

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 3-7

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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.**

Paragraph 8 of the ‘*Guide for the Public Authorities- Guidelines for the public authorities under the Right to Information Act, 2005*’, published by Department of Personnel & Training, Ministry of Personnel, P.G. and Pensions, Government of India¹ states as follows:

“8. The Act gives the right to information only to the citizens of India. It does not make provision for giving information to Corporations, Associations, Companies etc. which are legal entities/persons, but not citizens. However, if an application is made by an employee or office bearer of any Corporation, Association, Company, NGO etc. indicating his name and such employee/office bearer is a citizen of India, information may be supplied to him/her. In such cases, it would be presumed that a citizen has sought information at the address of the Corporation etc.”

Citizen -

CIC 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.²

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.³

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.⁴

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

¹ O.M.No.1/4/2008-IR dated: 25th April, 2008

² 139/ICPB/2006-25.10.2006

³ CIC\OK\A\2006\00121 - 27 June, 2006

⁴ CIC/OK/A/2006/00149-20.12.2006

- (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;**

Paragraph 2 of the ‘*Guide for the Public Authorities- Guidelines for the public authorities under the Right to Information Act, 2005*’, published by Department of Personnel & Training, Ministry of Personnel, P.G. and Pensions, Government of India⁵ states as follows:

“2.The Act casts important obligations on public authorities so as to facilitate the citizens of the country to access the information held under their control. The obligations of a public authority are basically the obligations of the head of the authority, who should ensure that these are met in right earnest. Reference made to public authority in this document is, in fact, a reference to the head of the public authority.”

The Central Information Commission organized the National Convention on Right to Information on completion of one year of its enforcement⁶. The then President of India, Dr. A.P.J. Abdul insisting on the implementation of the clause (a) of sub-section (1) of section 4, stated in the inaugural address:

"Good governance is being recognized as an important goal by many countries across the world. They have taken up specific initiatives for open government. Freedom of information is being redefined and supported by detailed guidelines. The Internet revolution has proved to be a powerful tool for good governance initiatives and the world is moving towards Internet governance...Can we provide good governance to our one billion people? Can the governance speed up the delivery system? Can this be done by e-governance at a cost affordable by our nation? E-governance system is a means to an end. We need enlightened citizens to realize the full benefits of the e-governance systems...I inaugurate the National Convention on Right to Information and my best wishes to all the participants for success in the mission of promoting India as the most informed and participative society in the World."

Record Management

Record Management system ought to be improved such that information which are

⁵ O.M.No.1/412008-IR dated: 25th April, 2008

⁶ at Vighyan Bhavan, New Delhi (October 13 to 15, 2006)

to be disclosed to public could be easily provided, after delineating the information that is exempted under the Act.⁷

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.⁸

- (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;**

⁷ CIC/OK/A/2006/00016 - 15 June 2006

⁸ CIC/WB/A/2006/00435-28.11.2006

- (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;**

Paragraph 19 of the ‘*Guide for the Public Authorities- Guidelines for the public authorities under the Right to Information Act, 2005*’, published by Department of Personnel & Training, Ministry of Personnel, P.G. and Pensions, Government of India⁹ states as follows:

“19. An another important point to note is that it is not sufficient to publish the above information once. The public authority is obliged to update such information every year. It is advisable that, as far as possible, the information should be updated as and when any development takes place. Particularly, in case of publication on the internet, the information should be kept updated all the time.”

In a landmark Decision, compensation was awarded by the CIC for non-publication of information under section 4(1)(d) which is another obligation of the public authority similar to the one under section 4(1)(b) .

In the present case, the issue is publishing of information of beneficiaries on the Old Age Pension Scheme and not a failure to respond to an RTI application.

The RTI Act 2005 is quite clear on the issue of *suo moto* disclosure, which is what complainants in the present case demand. Sec.4 (1) sub-section (b) sub-section (xiii) reads as follows:

Sec. 4(1)(b) (xii) and (xiii)

“Every public authority shall publish within one hundred and twenty days from the enactment of this Act the manner of

⁹ O.M.No.1/412008-IR dated: 25th April, 2008

execution of subsidy programmes, including the amounts allocated and the details of beneficiaries of such programmes; particulars of recipients of concessions, permits or authorizations granted by it; “

But the issue of concern in this case, which is the discontinuance or suspension of a scheme, can be defined as an administrative decision. Therefore, the above sub section of sec. 4(1) may be read with sec. 4(1) sub sec.(d) which reads as follows:

“Every public authority shall provide reasons for its administrative or quasi-judicial decisions to affected persons.”

