

OPEN DECISIONS

THE RIGHT TO INFORMATION ACT 2005

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

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

Sections 1-2

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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 paramourcy 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;**

Appropriate Government

[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.¹

- (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—**

¹ 152/ICPB/2006-9.11.2006

- (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;**

Shri Manoj Pai obtained following information on meteorites from the Prime Minister's Office:

S.No.	Question	Answer
1.	The PM's opinion on hazards from Radioactive Meteorites especially the one that fell in Gujarat on 31st July 2006.	PM's opinion on the hazards of radioactive Meteorites cannot be considered as information. As such, no information can be given.
2.	What kind of precautions has the PM's Office taken in this regard?	It is not possible for this Centre to provide information on this item.
3.	What are the institutes in India that can detect such radioactive objects and carry out research work done on the subject?	Normally Meteorites may not be active. However, radioactivity content in the Meteorites can be detected only after analyzing the sample. Health, Safety & Environment Group of BARC is competent to detect radioactivity in objects and carry out research work provided samples are submitted after proper treatment.

It was clarified ... that although “opinion” is indeed “information”, to so qualify it must be held in material form.²

File notings

The Full Bench of the Central Information Commission consolidated CIC’s stand on file notings in *Pyare Lal Verma v. Ministry of Railways*³ as follows: “The issue concerning the disclosure of “file noting” under the Right to Information Act first came up before this Commission in the case of *Satyapal v. CPIO TCIL* which was decided by a Division Bench consisting of Information Commissioner, Mrs. Padma Balasubramanian and the Chief Information Commissioner, Shri Wajahat Habibullah, in an Appeal⁴. In this case it was held as follows:

“In the system of functioning of public authorities, a file is opened for every subject/matter dealt with by the public authority. While the main file would contain all the materials connected with the subject/matter, generally, each file also has what is known as note sheets, separate from but attached with the main file. Most of the discussions on the subject/matter are recorded in the note sheets and even the decisions are recorded on the note sheets. These recordings are generally known as “file notings”. Therefore, no file would be complete without note sheets having “file notings”. In other words, note sheets containing “file notings” are an integral part of a file. Sometimes, notings are made on the main file also, which obviously would be a part of the file itself. In terms of Section 2(i), a record includes a file and in terms of Section 2(j) right to information extends to accessibility to a record. Thus, a combined reading of Sections 2(f), (i) & (j) would indicate that a citizen has the right of access to a file of which the file notings are an integral part. If the legislature had intended that “file notings” are to be exempted from disclosure, while defining a “record” or “file” it could have specifically provided so. Therefore, we are of the firm view that, in terms of the existing provisions of the RTI Act, a citizen has the right to seek information contained in “file notings” unless the same relates to matters covered under Section 8 of the Act.”

This decision of the Commission was duly communicated to the Department of

² Adjunct to Complaint No.CIC/WB/C/2007/00196-28.03.2008

³ CIC/OK/A/2006/00154 dated 29.1.2007

⁴ IC(PB)/A-1/CIC/2006 on 31.1.2006

Personnel and Training (DOPT) vide letter dated 26.2.2006 which was followed by a reminder on 27.3.2006 and 8.5.2006.

18. In Suchi Pandey Vs. Ministry of Urban Development, Government of India, this Commission vide order dated 15.5.2006 reaffirmed its decision in the Satyapal's case and advised the Ministry of Personnel, Public Grievances & Pension to remove such administrative instructions from its web site that are contrary to the RTI Act as found by the Commission. The following directions in this case are pertinent to be quoted:

“We see no reason to review this Decision. As the Decision of the Commission is binding u/s 19(7), any administrative instructions of a Ministry are of no account. The Ministry of Personnel, Public Grievances & Pensions is advised to remove such administrative instructions from its website that are contrary to the RTI Act, 2005 as found by the Commission. In the present case, the Ministry will make available the file notings requested to the appellant.”

(Emphasis added)

The decision of the Commission was again communicated to the DOPT vide letter dated 26.5.2006 and they were requested to remove the instructions concerning the file noting from their web site.

