in good faith done or intended to be done under this Act or any rule made thereunder.**

22 **Act to have overriding effect:–**

**The provisions 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.**

23 **Bar of jurisdiction of Courts:–**

**No court shall entertain any suit, application or other proceeding in respect of any order made under this Act and no such order shall be called in question otherwise than by way of an appeal under this Act.**

24 **Act not to apply to certain organisations:–**

(1) **Nothing contained in this Act shall apply to the intelligence and security organisations specified in the Second Schedule, being organisations established by the Central Government or any information furnished by such organisations to that Government:**

**Provided that the information pertaining to the allegations of corruption and human rights violations shall not be excluded under this sub-section:**

**Provided further that in the case of information sought for is in respect of allegations of violation of human rights, the information shall only be provided after the approval of the Central Information Commission, and notwithstanding anything contained in section 7, such information shall be provided within forty-five days from the date of the receipt of request.**

**Shedule II organizations**

Sanjay kumar requested from intelligence Bureau- information regarding one of their doctors. He lost his new born son allegedly due to medical negligence of that doctor. He contested :

- requested information was not sensitive; It has public interest implication because its disclosure was meant to open the illegal medical practice of an unqualified doctor;

- Exemption provided to the organizations listed in the Second Schedule of the RTI Act was not absolute and, they had an obligation to disclose information pertaining to allegations of corruption and human rights violation.

CIC held :

- Exemption provided to the organizations listed in the second schedule is absolute in nature.
- There is no scope for disclosure of the information maintained by a schedule II organization- whether or not it is classified as sensitive or non-sensitive.
- We would urge the high offices of the I.B. to consider if they could volunteer to supply the information requested, if it did not any way compromise the functioning of I.B.
  CIC/AT/A/2006/00055 - 27 April,2006

**(2) The Central Government may, by notification in the Official Gazette, amend the Schedule by including therein any other intelligence or security organisation established by that Government or omitting therefrom any organisation already specified therein and on the publication of such notification, such organisation shall be deemed to be included in or, as the case may be, omitted from the Schedule.**

**(3) Every notification issued under sub-section (2) shall be laid before each House of Parliament.**

**(4) Nothing contained in this Act shall apply to such intelligence and security organisation being organisations established by the State Government, as that Government may, from time to time, by notification in the Official Gazette, specify:**

**Provided that the information pertaining to the allegations of corruption and human rights violations shall not be excluded under this sub-section:**

**Provided further that in the case of information sought for is in respect of allegations of violation of human rights, the information shall only be provided after the approval of the State Information Commission and, notwithstanding anything contained in section 7, such information shall be provided within forty-five days from the date of the receipt of request.**

**(5) Every notification issued under sub-section (4) shall be laid before the State Legislature.**

## 25 Monitoring and reporting:–

**(1) The Central Information Commission or State Information Commission, as the case may be, shall, as soon as practicable after the end of each year, prepare a report on the implementation of the provisions of this Act during that year and forward a copy thereof to the appropriate Government.**

**(2) Each Ministry or Department shall, in relation to the public authorities within their jurisdiction, collect and provide such information to the Central Information Commission or State Information Commission, as the case may be, as is required to prepare the report under this section and comply with the requirements concerning the furnishing of that information and keeping of records for the purposes of this section.**

**(3) Each report shall state in respect of the year to which the report relates,—**

**(a) the number of requests made to each public authority;**

**(b) the number of decisions where applicants were not entitled to access to the documents pursuant to the requests, the provisions of this Act under which these decisions were made and the number of times such provisions were invoked;**

**(c) the number of appeals referred to the Central Information Commission or State Information Commission, as the case may be, for review, the nature of the appeals and the outcome of the appeals;**

**(d) particulars of any disciplinary action taken against any officer in respect of the administration of this Act;**

(e) the amount of charges collected by each public authority under this Act;

(f) any facts which indicate an effort by the public authorities to administer and implement the spirit and intention of this Act;

(g) recommendations for reform, including recommendations in respect of the particular public authorities, for the development, improvement, modernisation, reform or amendment to this Act or other legislation or common law or any other matter relevant for operationalising the right to access information.

(4) The Central Government or the State Government, as the case may be, may, as soon as practicable after the end of each year, cause a copy of the report of the Central Information Commission or the State Information Commission, as the case may be, referred to in sub-section (1) to be laid before each House of Parliament or, as the case may be, before each House of the State Legislature, where there are two Houses, and where there is one House of the State Legislature before that House.

(5) If it appears to the Central Information Commission or State Information Commission, as the case may be, that the practice of a public authority in relation to the exercise of its functions under this Act does not conform with the provisions or spirit of this Act, it may give to the authority a recommendation specifying the steps which ought in its opinion to be taken for promoting such conformity.

**26 Appropriate Government to prepare programmes:–**

(1) The appropriate Government may, to the extent of availability of financial and other resources,—

(a) develop and organise educational programmes to advance the understanding of the public, in particular of disadvantaged communities as to how to exercise the rights contemplated under this Act;

(b) encourage public authorities to participate in the development and organisation of programmes referred to in clause (a) and to undertake such programmes themselves;

(c) promote timely and effective dissemination of accurate information by public authorities about their activities; and

(d) train Central Public Information Officers or State Public Information Officers, as the case may be, of public authorities and produce relevant training materials for use by the public authorities themselves.

(2) The appropriate Government shall, within eighteen months from the commencement of this Act, compile in its official language a guide containing such information, in an easily comprehensible form and manner, as may reasonably be required by a person who wishes to exercise any right specified in this Act.

(3) The appropriate Government shall, if necessary, update and publish the guidelines referred to in sub-section (2) at regular intervals which shall, in particular and without prejudice to the generality of sub-section (2), include—

(a) the objects of this Act;

(b) the postal and street address, the phone and fax number and, if available, electronic mail address of the Central Public Information Officer or State Public Information Officer, as the case may be, of every public authority appointed under sub-section (1) of section 5;

(c) the manner and the form in which request for access to an information shall be made to a Central Public Information Officer or State Public Information Officer, as the case may be;

(d) the assistance available from and the duties of the Central Public Information Officer or State Public Information Officer, as the case may be, of a public authority under this Act;

(e) the assistance available from the Central Information Commission or State Information Commission, as the case may be;

(f) all remedies in law available regarding an act or failure to act in respect of a right or duty conferred or imposed by this Act including the manner of filing an appeal to the Commission;

(g) the provisions providing for the voluntary disclosure of categories of records in accordance with section 4;

(h) the notices regarding fees to be paid in relation to requests for access to an information; and

(i) any additional regulations or circulars made or issued in relation to obtaining access to an information in accordance with this Act.

(4) The appropriate Government must, if necessary, update and publish the guidelines at regular intervals.

### 27 Power to make rules by appropriate Government:–

(1) The appropriate Government 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:—

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

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

(c) the fee payable under sub-sections (1) and (5) of section 7;

(d) the salaries and allowances payable to and the terms and conditions of service of the officers and other employees under sub-section (6) of section 13 and sub-section (6) of section 16;

(e) the procedure to be adopted by the Central Information Commission or State Information Commission, as the case may be, in deciding the appeals under sub-section (10) of section 19; and

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

### 28 Power to make rules by competent authority:–

(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.

### 29 Laying of rules:–

(1) Every rule made by the Central Government under this Act shall be laid, as soon as may be after it is made, before each House of Parliament, while it is in session, for a total period of thirty days which may be comprised in one session or in two or more successive sessions, and if, before the expiry of the session immediately following the session or the successive sessions aforesaid, both Houses agree in making any modification in the rule or both Houses agree that the rule should not be made, the rule shall thereafter have effect only in such modified form or be of no effect, as the case may be; so, however, that any such modification or annulment shall be without prejudice to the validity of anything previously done under that rule.

(2) Every rule made under this Act by a State Government shall be laid, as soon as may be after it is notified, before the State Legislature.

### 30 Power to remove difficulties:–

(1) If any difficulty arises in giving effect to the provisions of this Act, the Central Government may, by order published in the Official Gazette, make such provisions not inconsistent with the provisions of this Act as appear to it to be necessary or expedient for removal of the difficulty:

Provided that no such order shall be made after the expiry of a period of two years from the date of the commencement of this Act.

(2) Every order made under this section shall, as soon as may be after it is made, be laid before each House of Parliament.