As is, therefore, laid down in the law, this information was expected to have been published within 120 days from the enactment of this Act, which was June 21, 2005. The ‘Old Age Stipend Scheme’ was evidently in operation in June 2005, and seems to have been discontinued, at least insofar as complainants are concerned only in April 2007. Yet, this has not been published to date. PIO Shri S.K. Jha, Dy. Commissioner (South) is, therefore, directed to comply within twenty working days of the date of issue of this Decision with the requirements of Sec. 4(1)(b)(xiii) read with sec. 4(1)(d) of the RTI Act with regard to the ‘Old Age Stipend Scheme’, under intimation to Shri Pankaj K. Shreyaskar, Joint Registrar of this Commission. This can also include the necessary information on Widows’ Pension.

Because the failure of the public authority cited above, cannot be ascribed as a failure of a PIO rendering him/her liable for penalty u/s 20(1), since the complaint is not one of failure to respond to an RTI application, no penalty will lie. However, it is clearly established that the complainants have suffered loss as a result of not being provided the information suo moto, as required under Sec 4 (1) of the Act. For this we find that the demand for compensation is reasonable.

However, the amount will require to be determined. Shri SK Jha, Deputy Commissioner will therefore pay an ad hoc amount of Rs 1000/- to each of the complainants u/s 19 (8) (b), within one month of the date of issue of this Decision Notice under intimation to Shri Pankaj K. Shreyaskar, Joint Registrar of this Commission. He will in the meantime also enquire into the loss or detriment suffered by each after hearing them, and send us a report by

March 31,2008 to enable us to determine any further compensation payable to complainants by the public authority.¹⁰

Full Bench of the CIC in *Sandeep Unnithan v Public Authority/ -Integrated HQ, Ministry of Defence (Navy)* recommended ‘that the Indian Navy and, in fact the Indian Armed Forces build up their storehouse of information, as mandated u/s 4(1) of the RTI Act, 2005 for disclosure at the appropriate time for the benefit of the students of India’s defence and to enhance the people’s trust in the armed forces’ undoubted capacity to ensure national security.’¹¹

- (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.**

Reasons for rejection of the loan applications

Reserve Bank of India advised Banks / FIs that “**in case of all categories of loans irrespective of any threshold limits, including credit card applications,** banks / FIs should convey in writing the main reason / reasons which, in the opinion of the bank / FI have led to rejection of the loan applications.

Necessary modifications in the Fair Practices Code based on the above instructions, with the approval of the Board, should be carried out by April 30, 2007. The modified Fair Practices Code should be placed on the bank's / FI's website and also given wide publicity.”¹²

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.¹³

¹⁰ Complaint Nos.CIC/WB/C/2007/00803-00806 & 00887-00896,3.3.2008

¹¹ CIC/WB/A/2007/01192, 31.12.2007

¹² RBI/2006-2007/280 DBOD.No.Leg.BC.65 /09.07.005/2006-07, March 6, 2007

¹³ 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.¹⁴

- (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**

¹⁴ CIC/WB/C/2006/00081- 13 July, 2006

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 role 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.. 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.¹⁵

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.¹⁶

- (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.**

Duty to assist: P.I.O.s have a duty to provide *reasonable assistance* to the requestors. How much assistance is *reasonable*? It should be sufficient to enable the requestor to quickly submit her request and obtain the information expeditiously. Competent authorities should issue clear instructions to all the public servants to render reasonable assistance to the requestors. Right to Information complaint boxes should be provided in all the blocks.

- (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.¹⁷

PIO- Multiple PIOs:

¹⁵ CIC/AT/A/2006/00059-5 May, 2006

¹⁶ 10/01/2005 - CIC - 25 February 2006

¹⁷ 111/IC(A)/2006 – 13 July,2006.

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.¹⁸

- (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 from the requester, is under obligation to seek information from 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.¹⁹

Other officers

- The U.S. Court of Appeals for the D.C. Circuit found inadequate the efforts undertaken by the Coast Guard to search for a 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**,

¹⁸ ICPB/C1/CIC/2006 - 6 March, 2006.

¹⁹ CIC/AT/A/2006/00015 - 1 March, 2006.