19. Similarly, in Mahendra Gaur Vs. Department of Consumer Affairs, this Commission again vide its order dated 23.6.2006 emphatically observed as follows and enjoined upon the DOPT to immediately remove its clarification of the file noting from its web site.

The following observations in this case in Para 4 are quoted below:

“It is not the first time that after the decision of this Commission in Satyapal case, a public authority has denied access to file notings on the basis of the website information of DoPT. A few other public authorities have also done so, due to which this Commission has to reiterate again and again its decision that information includes “file notings”. Therefore, to avoid unnecessary appeals which subject citizens to suffer cost and time, I enjoin upon the DoPT to immediately remove its clarification on “file notings” from its web site.”

The decision in this case was intimated to the DOPT on 28.6.2006.

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20. In this connection, it is also pertinent to refer to two other decisions of , Information Commissioner Shri A.N. Tiwari, concerning file notings, i.e.

i) Appeal No.CIC/AT/A/2006/00148 dated 14.7.2006

ii) Appeal No.CIC/AT/A/2006/363 dated 3.12.2006

In the first case, both the CPIO and the Appellate Authority of the Home Ministry have denied the appellant access to the file noting which precisely the appellant desired to have. The Commission directed the Appellate Authority to examine the matter de novo and to see as to whether the noting of the confidential file are barred by any exemption such as Section 8(1)(e) and 8(1)(i) and whether the notings being in the nature of a 3rd party fiduciary entrustment to a superior officer, are exempted from disclosure in terms of Section 11(1) of the Act. The issue was further elaborated in the 2nd appeal decided on 3.11.2006. Following observations of the Information Commissioner Sri A. N. Tiwari in this context are quoted below:

“Similar matters were dealt with by the Commission - in the case of K.C. Aggarwal Vs. Ministry of Home Affairs (No.CIC/AT/A/2006/00148). The substance of the order in that case was that file notings in a confidential file would attract the provisions of Section 8(1) (e) as well as Section 11(1) of the RTI Act. File notings are that part of the file in which an officer records his observations and impressions meant for his immediate superior officers. Especially when the file, in which the notings are contained, is classified as confidential, the entrustment of the file note by a junior officer or a subordinate to the next higher or superior officer assumes the character of an information supplied by a third party (in this case, the officer writing the note to the next higher officer). This being so, any decision to disclose this information has to be completed in terms of the provision of Section 11(1) of the RTI Act. When the file notings by one officer meant for the next officer with whom he may be in a hierarchical relationship, is in the nature of a fiduciary entrustment, it should not ordinarily be disclosed and, surely not without the concurrence of the officer preparing that note. When read together, Section 11(1) and Section 8(1)(e), unerringly point to a conclusion that notings of a

“confidential” file should be disclosed only after giving opportunity to the third party, viz. the officer / officers writing those notes, to be heard.”

As DOPT was not a party to the above proceedings, no communication was made to the DOPT of the above decisions.

21. Thus, insofar as this Commission is concerned, the issue concerning the “file noting” was well settled and the DOPT was duly informed about the Commission’s directions regarding removal of the instructions which were contrary to the provisions of the RTI Act from their web site. No objection was raised by the DOPT since the first communication was sent to them on 26.2.2006. It was only when the decision was passed in this case on 13.7.2006 that the DOPT vide their letter dated 17.7.2006 submitted that while making the Right to Information Bill, 2004, the Government has taken a conscious decision not to include “file notings” in the definition of “information” and requested that the matter be placed before the Full Bench of the Commission for consideration.

22. In view of the above, it is not at all necessary to make further observations on the issue. However, since the issues have been raised concerning points of law, it is necessary to further clarify the matter so that it can be settled once and for all.