31 **Repeal:–**

**The Freedom of Information Act, 2002 is hereby repealed.**

## THE FIRST SCHEDULE

**[*See* sections 13(*3*) and 16(*3*)]**

### Form of oath or affirmation to be made by the Chief Information Commissioner/the Information Commissioner/the State Chief Information Commissioner/the State Information Commissioner

**"I, ....................., having been appointed Chief Information Commissioner/Information Commissioner/State Chief Information Commissioner/State Information Commissioner**

**swear in the name of God**

**solemnly affirm**

**that I will bear true faith and allegiance to the Constitution of India as by law established, that I will uphold the sovereignty and integrity of India, that I will duly and faithfully and to the best of my ability, knowledge and judgment perform the duties of my office without fear or favour, affection or ill-will and that I will uphold the Constitution and the laws.".**

## THE SECOND SCHEDULE

**(*See* section 24)**

**Intelligence and security organisation established by the Central Government**

1. **Intelligence Bureau.**
2. **Research and Analysis Wing of the Cabinet Secretariat.**
3. **Directorate of Revenue Intelligence.**
4. **Central Economic Intelligence Bureau.**
5. **Directorate of Enforcement.**
6. **Narcotics Control Bureau.**
7. **Aviation Research Centre.**
8. **Special Frontier Force.**
9. **Border Security Force.**
10. **Central Reserve Police Force.**
11. **Indo-Tibetan Border Police.**
12. **Central Industrial Security Force.**
13. **National Security Guards.**
14. **Assam Rifles.**
15. **Sashtra Seema Bal.**
16. **Special Branch (CID), Andaman and Nicobar.**
17. **The Crime Branch-C.I.D.- CB, Dadra and Nagar Haveli.**
18. **Special Branch, Lakshadweep Police.**

**19. Special Protection Group.**

**20..Defence Research and Development Organisation.**

**21.Border Road Development Board.**

**22.Financial Intelligence Unit, India.**

## MORE DECISIONS FOR THE COMMON PERSON

**Are you victimized for using RTI ? CIC stands up for you !**

- Shri Dhanajay Tripathi applied to the P.I.O., B.H.U., on 11th November 2005 under the RTI Act for access to Prof. Harikesh Singh Inquiry Report into the incident[ relating to the inquiry into various aspects of incidents on 11-12 January 2005 when Shri Yogesh Roy, a student of the Banaras Hindu University, died at Sir Sunder Lal Hospital attached to the University] Registrar, BHU, is both In-charge of administration and Appellate Authority under the RTI Act, overruled the submissions of the PIO and thus became deemed PIO under Sub-Section 5 of Section 5 of the RTI Act 2005. Reply was sent to the Requester on 31.01.2006 under instruction from the Registrar denying him the information, thus, disposing of both, Appellant's application dated 11.11.2005 and his first Appeal dated 26.12.2005; CIC in exercise of powers conferred by Section 20(1) of the RTI Act 2005, the Commission imposes a penalty of Rs.25,000/- (Rupees twenty five thousand only) on Shri N. Sundaram, Registrar, Banaras Hindu University, Varanasi for denial of information despite the Commission's clear directions. CIC/OK/A/ 2006/00163-19.10.2006.

- CIC raised with the Vice Chancellor [of BHU] the issue of alleged victimisation of the [RTI]Appellant who had not been given admission to the post graduate course against seats reserved for students of the University. CIC directed that the Assistant Registrar, Shri Pankaj Shreyaskar, would visit the University to inspect the documents for satisfying the Commission that the non-admission of the Appellant was not in any way linked to the case before the Commission. the Commission directed the Vice Chancellor to release the compensation amount to the Appellant for three journeys to Delhi and back as directed in its previous order dated 17.7.2006, as required under Section 19(8)(b). CIC/OK/A/ 2006/00163-6.09.2006

- In exercise of powers conferred by Section 19(8)(b) of RTI Act – 2005, CIC directed the BHU authorities to… admit Shri Dhananjay Tripathi in the M.P.E. course for the year 2006-07 with immediate effect and grant him a grace period upto the date of admission for the purpose of attendance and to ensure that an applicant seeking information from the University under the RTI Act - 2005 is not victimized in future. CIC/OK/A/ 2006/00163-9.11.2006.

**"*Lodge FIR to initiate criminal action against those responsible for theft/loss of records*"- CIC directs the Ministry**

Ms. Misha Singh applied to the Ministry of Environment & Forests seeking information regarding environmental clearance and other parameters of the Maheshwar Hydro Electric Project, Madhya Pradesh in reference to the 1994 environmental clearance given to the NDVA and its follow up-- the reason for not providing information was that it could not be located.

On the basis of the above,CIC had directed Additional Registrar Shri L.C.Singhi of this Commission to visit the Office of the Ministry and investigate the matter of non-location of files.Accordingly, the Additional Registrar visited the office. His report is as follows:

-… the misplacement of the file is a fact. It is also a fact that the records are neither cataloged nor indexed. The department does not know how many files are untraceable. It is really strange as to how one full almirah could get misplaced and becomes "untraceable". However, prima facie there are no malafides. "

**DECISION NOTICE**

As reported by the Investigating Officer the concerned files and indeed a whole almirah are untraceable, CPIO cannot be held responsible for any malafide in the non-supply of information to applicant Ms Misha Singh and this would amount to a reasonable cause for the delay/failure to supply.

... a number of documents, which are held in public trust by the Department,have been admitted to have been mislaid. Simply stating that these are untraceable is not adequate excuse. If indeed, as suspected by the complainant,the files have actually been purloined this will amount to serious criminal act and its non-recovery a breach of trust on the part of the public authority. The Ministry of Environment & Forests will, therefore, immediately lodge a First Information Report (FIR) with the nearest Police Station to initiate criminal action against those responsible for this theft/loss.

Appeal No. CIC/WB/C/2006/00102 -16 October,2006

**Missing files**

The Public Information Officer …is, therefore, directed to make a renewed bid to trace the missing file with the full support of Member Secretary, NSES. A further period of 15 working days from the date of issue of this order is given as an opportunity for tracing the original file failing which a criminal case of theft will require to be registered with the police for further police investigation in this matter.

CIC/WB/A/2006/00536 & 540-30.10.2006

**MOU and confidentiality**

The copy of the MOU between the IOC and M/s Garima Gas Service has,…, been withheld on the ground that the document is confidential

The MoUs signed between the partner institutions contain details of cooperation mechanisms for promoting mutually beneficial activities for specific duration. Such documents should fall under the public domain. However, in case of conduct of commercial business and transaction, a clause on confidentiality of certain dealings is generally incorporated. In the instant case, such a clause is not inserted in the document under question for disclosure.

Therefore, the CPIO is directed to furnish the copy of distributorship agreement,…, after due application of section 8(1) and 10(1) of the Act.

311/IC(A)/2006-3.10.2006.

**Grievances redressal mechanisms**

All appellants who have certain grievances relating to their service matters are therefore advised to take advantage of grievances redressal mechanisms already available to them under the relevant Government Rules. The public authorities are also required to made such mechanisms effective so that the increase in frivolous applications under RTI Act could be combined.

CIC/MA/A/2006/00161 – 6 July,2006

**Ninety year old lady knocks the door of CIC for extension of passport**

...[H]ere is a case of a 90-year old lady [Smt. Krishna Devi Jhalani] who has asked for an extension of her Passport (not for a new one). Not getting any response for three months, she approaches the Information Commission. The PIO, who is also the Regional Passport Officer, neither cares to respond to the Commission's letter asking for her comments nor does she

appear in the hearing fixed by the Commission. Could there be a more callous and apathetic attitude of a government servant towards not only a member of the public but also a statutory body like the Information Commission? It is such officers who bring a bad name to the entire bureaucracy and tarnish its image. In fact, the Commission feels that a penalty for which a show cause notice is being issued is too small a punishment for a member of the bureaucracy such as this one. The concerned authorities are, therefore, hereby directed to take the strictest action against the Regional Passport Officer, who is also the PIO. No.CIC/OK/C/2006/00147-8 November, 2006

**Action taken report on complaint**

An appellant had asked for information about action taken report on the complaint filed by him before the Vigilance Officer, HPCL, Lucknow. He is an aggrieved person in the matter of allotment of petrol pump.

The process of selection of dealership for retail outlets is conducted as per the guidelines prepared by the Government. There is no reason as to why such procedures should not be made transparent to the full satisfaction of all the competitors.

In view of this, CPIO is directed to furnish the information sought, except the documents submitted by the other applicants. The action taken report, on his complaint to the Vigilance Officer, should also be provided.

176 /IC(A)/2006 - 17th August, 2006

**Officials who are responsible for delay in processing the files**

[Applicant wanted to know]…the names and the designations of the officials through whom the pension restoration file… passed and the time taken for processing at each such stage. The respondents are directed to furnish this information to the appellant… in the tabular form as indicated by the appellant.

I. Name of the applicant(s)

II. When application(s) reached CAO, E&S other officers in the hierarchy of the organization Pl indicate name and designation of each and every official(s) through which application(s) passes through (from CAO to concerned diarist/dealing hand in the section in which it was dealt with or supposed to be dealt with.)

III. For how long applications stayed with that officer / official as indicated in Col.2.

IV.What action officials, as in Col.no.II, took to process / dispose of the applicant(s) and when

V.Present status of
application and the date
on which latest action
taken;
CIC/AT/A/2006/00439-20.12.2006

**Survey Report**

Copy of the Survey Report when it was last mutated - A survey report is a public document as agreed by representatives of M.C.D. present. The act of mutation is also a legal action in the public domain….

Copy of all documents submitted for the mutation of the property. Such copy of all documents submitted for the mutation of the property will inevitably involve such documents as could fall under the mischief of sec. 8(1)(j) or claim to have been provided in confidence u/s 11. While the act of mutation itself is a public act, every document submitted in helping a public authority to arrive at a decision in the matter need not be so held. …Even if the property is involved in a legal dispute, such information as is also open to disclosure to the public may, therefore, be provided.