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.

Initial application fee should be totally abolished. Such fee is not charged in other countries such as U.S.A. and U.K. Initial application fee under Section 6(1) has become a major hurdle. Section 6 states that citizens can make a request in writing or through electronic means. But the initial application fee has to be paid. Even though one can send the request by e-mail it will not be attended until the application fee is received by the public authority. And the date of receipt of the payment is treated as the date of the application for considering the time limits under the Act.

The 'ten rupee' hurdle

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 RTI applications over one window or centralized counter. Complaint No.²⁰

Should the requests be typewritten?-s.6(I):

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 can not be said to have been with reasonable cause as required u/s 20 (1) & (2).²¹

Mistreated requesters

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

²⁰ CIC/WB/C/2006/00178 -14.11.2006

²¹ CIC/WB/C/2006/00035

office that in case there is any complaint in future, it will be taken very seriously.²²

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.²³

[State Bank of Bikaner and Jaipur's Citizens Charter describes the Banker's-Cheque(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.**

Can the identity of the requester disclosed?

Clear instructions should be issued to the Public Information Officers (P.I.O.s) not to unnecessarily disclose the contact details of the requester to others.

Registers (if any) maintained under the RTI Act, containing names and addresses of the requesters should be kept under lock and key.

Indian RTI Act does not provide guidelines on this important issue.

Canada prohibits such disclosures even to the officials working in the public authorities, if it is not necessary. This is very important; otherwise people may be scared to file requests against corrupt officials and authorities.

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.

²² CIC/OK/A/2006/00288-18.12.2006

²³ CIC/OK/C/2006/00118,Dated, the 4 December, 2006

- 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.[see: Office of the Information Commission of Canada, *Annual report 2005,2006*]
Even anonymous requests should be provided information as in Norway and Sweden .

U.S.Department of Justice clarifies:

“FOIA requesters, except when they are making first-party requests, do not ordinarily expect that their names will be kept private; therefore, release of their names would not cause even the minimal invasion of privacy necessary to trigger the balancing test. Personal information about FOIA requesters, however, such as home addresses and home telephone numbers, should not be disclosed. However, the identities of first-party requesters under the Privacy Act of 1974 should be protected because, unlike under the FOIA, an expectation of privacy can fairly be inferred from the personal nature of the records involved in those requests.”

FOIA Update, Vol. VI, No. 1, 1985 provided the following answers:

Can the identities of FOIA requesters be withheld under the FOIA?

No, not as a general rule. As one court has held, "FOIA requesters . . . have no general expectation that their names will be kept private." *Agee v. CIA*, 1 GDS 80,213 at 80,532 (D.D.C. 1980). In fact, in most cases the release of the name of a FOIA requester would not cause even the minimal invasion of privacy required to trigger the balancing tests of Exemptions 6 and 7(C). *See Stauss v. IRS*, 516 F. Supp. 1218, 1223 (D.D.C. 1981); *cf. National Western Life Insurance Co. v. United States*, 512 F. Supp. 454, 460-61 (N.D. Tex. 1980); *compare Wine Hobby USA, Inc. v. IRS*, 502 F.2d 133, 137 (3d Cir. 1974). It would take an extraordinarily rare and compelling situation for the mere identification of a person or entity as a FOIA requester of particular records to rise to the level of implicating a privacy interest (or, less likely, a commercial interest) protectible under the FOIA.

On the other hand, any personal information about an individual FOIA requester -- such as his or her home address, for example -- should be protected under Exemption 6 absent a particularly compelling public interest in its disclosure.... Similarly, the fact that an individual has made a first-person request for access to

his personal file under the Privacy Act of 1974, 5 U.S.C. § 552a, ordinarily should be protectible under Exemption 6. Therefore, a FOIA request for an agency list of Privacy Act requesters should be denied on that basis, and any FOIA requester seeking access to any record reflecting whether a particular individual has exercised his or her Privacy Act rights should be given a "neither confirm nor deny" response on that same basis.

In Japan, a Nagano man, who applied for the release of travel data on three assembly members who had gone on business trips using public funds, and found that government officials leaked his personal data to the very people he was requesting information on.

The leaked data included the man's name, address and other private details, the sources said. The Nagano resident had requested the data under a prefectural information disclosure ordinance.