23. In his written arguments, the learned Additional Solicitor General has quoted the following two decisions of the Hon’ble Apex Court, which provide valuable guidance, while interpreting any statute: *Baldev Singh Bajwa vs. Munish Saini* 2005(12) SCC T 18
Ilaichi Devi vs. Jain Society for Protection of Orphans & ors. 2003(18) SCC 413

In this connection, the following observations of the Hon’ble Apex Court are worth mentioning:

“The golden rule of construction is that when the words of the legislation are plain and unambiguous, effect must be given to them. The basic principle on which this rule is based is that since the words must have spoken as clearly to legislatures, as to judges, it may be safely presumed that the enactment may be gathered from several sources which are from the statute itself from the Preamble to the statute, from the Statement of Objects and Reasons, from the legislative debates, reports of committees and commissions which preceded the legislation and finally from all legitimate and admissible sources from where they may be allowed. Reference may be had to legislative history and latest legislation also.”

24. Thus, it is very clear that when the language used in the statute

is plain and unambiguous, effect must be given to that. Insofar as the RTI Act, 2005 is concerned, the word “information’ has been defined under section 2(f) of the Act which reads as under:

“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.”

(Emphasis added)

And Sec.2 (i) of the Act defines ‘records’ as under:

- (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.

25. It is pertinent to note that the definitions of both the words “information” and “record” are inclusive definitions. It has widened the meaning of both the words, as under the settled law of legal interpretation an inclusive definition not only signifies what it generally connotes but also what it specifically includes. Looked from this viewpoint, unless “file notings” are excluded specifically from the word “file”, the file would include both parts – the part containing correspondence and the part containing opinions and advices which is commonly known as “notings”.

26. The golden rule of construction as pronounced by the Hon’ble Apex Court in the above cases, the Preamble to the Statute and the Statements of Objects and Reasons also help in arriving at the true meaning of the words used in the enactment and accordingly the provisions contained in Sections 2(i) and 2(f) need be read in the context of the objectives of the Act which are set out in the Preamble viewed from this context, the Right to Information Act was enacted:-

- (i) to set out a practical regime of RTI
- (ii) to secure access to information under the control of public authorities,
- (iii) To promote transparency and accountability in the working of every public authority.

The Act, therefore, aims at bringing total transparency. The Preamble clearly states that it intends to harmonize the need to keep certain matters secret but at the same time reiterating the paramountcy of the

right to know. Thus, the Act intends to bring in a total change in the mindset of “secrecy” generated by the colonial legislations such as the Official Secrets Act and the Law of Evidence. The Preamble also outlines the grounds that may necessitate withholding of the information from the citizens. The Preamble permits non-disclosure of information that is likely to cause conflict with public interests including:-

- (i) efficient operations of the Governments
- (ii) optimum use of limited fiscal resources;
- (iii) Preservation of confidentiality of sensitive information.

Thus, any information the disclosure of which is likely to cause conflict with public interest can be withheld by a public authority whether it is a part of the correspondence side or it’s a part of the ‘Noting’ side.

27. In this connection, it must be pointed out that the definitions of the words “records”, “information” and “Right to Information” were almost the same under the Freedom of Information Act, 2002. But it was for explicit provision in section 8(1) (e) of the said Act that the “file notings” were exempted from disclosure. The section 8(1) (e) of the Act of 2002 reads as under:

Section 8(1) – Notwithstanding anything contained in this Act, there shall be no obligation to give any citizen, -

- (e) “Minutes or records of advice including legal advice, opinions or recommendations made by any officer of a public authority during the decision making process prior to the executive decision or policy formulation”

While, the Act of 2005 incorporates other exemptions provided for in section 8 and 9 of the Act of 2002, it has not incorporated any such provision which will exclude the “file notings” from disclosure. Contrary to what has been submitted before us by the DOPT, it appears that the Parliament, in fact, intended that the “file notings” are no more exempted and, as such, these are to be made available to the people. The reason for deletion of these specific words from the draft of the Act as mentioned by ASG in his arguments is more likely to be because the definitions cited above are clear and comprehensive on the subject and inclusion of the words would be rendered redundant as

pointed out by Information Commissioner Prof. MM Ansari during the hearing. Attention here is drawn to the definition of the word ‘file’ as contained in the ‘Manual of Office Procedure’ of the DoPT. As will be seen, Section 27 of Chapter II: ‘Definitions’, clearly states, ‘File means a collection of papers on a specific subject matter assigned a file number and consisting of one or more of the following parts:

- (a) Correspondence

(b) Notes

(c) Appendix to Correspondence

(d) Appendix to Notes'

This would imply that 'notings' are an inextricable part of a record as defined u/s 2(f) and further defined u/s 2(i)(a) of the Act unless it had been specifically exempted. Without that, by excluding 'notings' from a file, the DoPT would be going against their own Manual and established procedure mandated by them. This would also mean that if, as the Learned Counsel insists, 'notings' are not to be a part of the file, then first an amendment would have had to be carried out on the definition of a file in the DoPT's own manual.

28. Thus, from whichever angle the provisions of the Right to Information Act are looked into, "file noting" cannot be held to be excluded unless they come in conflict with public interest as aforesaid or are excluded under any of the provisions of the RTI Act, 2005. We therefore see no reason to disagree with the Decisions on the subject pronounced thus far by this Commission. File noting is to be made available to applicants under the Right to Information Act unless they come in conflict with public interest including preservation of confidentiality of sensitive information and are therefore excluded under any of the provisions of the Act."

Background

Two Decisions were pronounced in Pyare Lal Verma's above appeal. First one was issued by Information Commissioner Dr.O.P.Kejriwal on 13 July, 2006.CIC clashed with the Department of Personnel and Training (DOPT), the central nodal agency to oversee the implementation of the RTI Act over the issue of disclosure of file notings. After pronouncement of the Decision, Cabinet approved proposed amendments to the RTI Act. Activists all over the country protested against the proposed amendments. Government, however, is yet to table the amendments in the Parliament. Information Commissioner Dr.O.P.Kejriwal warned DOPT as follows:

"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.”⁵

DOPT sought legal opinion from the Additional Solicitor General, who questioned the legality of the decisions taken by a single bench and opined that it is mandatory under the law that each of the case which is to be decided by the Commission has to be decided by its Full Bench.

The Full Bench of the Central Information Commission pronounced its Decision in *Pyare Lal Verma v Ministry of Railways*⁶, in which CIC further held as follows: “it has been submitted on behalf of the DoPT that the web site contains its views and these are not directions to any public authority. In fact Joint Secretary Shri Ramanujam of the DoPT has, in a closely argued presentation before us gone to the extent of stating that nowhere have they said that no one should disclose the “file noting” and that they have not stopped any public authority from disclosing “file noting”.

In this context, it is pertinent to refer to the provisions of Section 19(7) and Section 19(8) of the Right to Information Act, 2005 which read as under:-
Section 19(7)

“The decision of the Central Information Commission or State Information Commission, as the case may be, shall be binding.” (Emphasis added)

..

The DoPT as the nodal Ministry must realize that it is bound by the provisions of an enactment and it cannot do anything or act in a manner which will be contrary to the provisions of any law. No public authority, Government, or statutory organization can ever claim that it is above the law. An authority which has been conferred with powers under a law is deemed to be vested with all incidental or ancillary powers to ensure that the powers conferred on it are effectively exercised. The directions of the Commission are, therefore, binding on each public authority which includes the Ministry of Personnel, Public Grievances and Pensions. The Ministry of Personnel, Public Grievances & Pensions has erred in claiming that it is not the public authority but a nodal Ministry. In fact that Ministry cannot escape its obligations under the Act nor can it take the plea that the Commission can only give recommendations and not issue directions. In light of the reasons recorded above, the Commission decides as under on issues 3 and 4:

⁵ CIC/OK/A/2006/00154 – 13 July 2006

⁶ CIC/OK/A/2006/00154, 29 Jan.2007

(i) The Commission recommends that the DoPT will suitably amend their website and remove all instructions/views which are contrary to the above decision within one month.” CIC seems to be satisfied with the fact that “the DOPT itself in response to our subsequent decisions has readily been providing the requisite information to applicants.”⁷

File notes

Information under RTI Act includes 'file notings' and the public authority is bound to disclose them, if sought for.⁸

Language

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.⁹

The High Court of Delhi in *Suresh Chand Gupta v Deputy Commissioner of Police and Anr.*¹⁰ insisted that assistance should be provided when the requester can not understand the records which are in English.