No.CIC/WB/A/2006/00348 dated 14.12.2006

**Industrial license**

This is a simple matter in which **a citizen has asked for information on what grounds a party has been granted an industrial license in a particular area**. It is not understood how the grant of an Industrial License which is the legal authorisation for starting any industry can be deemed to be "confidential" or why the ground for providing a license should be withheld from disclosure. It is understood that the manner of running the business can fall under the category of a trade secret or commercial confidence and therefore invite the mischief of Sec 8(d). However, a license only establishes whether an industry is authorized or not and enables a citizen to monitor whether an industrial unit is functioning in accordance with the law. Recent instances of widespread misuse of authority specifically in areas under MCD for permitting businesses in areas where they were not authorized to run businesses should induce us to follow an open policy in this regard, an inducement which is now mandated by the RTI Act

CIC/WB/A/2006/00328-11.12.2006

**Bank account of the deceased persons**

There is an established procedure to decide as to who would be the claimant of the money in the bank account of the deceased persons. Accordingly, the CPIO is directed to allow [ requester] access to the bank account of her deceased brother and furnish the information sought by her provided that she is able to prove and produce the certificate to the effect that she is the legal heir of her deceased brother.

443/IC(A)/2006-12.12.2006

**Information relating to allotment of petrol pump**

The complainant mentioned that he had sought certain information relating to allotment of petrol pump [from Bharat Petroleum Corporation Ltd.]

CIC held:…it was agreed that the following documents should be furnished to the complainant:

i)Site plan of the land submitted by the selected candidate;

ii)Copy of the sale deed/ownership papers of the land; and
iii)Letter of intent issued by the respondent.
376/IC(A)/2006-23.11.2006

**Information relating to allotment of petrol pump**
The entire process of allotment of retail outlets (ROs) and the procedure followed for preparation of merit list should fall under public domain. Accordingly, the information sought should be furnished to the appellant. Even the preparation of documents like sales officer's report, which is a part of the process of allotment of ROs, should also be disclosed.
281/IC(A)/2006-18.9.2006

**Tenders**
The appellant had sought the following information:
*"Copies of the note sheets leading to the issue of first tender, its cancellation, 2nd tender and 'award of job to the contractor' and his financial standing to execute the job of construction of 'Desulphurisation Plant'".*
The CPIO mentioned that the information sought could not be provided because the process of finalisation of tender in question was not finalized.
Hence, the information sought was denied.The CPIO mentioned that now since the matter has been finalized, the information sought could be given.
The CPIO is accordingly directed to furnish the information sought.
370/IC(A)/2006-22.11.2006

**Consumer issues**
The Appellant, …, while travelling from Hyderabad to New Delhi in AC Coach by train,found the air conditioning in the AC coach not functioning properly. The coach was so cold that many of the passengers were almost shivering. …After coming back, Shri Agarwal sought from the PIO, Railway Board, information on various issues connected with air conditioning in Railway coaches…
The Commission felt that as for the issue of compensation to Shri Agarwal, the Consumer Forum was the more appropriate agency.
However, since as the complaint was genuine, the Commission directed the Railway authorities to consider measures whereby the AC system could be substantially improved.
The Railways should examine this entire matter and inform the Commission of the steps they intend to take to remove such complaints in future by February end.
CIC/OK/A/2006/00432-16.11.2006

**EWS QUOTA- non compliance by private schools**
…we regret to note that the information given amounts to admission that no action has been taken by the Education Department, NCT, Delhi on the applications of 25.11.05 which had brought within the notice of the Department the non compliance by private schools of the NCT Govt.'s orders regarding reservation for EWS in schools. Therefore, although no penalty is proposed under the RTI Act, a copy of this decision notice will be endorsed to Hon'ble Chief Minister, NCT Delhi to bring to her notice the fact of non enforcement of the orders of NCT Delhi in ensuring reservation for EWS in Schools in this Union Territory, with the advice that Govt. may consider suitable action against those responsible for this default.
35 Appeal Nos. CIC/WB/A/2006/00221-32, 00233-46 & 00247-55--5.9.2006

**A success story**

Appellant Shri Surendra Kumar of Pitampura, Delhi made an application to PIO, DDA Shri OP Mishra, OSD (Land), seeking information on five points concerning land allotment on licence basis to Parasu Ram Dangal Society, Kashmiri Gate, Delhi The public authority persisted in pursuing the complaint on encroachment and, issuing notice to the alleged encroacher, conduct a joint verification of the site on 3/4/'06 in response to the original application.

So in the hearing PIO Mishra reported that despite resistance by the society in question, which delayed the verification, this was conducted on 14/6/'06, a large portion of unauthorized occupation identified and a demolition programme fixed for July 5, '06. A complete report would be submitted to the Commission on completion of demolition. Both appellant and respondent deserve commendation for having worked together to identify unauthorized encroachment .

CIC/WB/A/2006/00177 -12 July,2006.

**Who is using the Act?**

Combating corruption is one of the avowed objectives of the RTI Act. It would not be a happy development if the message these appeals give is that the RTI Act which promotes transparency is, quite paradoxically, also susceptible, through clever machinations, to being used to weaken, or at-least to complicate, the campaign against corruption by public authorities engaged in this task. Vigilance against these maneuverings is thus of utmost importance.

CIC/AT/A/2006/00379-27.11.2006

**Bank documents**

The documents sought for under point (a) above are those submitted by the appellant's son and these are not created by the Bank. The Bank is, therefore, not obliged to share or disclose to the public. However, in the instant case, the documents are required by the legal heir of the Bank's employee, who had submitted them. The documents in question should therefore be disclosed to the legal heir.

Likewise, the policy guidelines for appointments on compassionate grounds and the manner in which it has been implemented in the recent five cases of appointment, should also be furnished to the appellant.

245 /IC(A)/2006-6.9.2006

**Removal of encroachment**

Ajay Kumar Geol. filed a RTI a request regarding. action taken against the police officers who allegedly failed to take action on his earlier petition about the removal of encroachment on the road in the Pandav Nagar area of New Delhi.He filed an appeal with CIC where,during discussions,the A.O agreed to supply the requisite information to the requester.

CIC/AT/A/2006/00051-26 May,2006

# RTI AND BUREAUCRACY

**CIC pats P.I.O.s on their back**
He/she[P.I.O.] is rendering an extra service along with his/her normal duties and that too without any extra remuneration. The Applicants are, therefore, required to be moderate in their behaviour and language towards the representatives of the Respondents.
CIC/OK/C/2006/00121-16.11.2006

**Culture of secrecy**
…PIOs of several public authorities invoke exemptions under Section 8 of the RTI Act without adequate appreciation of the evidence before them. The tendency is to apply the exemption and then leave the matter to be decided by the Commission…. they want to play safe lest their superior authorities hold it against them for disclosing information.
The AA and the PIO seem to be constantly looking over their shoulders and are driven by a safety-first approach, viz. take the safest decision (read: apply exemption) and disclose information only when so directed by the Commission. Presumably, this saves them from the ire of their superiors. Passing the buck is a safer bet, but, sadly enough, it is not conducive to accelerating decision-making or to building of popular trust in the Department's commitment to transparency.
The Commission expects the AAs and the PIOs to apply their minds, duly analyze the material before them, and then draw a conclusion about disclosure or non-disclosure based upon a cogent and objective analysis of evidence. Any other approach will not be in the interest of removing the veil of mistrust which hangs between Governments and their peoples.
CIC/AT/A/2006/00195-25.09.2006

**Video conferencing**
CIC used video conferencing with Allahabad to hear an appeal,where the PIO is present.
CIC/WB/C/2006/00082- 17 July,2006

**Exemption from appearance for a PIO**
Paramveer singh has appeared for a driving test and interview for the post of Driver in response to the Panjab University's * He requested the registrar (P.U.) :

1. Merit List of candidates who appeared in the driving test and results of the interview.
2. Copy of appointment letters issued to the successful candidates and criteria adopted.

Not satisfied with the PIO's / A.O's reply paramveer Appealed to CIC.
PIO sought exemption from appearance at the hearing before CIC and did not come to CIC.
CIC directed the PIO : to supply the requested information and held that PIO should give his own Name and the Name of the A.O. in his communications to the CIC He should not seek exemption from appearance before CIC on flimsy grounds.
CIC/OK/A/2006/00016 & C/00068-15 June,2006.

**Who should sign what :**
Considering the fact, that CPIO is punishable under Section 20 of the Act with fine, it is necessary that the decision taken by the CPIO is communicated under his signature.

Likewise, while disposing of an appeal, the appellate authority discharges a quasi judicial function and as such his decisions must bear his signature to indicate that he has applied his mind in taking the decision. The usual office procedure has no place in the matters of RTI Act.
42/ICPB/2006 – 3 July,2006.

**PIO should sign all the communications**

In terms of RTI Act, it is the responsibility of the designated
PIO/CPIO to deal with applications under the Act and any decision on
the same has to be taken by the said CPIO. In terms of Section 20(1), he
can also be penalized for knowingly furnishing incorrect, incomplete,
misleading information etc,. and therefore, every decision has to be
conveyed under the signature of the designated CPIO. Likewise,
comments on the appeal also has to be sent under his signature as he has
to justify the decision taken by him. Therefore,.. all
the CPIOs … to ensure that all the RTI applications are
disposed of under their own signatures and that normal office procedure
to convey decisions, is not applicable in communicating decisions under
the RTI Act.
182/ICPB/2006-7.12.2006

**Who should appear -PIO/AA ?**

The appellant challenged Shri Samant[PIO]'s competence to represent the
respondents[public authority]. After hearing both the appellant and Shri N.S. Samant, it was
decided that Shri Samant shall be allowed to represent the respondents as the
incumbent PIO. The Commission decided to accept Shri N.S. Samant's oral
submission that he was now the PIO. It has been in practice in the Commission
to allow the PIO to represent the AA. The Commission does not follow a
highly strict regime about the appearance of the AAs, specially so, when the
Commission separately obtains the AA's comments and thus has a chance to
study the AA's contention.
CIC/AT/A/2006/00195-25.9.2006.