After the request was filed, the administrative office told Minoru Kobayashi, the assembly president, about it. Kobayashi decided the three assembly members should know the man was snooping into their travel records. He instructed the office to call the three and tell them the man's personal data, which was also later faxed to the assembly members.

Tsutomu Shimizu, a lawyer at the Japan Federation of Bar Associations who specializes in private information protection, called the matter a "grave situation." "It shatters the foundations of the disclosure system. Collusion between assembly members and the secretariat to leak private data makes it impossible for residents to feel comfortable asking for information," he said. [Assembly Chief Leaks Requester's Data, *Asahi Shimbun*, 16 January 2004,]

Earlier in June 2002, 29 employees of the Defense Ministry were punished after they were found to be maintaining lists and collecting personal information on those making information requests and providing that information to superior officers. They also tried to cover up their activities. The Ministry of Public Management, Justice Ministry, National Police Agency, the Agency for Nuclear and Industrial Safety and the Sendai Municipal Assembly were also discovered to be keeping files on requestors.

["29 Defense Agency officials punished over lists", *Japan Times*, June 21, 2002]

Is RTI applicant blind?

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.²⁴

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.²⁵

Personal discussion with the requester

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.²⁶

Position in U.K.

In *Dr C Lamb v Information Commissioner* (16 November 2006)

U.K. Information Tribunal criticized Information Commissioner (ICO) for its failure to take into account the lack of clarity in the complainant's original request. This is an interesting departure from the previously accepted principle that FOI is applicant blind!

There is nothing to prevent an authority volunteering advice and assistance: an applicant does not have to ask for it. Moreover, nothing on the face of the section restricts the duty to advise and assist only to those cases when some form of request has been made. In the Tribunal's view, the duty must include at least one to advise and assist an applicant with regard to the formulation of an appropriate request. A "request for information" under FOIA must in the words of section 8(1) (c) "describe" the information requested. In the Tribunal's view it is sufficient to observe that the subject matter of the information must be set out and described as precisely as possible. If a request does not describe the information with sufficient detail in a case where its terms are otherwise ambiguous or vague, the public authority should consider whether to exercise its duty to offer advice and assistance;

²⁴ CIC/AT/A/2006/00353&CIC/AT/A/2006/00312-2.11.2006

²⁵ CIC/AT/A/2006/00157 – 5 July, 2006.

²⁶ CIC /WB/A/2006/00180 – 5 July,2006

in the alternative it should, in an appropriate case, ask for further details or particulars of the request. These simple propositions do no more than reflect the various means of clarifying requests which are set out in the relevant code of practice already mentioned and which points out that if despite the assistance offered the applicant remains unable to describe the information sought sufficiently clearly, then the public authority is not expected to seek further clarification. The above matters are reflected in the terms of section 1(3) of FOIA which provides that:

“Where a public authority -

- (a) reasonably requires further information in order to identify and locate the information requested, and
 - (b) has informed the Applicant of that requirement,
- the authority is not obliged to comply with subsection (1) unless it is supplied with that further information”.

4. The Information Commissioner (the “IC”) has published an Awareness Guidance (No.2) in relation to the duty to advise and assist. The Tribunal notes that the following answer to question 2 reads as follows beginning with the question itself, namely “In order to offer advice and assistance to an applicant, is it permitted to enquire into the reasons why the request is being made? No. The purpose of providing advice and assistance is to help an applicant to exercise his rights under the Act; it cannot be the means by which a public authority seeks to discover the reasons for a particular, or potential, application. However, public authorities should bear in mind that section 1(3) of the Act does allow them to request further information from the Applicant if this is needed in order to identify and locate the information requested.

While it will be good practice to make contact with the applicant as soon as possible after the request is made, public authorities should be sensitive to the circumstances of the applicant when considering the appropriate method of contact. For example, requests for information will often be made in the context of complaints against the public authority. In such cases it may be inappropriate to contact an applicant by telephone - which would otherwise be the preferred means of establishing early contact - if this would give the impression of the public authority exerting undue pressure on the applicant.”

The present case shows the dangers necessarily inherent in a public authority failing to address the true nature of a request allowing it to be transformed into something other than what may have been thought to be its original ambit and purpose. It also shows the danger in not alerting a complainant to the need to specify his request at the earliest possible reasonable opportunity. Particularly in view of the IC’s finding that the request was “slightly unclear”, in the Tribunal’s view the Decision Notice should have concentrated upon the need to extract from the complainant, if

necessary by asking all relevant question, the precise nature of the request, as well as the intention of the Complainant's request.