The petitioner confined to a request that the PIO should permit inspection of the concerned records, with the assistance of the counsel or someone conversant in English.

PIO partly granted the request and allowed inspection as requested. The Petitioner, visited the office and later addressed a letter contending that he was not conversant in English, and could not properly inspect the records claiming to be aggrieved by the inaction of the respondent directions have been sought in these proceedings.

Mr. Justice S. Ravindra Bhat held :

“Section 7, in my mind, strengthens the petitioner's claim to be provided the facility of assistance of counsel and someone conversant in English.

The object of the Act is to provide access to information in the custody of the

⁷ CIC/WB/C/2007/00148, 30 Jan.2008

⁸ 36/ICPB/2006 - 26 June 2006

⁹ Decision No. CIC/WB/A/2006/00117- 13 June, 2006

¹⁰ W.P.(C) 8228/2007, Date of Decision : 16th November, 2007

executive agencies.

If the petitioner, for some reasons, felt inhibited due to his not being fluent in English, denial of appropriate assistance in fact would have resulted in withholding access to information. Surely, that is not the object of the Act or even the order. In these circumstances, the respondents should grant the petitioner's request. Accordingly, the respondent is directed to permit inspection of the concerned records by the petitioner, who can be accompanied by his counsel or an authorized representative.”

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.¹¹

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.¹²

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

¹¹ CIC/MA/A/2006/0002 - 27 June 2006

¹² 10/01/2005-CIC 25 February 2006

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 such reports contain accounts of consultations and deliberations among public officials. Moreover, the CRA argued, the very processes 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.¹³

- (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;**

A few organizations are feeling that Right to Information is a burden on them and try to persuade the Central Information Commission (CIC) that they need not honor people's Right to Information. On 6 August 2008, two institutions (IBA and BCSBI) were successful in doing so, while another body (UTI AMC) failed.

UTI AMC argued before the CIC that, "Since UTIAMC is subject to the control of SEBI, any citizen can seek information regarding UTIAMC through SEBI as it[SEBI] is entitled to seek any information from UTIAMC." UTI AMC is ready to provide information, but one should send one's request to SEBI, not to UTI AMC itself!

All the Decisions were pronounced by Central Information Commissioner Smt. Padma Balasubramanian. Excerpts from the Decisions:

- UTI Asset Management Company Pvt. Ltd.

¹³ Office of the Information Commission of Canada, *Annual report 2005,2006*

“UTIAMC has been sponsored by SBI, PNB, LIC and Bank of Baroda. Being the sponsors, they are the only 4 shareholders, holding 25% shares each. In other words, UTIAMC is owned by four public authorities. Therefore, a short question that arises for consideration is whether an institution/company wholly owned by a public authority/authorities could be considered to be a public authority in terms of the RTI Act. In terms of Section 2(h) of the RTI Act, any body owned, controlled or substantially financed directly or indirectly by the appropriate government would be a public authority. Even though there is no specific provision in the RTI Act that a body owned, controlled or substantially funded by another public authority is also a public authority, yet, from the purpose and object of the RTI Act, it is crystal clear that there should be transparency in the functioning of any institution in which public money is deployed. The four sponsors are public authorities and when they in turn own another entity, such an entity has to be treated as a public authority. ...One important fact which goes against the claim of UTIAMC is that its accounts are audited by the C&AG in terms of Section 619B of the Companies Act. In terms of this Section, a company in which one or more corporations owned or controlled by the Government-State or Central- holds more than 51% shares, then it shall be deemed to be a government company for the purposes of audit by the C&AG. In the present case, all the four shareholders are government companies and they in turn hold more than 51% shares in UTIAMC. Since in the present case, the entire share capital of UTIAMC is held by 4 public authorities, I have no hesitation to hold that UTIAMC is a public authority.