**If you Fax it, you can not claim secrecy**

The communication between the State Government of West Bengal and the Home Ministry, Government of India about entrustment of the case to the CBI .
The mere fact that the Special Secretary,Ministry of Home Affairs chose to send his communication to the StateGovernment of West Bengal through an open fax proves the point that the communication was not treated as 'sensitive' by the sender. The notification of the West Bengal Government was also an open notificationTheinformation which is handled through open channels is potentially disclosable,and the public authorities ought to know this fact.
CIC/AT/A/2006/00195-25.09.2006

# THE POLICE AND RTI

**Physical safety of any person- s.8*(1)(g)* :**
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).
CIC/AT/A/2005/0003-12 July,2006.

**Process of investigation s.8*(1)(h)* :**
… the Department can not take a plea of continuing investigation when the charge sheet has been served on the appellant.
CIC/MA/C/2005/2006-4 July,2006.

**Process of investigation s.8*(1)(h)* :**
Delhi Police received a request for :

- 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.
CICAT/A/2006/00071 - 11 May, 2006.

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

**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.

**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 2005/2006.

**Removal of encroachment**

Ajay Kumar Geol. filed a RTI a request regarding. action taken against the police officers who allegedly failed to take action on his earlier petition about the removal of encroachment on the road in the Pandav Nagar area of New Delhi.
He filed an appeal with CIC where,during discussions,the A.O agreed to supply the requisite information to the requester.
CIC/AT/A/2006/00051-26 May,2006.

**Case Diary**

We wish to add here that we accept the merit of the police authority's contention
that an open-ended order by this Commission to make available to any information seeker, all the 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,therefore, have to be examined independently, on the basis of facts specific to that case.
CIC/AT/A/2006/00071-11.5.2006

**Externment proceedings**

The respondents have pointed out that all externment proceedings are magisterial proceedings in which evidence is led before the Magistrate which is assessed by him before he passes an order. Either all or a part of the proceedings can be held in camera. This provision is intended to give protection to witnesses, deponents, etc., whose identity if exposed, can bring them to harm at the hands of the person facing externment or other violent elements. In the present case, the information is asked for by the appellant at a time when the proceedings are not yet concluded and have, in fact, just begun. It shall be premature to divulge any information at this stage, as it may interfere with the on-going magisterial proceedings.
The respondents have further argued that the information sought by the appellant can be accessed by him by applying to the Magistrate who is presently examining the case.

The appellant said that the Police had started a mala-fide externment proceeding against him, which has disturbed his and his family's life and peace. It is common for such proceedings to run for long periods of time without reaching any conclusion.
Meanwhile, the person, who is the object of enquiry, suffers anxiety, financial loss and loss of reputation and is mentally broken by the time the proceedings reach any finality.

In this background, the appellant wishes to receive the basic information early enough so that he is saved the usual consequences of long drawn out proceedings by initiating appropriate steps to defend and protect himself.

I have perused the orders of the AA and the CPIO. They have rejected the appellant's request for information under Section 8(1)(g) of the RTI Act.

It is, however, noted that the basis on which the proceeding under Section 50 of the Delhi Police Act has been initiated is a report from the lower Police officers to their superior. In the normal course, this report should be made available to the person against whom it is made to enable him to prepare his defence. It would appear that the appellant has not yet been provided the above information. I also find that this information as it stands now is not barred by any of the exemptions under Section 8(1) of the RTI Act while it is clearly an information held by the public authority under Section 2(j) of the RTI Act. There is a possibility that any such report may have in it names and particulars of persons other than the appellant. It is necessary to protect the interests of such persons in the event of disclosure of this information being authorized. Section 8(1)(g) enjoins that the possibility of those mentioned in the body of an information and who may come to harm on account of disclosure of that information should be factored into any decision regarding disclosure of such information. This requirement would be met if any names other than the appellant's which may appear in such a report are covered / blacked out before disclosing the information to the appellant.
CIC/AT/C/2006/00452-28.12.2006

**Land-lady and the law enforcing authorities**

…the appellant has requested is the information submitted by a land-lady to the law enforcing authorities, which is the local Police, in respect of the tenants to whom she had leased her residential premises. This is thus a matter exclusively between the land-lady and the Police authorities. There is no requirement in law for the land-lady to make a public announcement about who her tenants are. As such, the information given by a land-lady in respect of tenants legally occupying her premises must be classified as personal information, which is unrelated to any public activity or interest. This also could cause unwarranted invasion of privacy of the individual or individuals, who in this case is the land-lady as well as the tenants. From the facts of the present case, it is clear that the information requested by the appellant is not for any public cause or activity, but to pursue a personal dispute with his mother about property. There is absolutely no reason why the information on tenants furnished to the Police by the appellant's mother should be made available to the appellant so that he can pursue further his civil dispute with this mother.
Apart from the above, I also find merit in the AA's contention that the present information requested by the appellant is fiduciary in character, which is barred under Section 8(1)(e). It is an information, which a land-lady has given in trust and confidence to the Police to enable the law enforcing authorities to carry out such checks as may be necessary to ensure that lawless and criminal elements do not hire properties of unsuspecting landlords/land-ladies. This information has been transmitted by the land-lady to the Police in trust and confidence and not for the purpose of publicity.Should the Police authorities decide to use the information for background check of the tenants through a public enquiry, that is entirely the Police's discretion. This fact alone, however, does not transform the relationship between the Police and the land-lady to anything other than fiduciary. It is, therefore, this Commission's conclusion that the AA had rightly decided that the information requested by the appellant attracted exemption under Section 8(1)(e).
CIC/AT/A/2006/00453-18.12.2006

**[vigilance] enquiry reports**

..[vigilance] enquiry reports need not be provided in toto …because these reports contain names and other particulars of deponents as well as people, who assist the police authorities in investigating cases. Disclosure of the names of such persons would expose them to avoidable risk and may also compromise the source of information of the law enforcing agencies. Section 8(1)(g) …prohibits disclosure of such information. However, as a via media i.e. between the need for protecting such information from disclosure and the right of the citizen to access information, it has been consistently decided that the concluding parts of such reports need to be disclosed to the requesters. While doing so, the public authority should make sure that part does not have names and other particulars of deponents and sources of the information received by the law enforcing agency.
CIC/AT/A/2006/00310-14.12.2006

**Camera recordings at Police offices**

Camera recordings at Police offices may and do contain movements of witnesses and other persons who assist the Police in their law enforcement function, which if disclosed is likely to endanger the life or the physical safety of such persons. Such information is exempted from disclosure under Section 8(1)(g).
CIC/AT/A/2006/00330-12.12.2006

**Enquiry reports**

... The respondents should also consider whether action under Section 11(1) would be necessary before disclosing any or all of the enquiry reports on grounds of involvement of third parties. Lest the enquiry reports to be supplied to the appellant attract exemption of Section 8(1)(g), the respondents may consider blocking off names of deponents, witnesses, etc. which might be contained in the body of these reports, before supplying the reports to the appellant.
CIC/AT/A/2006/00361-4.12.2006

**F.I.R.**

This Commission has earlier taken the view that F.I.R.s, being the key to all investigations and prosecutions of offenders, are generally exempted from disclosure under Section 8(1)(h) of the RTI Act. The F.I.R.s also attract the exemption of Section 8(1)(g) in so far as their disclosure is likely to identify the source of information or assistance given in confidence for law enforcement or security purposes and, in given cases, may even endanger the life or physical safety of those finding mention in the F.I.R.

This position will however hold good generally for all current investigations and prosecutions. F.I.R.s of cases finally decided by the Courts will no doubt fall in a different category. Such F.I.R.s will not ordinarily attract the exemption of Section 8(1)(h). Separately, such F.I.R.s will need to be tested against the requirement of Section 8(1)(g). It is necessary, therefore, that in the latter category of F.I.R.s, it would be necessary to take a case-by-case decision on the basis of the nature and the character of the F.I.R. which would then be tested against the exemption criteria of Section 8(1)(h) and Section 8(1)(g).
CIC/AT/A/2006/00409-30.11.2006

**BCs**

…disclosure of the names of all BCs as available with the Police authorities will be inadmissible in view of the exemptions under Section 8(1)(g). The names of these BCs are prepared on the basis of security related information obtained by the Police for law

enforcement purposes, and are clearly barred by the exemption of Section 8(1)(g). The Police do not disclose the F.I.R.s on account of the exemption of Section 8(1)(h).
That being so, there seems to be no exemption in respect of disclosure of the names of the people in the neighbourhood mentioned by the appellant against whom cases have been registered for offences such as chain-snatching, knifing, bootlegging, etc. Not barred from disclosure also is information as to how many cases under what Section have been registered against each of these persons now facing trial and prosecution. Since these matters are already in the court the police should not find it difficult to disclose to the appellant the particulars requested by him.