Later ICO encroached further into this theory. In Decision Notice ,dated 1 February 2007,Reference: FS500861211,The Commissioner has considered the fact that in previous common law cases involving confidentiality the House of Lords has indicated that the reason for seeking disclosure may be relevant to the decision as to whether a duty of confidence should apply or not. Of note is the view that those seeking to disclose information should not, at the heart of their reasoning, be seeking to “steal a march” on their competitive rivals in seeking the disclosure. In this case the Commissioner notes that the complainant is employed by a company which collates and sells statistical reports on investment funds and investment opportunities. It seems likely therefore that the complainant's reason for requesting this information may be one of profit. Interestingly here the Commissioner considered the fact that in previous common law cases involving confidentiality the House of Lords has indicated that the reason for seeking disclosure may be relevant to the decision as to whether a duty of confidence should apply or not. This is a further in road into the principle that FOI is applicant blind.

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.²⁷

- (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**

²⁷ CIC/OK/A/2006/OOO50 – 3 July,2006

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.

Guide on *RTI applications received by a public authority regarding information concerning other public authority/authorities* published by Department of Personnel & Training, Ministry of Personnel, P.G. and Pensions, Government of India (O.M.No. 10/2/2008-IR dated: 12th June, 2008) states as follows:

“2. 'Section 6(1) of the RTI Act, 2005 provides that a person who desires to obtain any in formation shall make a request to the public information officer (PIO) of the concerned public authority. Section 6(3) provides that where an application is made to a public authority requesting for any information which is held by another public authority or 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 to that other public authority. A careful reading of the provisions of sub-section (1) and sub-section(3) of Section 6, suggests that the Act requires an information seeker to address the application to the PIO of the 'concerned public authority'. However, there may be cases in which a person of ordinary prudence may believe that the piece of information sought by him/her would be available with the public authority to which he/she has addressed the application, but is actually held by some another public authority. In such cases, the applicant -makes a bonafide mistake of addressing the application to the PIO of a wrong public authority. On the other hand where an applicant addresses the application to the PIO of a public authority, which to a person of ordinary prudence, would not appear to be the' concern of that public authority, the applicant does not fulfill his responsibility of addressing the application to the 'concerned public authority'.

3. Given hereinunder are some situations which may arise in the *matter* and action required to be taken by the public authorities in such cases:

(i) A person makes an application to a public authority for some information which concerns some another public authority. In such a case, the PIO receiving the application should transfer the application to the concerned

public authority under intimation to the applicant. However, if the PIO of the public authority is not able to find out as to which public authority is concerned with the information even after making reasonable efforts to find out the concerned public authority, he should inform the applicant that the information is not available with that public authority and that he is not aware of the particulars of the concerned public authority to which the application could be transferred. It would, however, be the responsibility of the PIO, if an appeal is made against his decision, to establish that he made reasonable efforts to find out the particulars of the concerned public authority.

(ii) A person makes an application to a public authority for information, only a part of which is available with that public authority and a part of the information concerns some 'another public authority.' In such a case, the PIO should supply the information available with him and a copy of the application should be sent to that another public authority under intimation to the applicant.

(iii) A person makes an application to a public authority for information, a part of which is available with that public authority and the rest of the information is scattered with more than one other public authorities. In such a case, the PIO of the public authority receiving the application should give information relating to it and advise the applicant to make separate applications to the concerned public authorities for obtaining information from them. If no part of the information sought, is available with it but is scattered with more than one other public authorities, the PIO should inform the applicant that information is not available with the public authority and that the applicant should make separate applications to the concerned public authorities for obtaining information from them. It may be noted that the Act requires the supply of such information only which already exists and is held by the public authority or held under the control of the public authority. It is beyond the scope of the Act for a public authority to create information.

Collection of information, parts of which are available with different public authorities, would amount to creation of information which a public authority under the Act is not required to do. At the same time, since the information is not related to any one particular public authority, it is not the case where application should be transferred under sub-section (3) of Section 6 of the Act.

It is pertinent to

note that sub-section (3) refers to 'another public authority' and not 'other public authorities'. Use of singular form in the Act in this regard is important

to note.