In view of this decision, I direct UTIAMC to designate PIOs and AAs and also comply with the provisions of Section 4 of the Act. These directions should be complied with, within a period of one month”.¹⁴

- Indian Banks Association

“...IBA is a voluntary association of Banks. Its membership comprises

¹⁴ Appeal No.2624/ICPB/2008, August 6, 2008

of 150 member banks- public and private sector banks, foreign banks, financial institutions and cooperative banks. Only 28 out of 150 members, are public sector banks.. The entire expenses of IBA are found to be proportionally borne by the members. Even the members of the Management Committee are found to be elected representatives of the Member banks. It is also seen that on the basis of the authority given by the member banks, IBA negotiates with employee organization on behalf of the banks. Thus, I find that the Association is neither substantially funded by the government nor it is under the control of the government. Therefore, I find that IBA does not fall within the definition of a public authority as defined in Section 2(h) of the RTI Act and accordingly I hold that IBA is not a public authority”.¹⁵

- The Banking Codes & Standards Board of India (BCSBI)

“Taking into consideration the object and purpose of the RTI Act, I have taken the view that any institution substantially financed, owned or controlled by any public authority would have to be treated as a public authority not withstanding the fact the there is no direct or indirect funding by an appropriate government. Therefore, I have to only examine whether RBI, being a public authority is substantially funding BCSBI. Even though for the first five years, RBI were to fund BCSBI, I find that its funding to be only less than 50% of the total funding of BCSBI for the last two years and that there is no managerial control by RBI over BCSBI. In view of this, I hold that BCSBI is not a public authority in terms of the RTI Act”.¹⁶

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 referred

¹⁵ Appeal No.2622/ICPB/2008,August 6, 2008

¹⁶ Appeal No.2623/ICPB/2008,August 6, 2008

to 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.¹⁷

Whether Stock Exchanges are public authorities?

Yes. Full Bench of the CIC in *Smt. Raj Kumari Agrawal and Others v Jaipur Stock Exchange Ltd., Jaipur and Others* considered whether Stock Exchanges are public authorities :

‘In view of the decision of the Delhi High Court¹⁸ which has been affirmed by the Hon’ble Apex Court¹⁹, a stock exchange is a “state” within the meaning of Article 12 of the Constitution of India and as such it is amenable to the writ jurisdiction of the superior courts. In view of this, it has been submitted on behalf of the SEBI that the term ‘public authority’ is broader and more generic than the word ‘state’ under Article 12 of the Constitution of India. Every authority or institution which is a ‘state’ has to be a public authority under Section 2(h) of the Right to Information Act, 2005. Even a non-governmental organization if substantially financed directly or indirectly by funds provided by the Government may be a public authority. Even a private institution substantially financed by an appropriate Government can also be a ‘public authority’ but such non-governmental bodies or such private institutions or bodies may not be categorized as ‘state’ but they would be public authorities within the meaning of Section 2(h) of the RTI Act.

There is enough merit in these submissions and the Commission agrees that an authority or an institution or a body if it is a “state” within the meaning of Article 12 of the Constitution of India, it cannot claim that it is outside the purview of the Right to Information Act, 2005.

The Commission, therefore, decides and holds that a stock exchange being a quasi governmental body working under the statute and exercising statutory powers has to be held to be a “public authority” within the meaning of section 2(h) of the RTI Act, 2005.²⁰

¹⁷ CIC/WB/A/2006/00011-30.11.2006

¹⁸ Delhi Stock Exchange vs. K.C. Sharma (MANU/DE/0514/2002)

¹⁹ K.C. Sharma Vs. Delhi Stock Exchange AIR 2005 SC 2884

²⁰ CIC/AT/A/2006/00684 & CIC/AT/A/2007/00106, 07.06.2007

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 Housing Society Ltd. is brought in compliance with the existing law on the subject and make that information available to appellant.²¹

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.²²

- (i) **"record" includes—**
- (a) **any document, manuscript and file;**
 - (b) **any microfilm, microfiche and facsimile copy of a document;**

²¹ CIC/WB/C/2006/00080-9.10.2006

²² CIC/WB/A/2006/00029 -20 July 2006

- (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.²³

- (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;**

To compile or not to compile? Yes, you have to compile!