**BCs after externment**

The externment of the BCs is done on the order of
the Deputy / Joint Commissioners of Police exercising their magisterial powers. As such the orders of externment, being magisterial orders, are in the public domain. These are liable to be challenged in a superior court. There does not seem to be any reason why the names of such externed persons – whether externed outside the district or outside the State, not be disclosed. In fact, the Police should routinely disclose these names so that the citizens are made aware about whether those orders have been carried out by those against whom these are issued. This will enable the public to extend its cooperation to the Police in discharging the law enforcement function with greater efficacy.
CIC/AT/A/2006/00370-27.11.2006

**Enquiry reports**

The uniform view taken was that in all matters of Police enquiries on petitions filed by citizens, it was not necessary to disclose the entire enquiry report if it contained references to people, who gave information or have had their depositions recorded in good faith and in confidence. The identities of such citizens who cooperateMwith the law enforcement authorities need to be protected. However, as in earlier casesMand in the case of *Prem Peyara Vs. Delhi Police in Appeal No. CIC/AT/A/2006/00354*,the appellant in this case as well is entitled to receive the concluding portion of the Enquiry Report along with any order that might exist about further action on the basis of those conclusions.
It is, therefore, directed that the respondents shall furnish to the appellant the
concluding portion of the vigilance enquiry report mentioned in the appellant's original request for information as well as the order of the competent authority regarding further action on the basis of that report, if any. This may be completed within 2 weeks from the date of the receipt of this order.
CIC/AT/A/2006/00373-23.11.2006

**Accused and RTI**

He[A.A.] has rightly concluded that since the appellant as an accused himself was entitled to receive the documents which he had mentioned in his RTI petition, it should be presumed that he already has access to these documents. The appellant will have to clearly state that he has not received those documents from the Court in order that his case could be examined under the RTI Act.
I am in agreement with the contention of the AA that the appellant could be provided not the full reports of the Investigating Officers, but the concluding parts of the report containing the Investigating Officer's findings. The AA has recorded that this has already been done, but the appellant claimed before me that he had not received the information.
The PIO may supply again to the appellant, within 2 weeks from the date of the
receipt of this order, the concluding parts of the Investigating Officer's report which contained his findings.

The AA has also correctly held that details of the Daily Diary, which contained
in it names and addresses of informants, witnesses and other contacts of the police authorities, could not be disclosed to the appellant under Section 8(1)(g) of the RTI Act. This is congruent with the Commissions orders in similar cases.
CIC/AT/A/2006/00354-1.11.2006

**Enquiry reports**

the Commission has taken the view that enquiry reports such as these may be disclosed to an appellant subject to the condition that its disclosure did not attract the exemptions of Section 8(1)(g) and Section 8(1)(h).
In respect of Section 8(1)(g), it may be stated that the Enquiry Officers, who prepare such reports record statements of several witnesses, who give their depositions in confidence to the Enquiry Officer. Disclosure of the names of such persons may lead to exposing them to wholly avoidable risks and even endanger their safety and their lives.The Commission, therefore, has not countenanced disclosure of the entire enquiry reports to appellants. However, in the interest of transparency and in keeping with the spirit of the Right to Information Act, disclosure of such enquiry reports, after deleting the names of deponents and other persons, who might have cooperated with the enquiry proceedings, have been authorized. In certain cases, the public authorities have been directed to disclose gist of the enquiry report or the concluding part of the Enquiry Officer's observations / findings.
…Before disclosing the reports to the appellant, the names of deponents, witnesses or any other persons who might have assisted in the enquiry proceedings may be deleted in a suitable manner.
CIC/AT/A/2006/00144-21.11.2006

**Ongoing investigation**

The appellant … argued that the information which he had sought, no doubt, pertained to an ongoing investigation about the death of his daughter under unexplained circumstances. The appellant suspected foul play in the death of his daughter. He has been obviously meeting and representing to various Police officers in order to get the investigation move forward, but as alleged by him, nothing seemed to have happened to expedite investigation. The appellant says that he has submitted a number of applications pointing out the deficiencies in the conduct of the investigation but has not received a response. His appears to be a case of a distraught father seeking justice for what he suspects to be unexplained death of his daughter.In fairness to him, the Police authorities should take him into confidence about the stage and the status of the investigation.
CIC held:
… that disclosure of information pertaining to ongoing investigations is
exempted under Section 8(1)(h) of the RTI Act. However, in this present case I do not think the disclosure of the present stage and the status of the investigation to the appellant will in any way impede the process of investigation as laid down in Section 8(1)(h). Far from impeding the investigation, taking the appellant into confidence will give a positive direction to the investigation and enable the authorities concerned to swiftly reach at the truth.
In view of the above, the respondents are directed to inform the appellant the
present stage and the status of the investigation in respect of all its aspects.
CIC/AT/A/2006/00355-26.12.2006

# High Courts and the RTI Act

**Delhi High Court issues  stay on a Decision given by CIC**

[*For the first time after the enactment of the RTI Act, A High Court issued stay on a Decision given by CIC.*]

The Delhi High Court on 22 August,2006  stayed  the CIC order directing the government to make available to it copies of late president K.R. Narayanan's letters to then prime minister Atal Bihari Vajpayee about the 2002 communal violence of Gujarat.
Justice Anil Kumar stayed the August 8 order till January 11, 2007 on an application moved by the Union Government saying that the letters could not be made available to CIC as it would impinge on the national security and integrity.

Additional Solicitor General Gopal Subramaniam and Standing Counsel Rajiv Mehra argued before the court that the CIC's order was "erroneous, ultra vires and untenable in law."

Quoting Article 74 and 78 of the Constitution, the Union Government submitted that any advice tendered by the Union Council of Ministers or correspondence exchanged between the President and the Prime Minister enjoyed immunity from public scrutiny.

The Centre asserted that the correspondence between the President and the Prime Minister were "classified" and "privileged" documents under Article 74 and hence the provisions of the Right to Information Act, 2006 cannot overide the same.

The petition complained that the CIC erroneously applied the provisions of Section 6 of RTI Act in seeking production of the classified documents from the Government.

Rashtrapathi Bhavan had earlier rejected a similar plea from the Justice Nanavathi Commission probing the post-Godhra communal carnage in Gujarat.
Allowing the plea, Justice Anil Kumar said: "The national security and integrity must prevail upon all the rights even if they are enshrined in the constitution."

**Delhi HC extends stay on disclosure of scores in Civil Services exams.**

The Delhi High Court further extended till March 20 the stay on the Central Information Commission's (CIC) order to disclose the individual scores of the candidates who appeared in the civil services examinations, 2006.

Justice Sanjay Kishan Kaul extended the stay and fixed March 20 for the final hearing of the matter.

On November 13 last year, the Central Information Commissioner had ordered to disclose within two weeks

marks secured by candidates in the civil services examination, 2006.

UPSC had then filed a writ petition in the High Court challenging CIC's order on the ground that disclosure of information would undermine the entire examination procedure and cause irreparable loss to it.

A full bench of the CIC, headed by Chief Information Commissioner Wajahat Habibullah, had passed the order on separate applications filed by over a 100 unsuccessful candidates seeking disclosure of marks obtained by them in the prelims.

The plea to CIC was against UPSC's decision that information sought by around 2,500 IAS aspirants like cut-off marks, individual scores, scaling criteria and model answers were top secret and disclosure of such "crucial" documents would lead to violation of intellectual property rights.
Bureau Report , **Zee News.com,17 January,2007**

## Delhi High Court stays CIC order on UPSC

The Delhi High Court on November 27, 2006 stayed the execution of the order of the Central Information Commission (CIC) to disclose the marks of the candidates, who appeared in the preliminary test of the civil services examination conducted by the UPSC this year.

Justice Anil Kumar said the order of the CIC, the apex body to implement the Right to Information Act (RTI Act), would not be implemented till January 16, the next date of hearing.

The Union Public Service Commission (UPSC) had filed a petition in the High Court challenging CIC's November 13 order to disclose within two weeks the marks of the candidates.

In its writ petition, the UPSC had sought directions to the CIC for an ex-parte interim stay of its order on the ground that disclosure of the information would undermine the entire examination procedure and cause irreparable loss to it.

A full-bench of the CIC, headed by Chief Information Commissioner Wajahat Habibullah, had passed the order on separate applications filed by over a 100 unsuccessful candidates seeking disclosure of marks obtained by them in the preliminary examination.

The CIC had asked the UPSC to reveal the cut-off marks in optional papers of the short-listed candidates, who made it to the mains examination.

The commission also directed the UPSC to disclose its scaling system saying that "it involves large public interest and provides level-playing field to all aspirants."

The UPSC in September this year decided that information like cut-off marks, individual scores, scaling criteria and model answers sought by about 2,500 IAS aspirants were top secret and disclosure of such "crucial" documents would lead to violation of intellectual property, said the application.

"Once the data is disclosed the damage will be done and it will not be possible to undo the same... Consequently, the UPSC, which is a constitutional authority, will be put to irreparable loss even as no such loss will be caused to the CIC," the petition said.
[United News of India,-Hindustan Times]

## <u>CIC directs UPSC to disclose cut-off marks of Civil Services prelims</u>

In *Rajnish Choudhry Vs. UPSC* [ decision 231/IC(A)/2006-1.9.2006] CIC ordered disclosure of total marks scored by the appellant in written papers as well as interview and the procedure and the technique that are followed to determine the cut-off point (or level of score of marks) to draw the line between successful candidates and others.
UPSC requested for recall of this decision and to decide the appeal de novo by the Full Commission after affording reasonable opportunity of being heard including oral hearing to UPSC.CIC decided to hear the matter by its full Bench. In the instant case, the appellants have asked for the following information:

- Cut-off marks for each of the optional subjects and the General Studies for different categories like General/OBS/SC/ST/PH;
- Details of marks obtained by the concerned appellant in the Civil Services Preliminary Examination;
- Model answers for each series of every subject.