(iv) If a person makes an application to a public authority for some information which is the concern of a public authority under any State Government or the Union Territory Administration, the Central Public Information Officer (CPIO) of the public authority receiving the application should inform the applicant that the information may be had from the concerned State Government!UT Administration. Application, in such a case, need not be transferred to the State Government!UT Administration.”

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.²⁸

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.

Within thirty days ...

Section 7(1) mandates that the requested information shall be provided **within thirty days** of the receipt of the request.... Following example clarifies it:

²⁸ CIC/WB/C/2006/00067 – 12 July,2006

A requester who is a person Below Poverty Line submits an application on 1st May. PIO should provide information as expeditiously as possible and in any case within 30 days of the receipt of the application. Here, the last date for providing information will be 31st May.

As to the expression “*within ... of*” reference may be made to a case of *K.N. Pandey v. S.L. Saxena*, [AIR 1959 All. 54.] where the first day was held to be excluded.[Law commission of India, 60th report on the General clauses Act 1897, May 1974]

Another requester (who is not a person Below Poverty Line) submits an application on 1st May. PIO dispatched the intimation giving the details of further fees on 5th May and the requester pays further fees on 16th May (the period *intervening* between dispatch of the intimation and payment of fees - 10 days - shall be excluded for the purpose of calculating the period of 30 days referred to in section 7(1)). Here, the last date for providing information will be 10th June.

Thirty day time limit is too much for average requests filed in India.

Requests for ready-made information...information already recorded in the records and registers need not wait for 30 days. Fast track mechanism should be established for disposal of such requests. A time limit of one week may be prescribed for fast track requests. Requests for information which is to be culled out from many sources and information exceeding 50 pages may use the 30 day limit.

Interestingly, *The National Rural Employment Guarantee Act 2005(NREGA) Operational Guidelines 2006*, prescribed by the Ministry Of Rural Development Department Of Rural Development, Government Of India (2nd edition) goes one step ahead in facilitating transparency by reducing time limit for disclosure of the records requested under the RTI Act to seven days and further fees for obtaining information to actual photocopying costs.

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.²⁹

Life & Liberty –s.7(I) :

On the question of life and liberty, this Commission has ruled as follows in Appeal no ³⁰in *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".

- (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.**

²⁹ CIC/WB/A/2006/00128-18 July, 2006.

³⁰ CIC/WB/C/2006/00066 Of 19/4/2006,

- (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 from the requester in advance to minimize wastage of resources of the public authorities.³¹

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.³²

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.³³

Reasonable fees

U.K. Information Tribunal Decision No ³⁴

³¹ 08/IC(A)/2006 - 8 March 2006

³² CIC/PB/A/2006/00063-19, June, 2006.

³³ 204/IC(A)/2006-25.8.2006

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 all 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

³⁴ EA/2005/0014 - 25 March 2006:

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).**

Fee

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).³⁵

- (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.³⁶

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

³⁵ CIC/AT/A/2005/00004 - 27 January 2006

³⁶ CIC/OK/A/2006/00163 – 7 July, 2006.

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.³⁷

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 case³⁸
- PIO should indicate clearly the **grounds** of seeking exemptions from disclosure of information while rejecting a request.³⁹
- PIO should give his own name, name of appellate officer in his communications.⁴⁰
- The requester should be entitled to receive clear-cut replies to all his queries.⁴¹

- (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

³⁷ CIC/OK/C/2006/00010 – 7 July, 2006.

³⁸ CIC/OK/C/2006/00010 – 7 July, 2006.

³⁹ 27/IC (A)/06 - 10 April, 2006

⁴⁰ CIC/OK/A/2006/00016 - 15 June 2006.

⁴¹ CIC/AT/A/2006/00144 – 14 July, 2006.

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.⁴²

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

⁴² CIC/AT/C/2006/00471-21.12.2006

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.⁴³

CIC decision in Sarbajit roy v D.D.A., Decision No.10/1/2005- CIC, dt. 25.02.2006: CIC held, “Sec. 7(9) of the Act does not authorize a public authority to deny information. It simply allows the authority to provide the information in a form easy to access ... But this provision does not exempt disclosure of information, only adjustment of the form in which it is provided.”

CIC decision in J.K. Agarwal v. Syndicate Bank, Decision No. 26/IC (A)/06, dt. 07.04.2006: CIC held that Sec. 7(9) can be used for scoping the request.
[Scoping: adjusting the scope of the request for quick response.]

⁴³ CIC/AT/A/2006/00300-13.12.2006