Many times PIOs reject requests saying that they need not create or compile information from various sources taking shelter under section 2(j) which defines right to information among other things as the right to information ...which is held by or under the control of any public authority...

Earlier Decisions of CIC added confusion by deciding that public authorities need not create information afresh:

- *“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 advised to specify the required information, which may be provided, if it exists, in the form in which it is sought”²⁴*
- *“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.”²⁵*

²³ CIC/WB/A/2006/00270-9.10.2006

²⁴ 285/IC(A)/2006-20.9.2006

²⁵ 225/IC(A)/2006-31.8.2006

- The Ministry of Environment & Forests has mistakenly taken the curious view that the information sought does not fall within the definition u/s 2(f), since it needs to be “compiled and processed”. Even though as clarified in the hearing such information is not held by the Ministry, there are organizations working with the Ministry who will undoubtedly hold this information. These may be separate public authorities who can be asked to provide the information sought u/s 6(3) (i) and (ii) If on the other hand, no such information is available with the Ministry or any of its attached or subordinate offices, the public authority will be required to say so. But on no account can information be denied because it will require to be collated, since collating information is indeed the prime task of a CPIO.²⁶

CIC ended this debate with a wonderful Decision favoring citizens.

“Under Rule 4 (a) of the RTI Act (Regulation of Fee & Cost Rules) 2005 which came into force on September 16, 2005 a fee is expected to be charged for each page “created or copied”, which indicates that all information held by or under the control of any public authority is accessible to the public as is covered by the ‘right to information’ defined in sec. 2(j), even when it needs to ‘collected’.”²⁷

The RTI Act clearly demands creation of information. This is reflected in section 4. Section 4(1) (c) requires publication of relevant facts while formulating important policies etc. and Section 4(1) (d) requires disclosure of reasons for administrative or quasi-judicial decisions.

Do it yourself

In another Decision CIC asked the applicants to compile the information themselves:

“the Complainant complained that the amount of Rs.27,240/- asked for by the Respondents to compile the data was exorbitant. During the hearing, the Respondents stated that the Complainant had asked for status of promotions of Station Masters on their rolls as on 10 February 1995. This included many of the persons who had retired. The Commission agrees with the Respondent that to compile this data with a particular date in mind and that too about 12 years old, would result in heavy drainage of manpower and office time. The Commission,

²⁶ CIC/WB/A/2006/00640-14.5.2007

²⁷ Complaint No.CIC/WB/C/2007/00345-Decision date:18.02.2008

therefore, finds the amount stated as reasonable. In case the Applicant does wish so, he could deploy his own manpower for collecting and compiling this information otherwise the Commission authorizes the Respondent to start the work only after having received the entire amount from the Complainant.

During the hearing, the Respondent said that they would try to complete this date within two months. They also told the Commission that as many as 10 Station Masters had filed applications for the same piece of data. The Commission feels that it may be better for the Applicants to pool their own resources and go through the files which the Respondent was prepared to open up for their inspection. They can, therefore, compile this data by themselves.”²⁸

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.²⁹

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.³⁰

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

²⁸ CIC/OK/C/2007/00415, 21 January 2008

²⁹ CIC/WB/A/2006/00144 -- 3 Aug.2006

³⁰ CIC/AT/A/2006/20 - 23 March 2006

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.”³¹

Information Held

A Royal Mail employee³² 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 than 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

³¹ CIC/AT/A/2006/00073 – 4 July 2006

³² *Paul Harper v. the information commissioner and Royal mail plc.*, U.K. Information Tribunal Decision No. EA/2005/0001

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.³³

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 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 should suffice 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