CIC held :UPSC applies the scaling formula and accordingly, the candidates are assigned the marks after applying the scaling formula. But we see no reason as to how the assigned marks after applying the formula, whatever it might be, could be a part of Intellectual Property of the UPSC. Similarly, cut-off marks in respect of each of the subject are also fixed in accordance with the said formula. Exemption is claimed by UPSC about the "process" which has been developed as an original literary work, but the same is not true in respect of marks assigned after the process of evaluation is applied. So, whatever claim of Intellectual Property there is in respect of the formula or the process, the same cannot be applied to the product, i.e. the marks assigned to each candidate and the cut-off marks fixed in respect of each of the optional subjects… UPSC consults the subject experts, designs the questions papers, and takes model answers in respect of each of such question papers. The question papers, which are prepared by subject experts for UPSC in a particular manner, are original literary works and as such copyright in respect thereto vests in the UPSC. Since this literary work has been done by the subject experts on behalf of the UPSC, it can legitimately claim copyrights thereof and can thereby restrict its circulation or can exclude others from circulating it.
CIC directed [in the decision agreed to by the Full Bench, announced by the Chief Information Commissioner] as under:

- The UPSC shall, within two weeks from the date of this order, **disclose** the marks assigned to each of the applicants for the Civil Services Preliminary Examination 2006 in General Studies and in Optional Papers

- The UPSC, within two weeks from the date of this order, shall also **disclose** the cut-off marks fixed in respect of the General Studies paper and in respect of each of the Optional Papers and if no such cut-off marks are there, it shall disclose the subject-wise marks assigned to short-listed candidates

- The UPSC shall examine and **consider** under Section 8(1) (d) of the RTI Act the disclosure of the scaling system as it involves larger public interest in providing a level playing field for all aspirants and shall place the matter before the Competent Authority within one month from the date of this order. This will also cover the issue of disclosure of model answers, which we recommend should in any case be made public from time to time. In doing so, it shall duly take into account the provisions of Section 9 of the RTI Act.

**D**ecision No 354/IC(A)/2006-13 November,2006

**Right to Privacy fades out in front of the Right to Information Act and larger public interest : Madras High Court**

The Madras High Court has held that banks have a right to publish the photographs of defaulters in newspapers and that such publication will not amount to invasion into the privacy of the individual.

Justice V Ramasubramanian, who dismissed a writ petition by a defaulting borrower from State Bank of India, K J Doraisamy, said publishing the photographs of defaulters would not be 'breach of duty of secrecy and confidentiality' on the banks' part.

The State Bank of India, Erode branch, issued a notice on May 22 to Doraisamy, warning him that it will publish his photograph as well as the surety in newspapers, if the loan was not repaid.

The borrower challenged the notice on the ground that the publication of the photographs would bring down his reputation and would be violative of Article 21 of the Constitution guaranteeing Right to Privacy.

The judge held that with the advent of the Right to Information Act, 2005, the banks had a duty to inform the public and that would not amount to violation of the Right to Privacy and dignity of the borrower.

He said "the duty of the bank to disclose information to the public or the interest of the bank requiring disclosure supersedes it duty to maintain secrecy and confidentiality".

"Right to Privacy fades out in front of the Right to Information Act and larger public interest. If borrowers can find newer and newer methods to avoid repayment of loans, the banks are also entitled to invent novel methods to recover their dues", he added.
-THE HINDU,Nov.24,2006 (PTI),

**Patna HC issues notice to Bihar govt on information officers**

The Patna High court has directed the Bihar government to file a reply, within six months, stating reasons why Information Officers were not appointed in various departments as required under the Right to Information Act, during hearing of a public interest litigation petition filed by state Congress chief spokesman Prem Chandra Mishra in this connection.The counsel for the petitioner informed the court that the state Information Commission had not been provided with required infrastructure and staff, although it had been constituted about two months back. (UNI) 2 November, 2006

**High Court Directs To Implement Right To Information Act In Bihar**

The Patna High Court today directed the Bihar government to implement the right to Information Act immediately in the interest of the people of the state.

While hearing a PIL filed by the Bihar Pradesh Congress Comittee Chief Spokesperson Prem Chandra Mishra, a division bench of the court comprising Chief Justice J.N.Bhatt and Justice Shivkriti Singh asked the state government to implement the Act in Bihar at the earliest as it had already been enforced in other states.

Advocate General P K Shahi informed the court that the state government had convened a meeting on July 21 in this connection.

-13/7/2006(UNI)

**Govt staff in dock can't use RTI in case: High Court**

Will a public servant, against whom criminal investigation is pending in a court of law, be entitled to information regarding his prosecution under the Right to Information (RTI) Act? The answer is no, said the Delhi High Court recently as it upheld a decision of the Central Information Commission (CIC).
The HC's response came on a petition filed by the in-charge, Commissioner of Customs and Central Excise at Guntur, Surinder Pal Singh, aggrieved by the CIC order of August 21, 2006.
Singh, accused of abusing his official position by fraudulently reducing the excise duty to the tune of over Rs 34 lakh in 2001, had filed an application under Section 6(1) of the Act.
Seeking documents like several pages of note sheets, correspondence to and from the file with Central Vigilance Commission (CVC), an application was made before the Central Public Information Officer (CPIO). Singh also sought details of correspondence with the CVC.
Singh's request was declined by the CPIO on the ground that perusal of the file revealed that it dealt with the prosecution sanction against him by the competent authority. Moreover, Central Bureau of Investigation (CBI) had already filed a chargesheet against him in the special court at Vishakhapatnam in 2005 based on the prosecution sanction.
Aggrieved by it, he filed appeals before the Appellate Authority and subsequently CIC. The CIC also did not accede to his request, following which he approached the HC, which too held, "The decision to decline the request of the petitioner for the information regarding the sanction of his prosecution, which may impede the prosecution of the offender, cannot be faulted."
Justice P Anil Kumar declining to set aside the CIC order noted, "There is no error or illegality in the orders passed by the respondents (CIC) seeking exemption under Section 8(1) (h) of the RTI Act, 2005 nor any procedural unreasonableness can be inferred."

While Singh's counsel argued that supply of documents would not impede the prosecution as investigation is already over and papers sought are just to assist in the matter, the CIC held otherwise. It was also challenged that since prosecution sanction was first refused and then granted, the authority concerned has no right to review its order and grant the sanction for which said documents and correspondence were sought.
[Tanu Sharma ,*Posted online: The Indian Express, November 28, 2006* NEWDELHI]

**Juvenile cases should not be exposed to media: Kerala HC**

In a significant judgement, the Kerala High Court directed the State Government to ensure that juveniles in conflict with the law should not be exposed to the public and said "media trial is more painful than judicial trial." While considering a suo moto petition, the division bench comprising Justice K S Radhakrishnan and Justice M N Krishnan directed the state government and the Director General of Prosecution to direct police officials to see that juvenile delinquents were not exposed to the media.

The court also warned that erring officials in this regard might face disciplinary proceedings apart from the provisions of Section 21 of the Juvenile Justice Act.

The court also directed District Collectors to give directions to district probationary officer to inform the press about the section 21 of the Act, while dealing with the Juvenile cases.

The court said electronic and print media had given much publicity relating to a juvenile delinquent, who was chargesheeted for an offence under Section 302 IPC.

The juvenile, aged 16, was arrested on charges of murdering a seven-year-old child on June 15, 2006.

Following media reports, the Child Welfare Committee Chairman George Pulikuthiyil wrote a letter to the Chief Justice of Kerala seeking his intervention. On this basis, the court took the case suo moto.

The court observed that exposure of both the accused and victim in the media during investigation was an agonising experience to the child and family members.

The court said the Law Commission of India had recommended enacting a law to prevent media from reporting anything prejudicial to the rights of the accused in criminal cases from the time of arrest, during investigation and trial.

It was for the Parliament to look in to the report of the Law Commission and take appropriate action. (UNI) -www.indlaw.com-29November2006

**Inter-American Court Recognizes Right of Access to Government Information in *Claude Reyes and others v. Chile***

The Inter-American Court recognizes a general human right of access to government-held information, the first such ruling by an international tribunal.

The Inter-American Court, in its ruling in the case of *Claude Reyes and others vs. Chile*, found that Chile had violated the right to information both by not providing information in response to a specific request for information by three environmental activists in 1998, and also by not

having a law and other effective mechanisms to guarantee the right of all persons to request and receive information held by government bodies.
The Inter-American Court ordered Chile to release the information requested and to give reasons for any information not released. It also required Chile to adopt legal and other measures "*to guarantee the effectiveness of an adequate administrative process for dealing with requests for information, which sets deadlines for providing the information"* and instructed the Chilean State to train its public officials on the right to information and international standards on exemptions.
In this case, three environmental activists, including one member of the Chilean parliament, filed an access to information request with the Chilean government for copies of the background and environmental checks on US-based company Trillium Corporation which had started a major logging project in the native *lenga* forest of the Chilean part of Tierra del Fuego, in the Rio Condor valley. The request was filed on 6 May 1998. In spite of the successful case at the Inter-American Court, which held a public hearing in Buenos Aires in April 2006, they are still waiting for an answer.
The environmental activists who filed the request had a simple question: had the Chilean government, particularly Chile's Foreign Investment Committee, done a proper review of the possible environmental impacts of the Rio Condor Project, and had they checked out Trillium Corporation's track-record of sustainable logging, checks that were required by Chilean law before project went ahead? The only information they ever received was the total value of Trillium's investment in the project.
The staff of Terram, the environmental NGO that filed the request for information in 1998, were concerned about the possible deforestation of 285,000 hectares of native timber land, knows as *lenga*, in the Chilean part of Tierra del Fuego, land which was owned by Trillium Corporation.
For Europe this decision has a number of implications:

- Countries such as Spain, Italy and Greece, which do not have full access to information laws, will need to consider legislative reform to bring ensure they respect the right to information full, in line with international standards;
- All countries will need to review mechanisms, including training of public officials, for ensuring that they respond to all requests for information made by the public;
- The European Court of Human Rights, which to date has only ruled that there is a right to information if it is needed to defend other rights, will be likely to consider widening its interpretation of the right to information;
- The decision will give a boost to the current initiative by the Council of Europe to develop a binding treaty on the right of access to government information that would oblige 46 countries to respect this right.

*Over 65 countries globally have laws that guarantee the right of access to information. In Europe 40 of the 46 members of the Council of Europe have such laws but implementation is often imperfect and monitoring studies show that many requests by the public for government information go unanswered or are denied.*
[**access info News Release** *Madrid, 11 October 2006*,www.access-info.org]

**The Rio Condor Valley in Chile**

*photo courtesy of Greenpeace*

ANNEXURE

## 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 first question that needs to be determined in this case is as to whether the provisions of the Indian Evidence Act stands over-ridden by the Right to Information Act, 2005? In this connection it is pertinent to refer to provisions of Section 22 of the Act, which reads as under: "The provisions 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." A plain reading of Section 22 makes it clear that it not only over-rides the Official Secrets Act, but also all other laws and that ipso facto include the Indian Evidence Act. In view of this no public authority can claim to deny any information on the ground that it happens to be a "privileged" one under the Indian Evidence Act. Section 3 of the Right to Information Act confers a right on all citizens to obtain information and it casts an obligation on all public authorities to provide the information so demanded. The right thus conferred is only subject to the other provisions of the Act and to no other law.

The second question that needs to be determined is as to whether the Government or for that matter a public authority can deny or refuse to give an information to a citizen on the ground that the information so demanded is covered by Article 74 (2), 78 or Article 361 of the Constitution of India and as such it cannot be furnished. In this case the CPIO and the

Appellate Authority have argued that the Right to Information Act does not and cannot override the Constitutional provisions.

On the other hand the Appellant has submitted that there is no repugnancy between the Right to Information conferred by the Act and the constitutional provisions taken recourse to by the CPIO and by the Appellate Authority for denying the requested information. The Appellant has submitted that none of these Articles anywhere state that the information/correspondence between the President and the Prime Minister should not be disclosed. As observed by the Hon'ble Apex Court in Bommai's case, Article 361 is the manifestation of the theory prevalent in English law that 'King can do no wrong' and, for that reason, his actions are beyond the process of the court. Any and every action taken by the President is really the action of his ministers and subordinates. It is they, who have to answer for, defend and justify any and every action taken by them in the name of the President, if such action is questioned in a Court of law. The President cannot be called upon to answer for or justify the action. It is for the Council of Ministers to do so. Where the President acts through his subordinates, it is for the subordinate to defend the action. Before deciding the issue of applicability of Article 74(2) to the instant case, it is pertinent to refer again to the provisions of Article 74(2), which clearly stipulates that the court shall not inquire into whether any advice was at all tendered and even if there was any such advice, the court shall not inquire as to what advice was tendered.

In this connection the following observations of Justice Sawant and Justice Kuldip Singh in *S. R. Bommai vs. Union of India* (AIR 1994 SC 1918) regarding the scope and ambit of Article 74(2) are quite relevant: "The object of Article 74(2) was not to exclude any material or documents from the scrutiny of the Courts but to provide that an order issued by or in the name of the President could not be questioned on the ground that it was either contrary to the advice tendered by the Ministers or was issued without obtaining any advice from the Ministers. Its object was only to make the question whether the President had followed the advice of the Ministers or acted contrary thereto, non-justiciable." Justice Ahmadi also agreed that Article 74(2) is no bar to the production of all the material on which the ministerial advice was based.

This issue has been further clarified in a recent case by the Hon'ble Supreme Court (*Rameshwar Prasad and Ors.vs. Union of India and Anr.*AIR2006SC980): "A plain reading of Article 74(2) stating that the question whether any, and if so what, advice was tendered by Ministers to the President shall not be inquired into in any Court, may seem to convey that the Court is debarred from inquiring into such advice but *Bommai* has held that Article74 (2) is not a bar against scrutiny of the material." In S.P Gupta's case the question arose as to whether the views expressed by the Chief Justice of the High Court and the Chief Justice of India on consultation form part of the advice. In this case the two Chief Justices were consulted on "full and identical facts" and their views were obtained and it is after considering those views that the Council of Ministers tendered its advice to the President. The views expressed by the two Chief Justices preceded the formation of the advice. The Hon'ble Supreme Court clearly held that merely because their views are referred to in the advice that is ultimately tendered by the Council of Ministers, they do not necessarily become part of the advice. The Court further ruled that what is protected against disclosure under clause (2) of Article 74 is only the advice tendered by the Council of Ministers. The reasons that have weighed with the Council of Ministers in giving the advice would certainly form part of the advice. But the material on which the reasoning of the Council of Ministers is based and advice given cannot be said to form part of the advice.

The Hon'ble Apex Court illustrating the point with the example of a judgment clearly laid down the law as follows: "The judgment would undoubtedly be based on the evidence led before the Court and it would refer to such evidence and discuss it but on that account can it be said that the evidence forms part of the judgment? The judgment would consist only of the decision and the reasons in support of it and the evidence on which the reasoning and the decision are

based would not be part of the judgment**.** Similarly the material on which the advice tendered by the Council of Ministers is based cannot be said to be part of the advice and the correspondence exchanged between the Law Minister, the Chief Justice of Delhi and the Chief Justice of India which constituted the material forming the basis of the decision of the Central Government must accordingly be held to be outside the exclusionary rule enacted in clause (2) of Article 74."

The appellant has in this connection referred to the decision of the Hon'ble Supreme Court in *R. K. Jain vs. Union of India & Ors.* (AIR 1993 SC 1769) wherein the Apex Court has held the claim of the State Minister and the State Secretary for immunity of state documents from disclosure as unsustainable. But in this case , the Hon'ble Court did not find it necessary to disclose the contents to the petitioner or to his counsel. It may be mentioned that in this case the immunity was claimed by the State under the Evidence Act as well as under the constitutional provisions and the Hon'ble Court refused to grant a general immunity so as to cover that no document in any particular class or one of the categories of Cabinet papers or decisions or contents thereof should be ordered to be produced. It would not be out of context to refer to the decision of the Apex Court in *State of Punjab vs. Sukhdev Singh,* AIR 1961 SC 493, wherein the Hon'ble Court held that the documents which embody the minutes of the meetings of the Council of Ministers and indicate the advice given by the Council cannot be produced in a court of law unless their production is permitted by the head of the department. It was not for the court to go into the question as to whether the public interest will be really injured or not by its disclosure.

But in *State of U.P. vs. Raj Narain* (AIR 1975 SC 884) the following observations of Hon'ble Justice Mathew are worth quoting: "In a government of responsibility like ours, where all the agents of the public must be responsible for their conduct, there can be but few secrets. The people of this country have a right to know every public act, everything that is done in a public way, by their public functionaries. They are entitled to know the particulars of every public transaction in all its bearing. The right to know, which is derived from the concept of freedom of speech, through not absolute, is a factor which should make one wary, when secrecy is claimed for transactions which can, at any rate, have no repercussion on public security. To cover with veil of secrecy, the common routine business is not in the interest of the public. Such secrecy can seldom be legitimately desired."

The case of *S.P. Gupta v. Union of India*, 1981 SCC Supp. 87, decided by a seven-Judge Constitution Bench is generally considered as having broken new ground and having added a fresh, liberal dimension to the need for increased disclosure in matters relating to public affairs. In that case, the consensus that emerged amongst the Judges was that in regard to the functioning of government, disclosure of information must be the ordinary rule while secrecy must be an exception, justifiable only when it is demanded by the requirement of public interest.