³³ CIC/WB/A/2006/00379; 00380 & 00381-21.12.2006

public authority has no obligation beyond supplying the above-mentioned information to the information-seeker.³⁴

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.³⁵

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.³⁶

Certified Copies

...attested copies that had been supplied had the same dictionary meaning as 'Certified Copies'.³⁷

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.³⁸

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.³⁹

Information :

Citizens can ask for copies of documents containing the information. But they cannot seek **opinions** through a questionnaire.⁴⁰

Information in the memory

³⁴ CIC/AT/A/2006/00411-5.12.2006

³⁵ CIC/AT/C/2006/00111-20.11.2006

³⁶ CIC/AT/A/2006/00409-30.11.2006

³⁷ CIC/WB/C/2006/00152-30.10.2006

³⁸ CIC/MA/A/2006/00150-19 June,2006

³⁹ F.No.PBA/06/136-4.10.2006

⁴⁰ CIC/OK/A/2006/00049 - 2 May 2006

The appellant is under an erroneous impression of that not only he has a right to information, he also has a right to the information in the memory of a public authority. There is no obligation to disclose such information.⁴¹

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.⁴²

- (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**

⁴¹ CIC/AT/A/2006/00296-20.11.2006

⁴² CIC/AT/A/2006/00321-23.11.2006

- (n) **Information Officer designated as such under sub-section (2) of section 5; "third party" means a person other than the citizen making a request for information and includes a public authority.**

Whether a public authority can appeal the decision of a PIO/Appellate Authority under the RTI Act?

Full Bench of the CIC in *Mrs. Guninder Kaur Gill v DCP EOW* answered this question as follows:

‘We have therefore proceeded to address this issue.

Section 19(2) recognizes the right of a third party to submit an appeal before the First Appellate Authority. Section 19(2) reads as under:

“19(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.”

The definition of “third party” as given under Section 2(n) includes a Public Authority. Section 2(n) is reproduced as under:

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

. Section 2(n) is a definition clause and definition clause under the Rules of Interpretation is one that defines a concept and insofar as that particular enactment is concerned, the meaning is applicable to the term wherever it is used in that enactment. Thus, the term “third party” wherever it occurs in the RTI Act shall ipso facto include a Public Authority. Over and above the definition of “third party” is an inclusive one, which makes it’s meaning wide and extensive.

. In this context, Section 11(1) is pertinent. Under Section 11(1), whenever a CPIO intends to disclose an information or record —

- (i) which relates to and has been treated as confidential by that ‘third party’; or
- (ii) which has been supplied by a third party and has been treated as confidential by that third party

the CPIO shall give a written notice to such third party of the request and of his intention to disclose the information. Section 19(2) confers a right on a Public Authority of preferring an appeal

before the First Appellate Authority against the decision of CPIO. Thus, if the CPIO decides to disclose information that relates to a Public Authority and if the Public Authority has treated the information as confidential, it can submit an

appeal before the First Appellate Authority under Section 19(2) of the RTI Act. The issue still remains as to whether a Public Authority can appeal against the decision of its own CPIO. In this context, the opening words of Section 19(1) are important. It says that any person can prefer an appeal who —

- (i) does not receive a decision within time specified; or
- (ii) is aggrieved by a decision of the CPIO

It may be mentioned that the word `person` has not been defined in the Act but it is wide enough to include a Public Authority, which is a juristic entity and as such is a “person” in the eye of law.

The right of appeal is a legal right and is available to every aggrieved party to a proceeding and this right cannot be taken away unless law explicitly provides it.

Insofar as an appeal before the CIC is concerned, Section 19(3) of the Act refers, which reads as under:

“19(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.”

The opening words of the sub-section makes it clear that the 2nd appeal is against the decision passed by the First Appellate Authority and it can be preferred by any of the aggrieved parties. Issue No 3 is so disposed of.⁴³

⁴³ CIC/AT/A/2006/00074 and CIC/WB/A/07/00679 ,Date of Decision: 02.08.2007