In *Dinesh Trivedi vs. Union of India* (1997) 4 SCC 306 the Court reiterated the limitations of the Right to Information Act. In this context, the following observations of the Supreme Court are noteworthy. "In modern constitutional democracies, it is axiomatic that citizens have a right to know about the affairs of the Government which having been elected by them seeks to formulate sound policies of governance aimed at their welfare. However, like all other rights, even this right has recognized limitations; it is, by no means, absolute. "

In *Doypack Systems Pvt. Ltd. etc. vs. Union of India* (AIR 1988 SC 782), the production of the documents was resisted by the Attorney-General on behalf of the Union of India on the ground that the documents were not relevant and in any event most of them were 'privileged' being part of the documents leading to the tendering of the advice by the Cabinet to the President, as contemplated by Article 74(2) of the Constitution. Rejecting the claim for production of the documents, the Hon'ble Supreme Court held as follows: "It is settled law and it was so clearly recognised in Raj Narain's case (supra) that there may be classes of documents which public

interest requires should not be disclosed, no matter what the individual documents in those classes may contain or in other words, the law recognises that there may be classes of documents which in the public interest should be immune from disclosure. There is one such class of documents which for years has been recognised by the law as entitled in the public interest to be protected against disclosure and that class consists of documents that it is really necessary for the proper functioning of the public service to withhold from disclosure. The documents falling within this class are granted immunity from disclosure not because of their contents but because of the class to which they belong. This class includes cabinet minutes, minutes of discussions between heads of departments, high level inter-departmental communications and dispatches from ambassadors abroad "Cabinet papers are, therefore, protected from disclosure not by reason of their contents but because of the class to which they belong. It appears to us that Cabinet papers also include papers brought into existence for the purpose of preparing submission to the Cabinet."

From the above decisions of the Apex Court, it may be inferred that Article 74(2), 78 and 361 of the Constitution of India do not *per se* entitle the public authorities to claim "privilege" from disclosure. Now since the Right to Information Act has come into force, whatever immunity from disclosure could have been claimed by the State under the law, stands virtually extinguished, except on the ground explicitly mentioned under Section 8 and in some cases under Section 11 of the RTI Act. In this context, it would be pertinent to refer to the provisions of Section 8 of the Right to Information Act, which enlists various exemptions and clause (1)(i) whereof reads as under: (i) Cabinet papers including records of deliberations of the Council of Ministers, Secretaries and other officers: Provided that the decisions of Council of Ministers, the reasons thereof, and the material on the basis of which the decisions were taken shall be ade 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  n this section, shall not be disclosed. From the above, it appears that the Cabinet papers including records of deliberations of the Council of Ministers, Secretaries and other officers shall be made public, once a decision has been taken or the matter is complete. As such, the veil of confidentiality and secrecy in respect of Cabinet papers has been lifted by the first proviso to section 8(1)(i) of the Right to Information Act, 2005. Thus Cabinet papers including records of deliberations of the Council of Ministers, etc. can be withheld or disclosure whereof can be denied only if: i) the matter is still pending or : ii) the information comes within one of the specified exemptions under section 8(1). In view of the above observations, the CPIO cannot deny information sought under the Right to Information Act by taking recourse to either the Law of Evidence or Article 74(2), of the Constitution of India.

In this connection, it would be pertinent to refer to a latest decision of the Apex Court in *Rameshwar Prasad and Ors.vs. Union of India (UOI) and Anr.*(AIR2006SC980) wherein it has been clearly mentioned that every material that the President sees or is placed before him does not become a part of the 'advice'. The following observations in the said case are worth quoting: "But it is difficult to appreciate how does the supporting material, becomes part of advice. The respondents cannot .say that whatever the President sees -- or whatever is placed before the President becomes prohibited material and cannot be seen or summoned by the Court."  This, however, does not mean that the disclosure can be claimed as a matter of right in respect of all types/categories of information/ correspondence.

Even in S. P. Gupta's case, the Hon'ble Supreme Court held that the disclosure of documents relating to affairs of State involves two competing dimensions of public interest, namely, the right of the citizen to obtain disclosure of information, which competes with the right of the State to protect the information relating to its crucial affairs. It was further held that, in deciding whether or not to disclose the contents of a particular document, a Judge must balance the competing interests and make final decision depending upon the particular facts involved in each individual case. It is important to note that it was conceded that there are certain classes

of documents which are necessarily required to be protected, e.g. Cabinet Minutes, documents concerning the national safety, documents which affect diplomatic relations or relate to some State secrets of the highest importance, and the like in respect of which the Court would ordinarily uphold Government's claim of privilege.

In *R. K. Jain vs. Union of India* (AIR 1993 SC 1769) the following observations of the Apex Court need to be mentioned: "In a democracy it is inherently difficult to function at high governmental level without some degree of secrecy. On such sensitive issues it would hamper to express frank and forthright views or opinions. Therefore, it may be that at that level the deliberations and in exceptional cases that class or category of document gets protection, in particular, on policy matters. Therefore, the Court would be willing to respond to the executive public interest immunity to disclose certain documents where national security or high policy, high sensitivity is involved. Information relating to national security, diplomatic relations, internal security or sensitive diplomatic correspondence *per se* are class documents and that public interest demands total immunity from disclosure. Even the slightest divulgence would endanger the lives of the personnel engaged in the services etc."

In *People's Union for Civil Liberties v. Union of India* AIR 2004 SC 1442 the Hon'ble Supreme Court stated that Right to Speech and Publish does not carry with it an unrestricted right to gather information. A reasonable restriction on the exercise of the right to know is always permissible in the interest of the security of the State.

In *Chairman, Railway Board vs. Chandrima Das* (AIR 2000 SC 988) the Court held that fundamental rights guaranteed under Part III of the Constitution are not absolute in terms. Those rights will be available subject to such restrictions as may be imposed in the interest of the security of the State, or other important considerations. Interest of the nation and security of the State is supreme. Primacy of the interest of the nation and the security of the State will have to be read into the Universal Declaration as also in every Article dealing with Fundamental Rights including Article 21.

An information requested under the Act can, however, be denied under the provisions of Section 8 or Section 11. In the instant case too, the CPIO has also taken recourse to Section 8 (1) (a). In paragraph two and three of the letter dated November 28, 2005 addressed to the appellant, the CPIO, while denying the information to the appellant, has stated as under: "It may also be pointed out that in terms of Section 8 (1) (a) of the Right to Information Act, 2005, the information asked for by you, the disclosure of which would prejudicially affect the sovereignty and integrity of India, the security, strategic, scientific or economic interests of the State etc. In these circumstances, the undersigned expresses its inability to provide you the copies of the correspondence as desired by you under the Right to Information Act, 2005."

From the above, it is difficult to understand as to on what grounds the information has been denied. It is also difficult to comprehend as to how the disclosure of the information is going to affect the strategic, scientific or economic interests of the State. It appears that the denial has been communicated in a mechanical manner.

Even the Appellate authority has failed to take cognizance of these infirmities in the order of denial of information. The Appellate authority did not examine as to whether the information sought for by the Appellant could qualify for exemption under Section 8 (1) (a) of the Act. In view of the observations made above and in view of the facts and circumstances of the case, the only relevant ground for denial could be that the disclosure could prejudicially affect the security of the nation and not on other grounds like the strategic, scientific or economic interests of the State etc. It has however been strongly argued on behalf of the appellant that disclosure will in fact help restore confidence in a section of the community that was badly affected by civil strife. In contra, it has been forcefully submitted by the learned Additional Solicitor General that correspondence concerns a matter involving national security and it will not be in public interest to disclose the same. It is legally permissible for the public authority to deny the information on grounds of national security under section 8(1)(a).

However, a public authority may still allow access to such information if public interest in disclosure outweighs the harm to the protected interests. Prima facie the correspondence involves a sensitive matter of public interest. The sensitivity of the matter and involvement of a larger public interest has also been admitted by all concerned including the appellant.
In S. P. Gupta's case, the Hon'ble Supreme Court has held that the disclosure of documents relating to the affairs of State involves two competing dimensions of public interest, namely, the right of the citizen to obtain disclosure of information, which competes with the right of the State to protect the information relating to its crucial affairs. It was further held that, in deciding whether or not to disclose the contents of a particular document, a Judge must balance the competing interests and make final decision depending upon the particular facts involved in each individual case. Since two differing stands have been taken before us in regard to public interest, applying the decision in SP Gupta's case, we consider it appropriate, that, before taking a final decision on this appeal, we should personally examine the documents to decide whether larger public interest would require disclosure of the documents in question or not.
Mr. Prashant Bhushan, representing the Appellant has also agreed that some part of the correspondence may be held to be covered by Section 8(1) (a) and as such its disclosure may have to be denied, but at the same time he has submitted that then also it will be the duty of the Commission to sever that part which is prejudicial to the security and integrity of the State and disclose remaining part of the correspondence.
The Commission after careful consideration has, therefore, 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 order disclosure or not, and only then it will issue appropriate directions to the public authority.
Accordingly we direct the public authority to produce the impugned documents for our perusal in a sealed cover, at 11.00 A.M. on 22nd August, 2006 through a senior officer, who shall remain present during perusal and who will thereafter take them back after sealing the same in our presence. Summons to that effect be sent accordingly by the Registrar.
**CIC/MA/A/2006/00121-8 Aug,2006.** [Wajahat Habibullah Chief Information Commissioner; M.M. Ansari,O.P. Kejariwal and Padma Balasubramaniam Information Commissioners.]

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**The Information Commissioners-**
1. Chief Information Commissioner (CIC) Shri Wajahat Habibullah
2. Information Commissioner (IC (PB)) Smt. Padma Balasubramanian
3. Information Commissioner (IC (K)) Dr. O. P. Kejriwal
4. Information Commissioner (IC (A)) Prof M.M. Ansari
5. Information Commissioner (IC (T)) Shri. A. N. Tiwari