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DT 23/7/09.

**GOVERNMENT OF INDIA (BHARAT SARKAR)  
MINISTRY OF RAILWAYS (RAIL MANTRAALAYA)  
(RAILWAY BOARD)**

**Sub : A Guide to the Right to Information Act, 2005 (22 of 2005)  
given by Shri Shailesh Gandhi, Hon'ble Information  
Commissioner (CIC) for Public Information Officers.**

Reference is invited to guidelines given by Shri Sahilesh Gand  
Hon'ble Information Commissioner (CIC) to the undersigned for guidance  
while dealing with cases registered under RTI Act, 2005.

As it is an important circular, it is being sent to all CPIOs of Railw  
Board (Ministry of Railways) who may send to the nodal officer under ea  
group. Copy of the same is being put on Indian Railways website whic  
could be viewed on [www.rti.railnet.gov.in](http://www.rti.railnet.gov.in).

All concerned CPIOs/Deemed PIOs and nodal officers are requested  
take note of it while dealing with RTI cases.



**(SUNIL KUMAR)  
Adviser (Public Grievances) &  
Central Public Information Officer -III  
(Coordination CPIO)  
Ministry of Railway, Railway Board**

**Copy to : CPIO-I/APIO-I  
CPIO-II/APIO-II**

**Copy on website : [www.rti.railnet.gov.in](http://www.rti.railnet.gov.in)**

Copy to CPIOs Zonal Railways

# A GUIDE TO THE RIGHT TO INFORMATION ACT, 2005 (22 OF 2005) FOR PUBLIC INFORMATION OFFICERS

-SHAILESH GANDHI

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## I. INTRODUCTION

Right to Information is a Fundamental Right of Citizens and the Right to Information Act 2005 has only codified this ‘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.’<sup>1</sup> It is a major step in the direction of Citizen empowerment and good governance. This right existed since the Constitution of India was adopted, but was difficult to enforce in the absence of an implementing mechanism. The RTI Act provides this crucial mechanism which aims to bring in good governance through transparency and accountability.

The Public Information Officer (PIO) is the most important functionary in the implementation of this mechanism by giving the individual Citizen the primacy he deserves. The PIOs are the vital institutional interface that would ensure true participatory democracy. In this critical role, the PIO is subject to pulls from the empowered Citizenry seeking to use their right, and an administrative set up steeped in the culture of secrecy and arrogance of power. Given the fact that the Act specifies penalties on erring PIOs, they often feel unreasonably victimized. The truth is that if the PIO acts in a systematic manner, he will increasingly become a key fulcrum in this journey towards a true and meaningful SWARAJ.

## II. WHAT IS INFORMATION?

The Act gives a clear definition in Section 2 (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;*

In simple terms, ‘information’ has to exist. The PIO has to give information from existing records. If an opinion has been given on a matter, for instance, by a file noting, it would have to be provided. However, the PIO is neither expected to nor supposed to provide his opinion, justification or clarification which does not exist in any file or record.

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<sup>1</sup> Preamble, Right to Information Act, 2005.

The PIO must provide the information within 30 days of receiving the RTI application. Not giving the information without reasonable cause attracts the penal provisions of the RTI Act. As per Section 20 (1), penalty shall be imposed at Rs. 250 per day of delay if there is no reasonable cause for delay. Refusal to accept a RTI application also attracts the same penalty as per Sections 18 and 20. Section 20 (1) states unequivocally that *'the burden of proving that he acted reasonably and diligently shall be on the Central Public Information Officer or the State Public Information Officer.'* Disciplinary action may also be taken against a PIO for unreasonably refusing or delaying giving the information.

The implementation of the RTI Act is critically dependent on the PIOs. As per Section 3 of the RTI Act, *'Subject to the provisions this (RTI) Act, all citizens shall have the Right to Information.'* Giving information is the rule and denial the exception. The PIO carries the responsibility of ensuring the implementation and success of the RTI regime and is also personally liable for any lapses. It is indeed possible to do one's duty as a good Public Information Officer and also make a useful contribution to the cause of good governance. We assume most PIOs will have a desire to follow the law, and are providing some easy tips to follow which may help them to do their work diligently, and correctly. A proper implementation of the RTI Act by PIOs will be a major contribution to taking India towards a true participatory democracy and the Swaraj we deserve and desire.

What is right to information? Section 2 (j) states:

*"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; .*

Also, Section 19 (5) clearly puts the responsibility on the PIO

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

### **III. PUBLIC INFORMATION OFFICERS AND ASSISTANT PUBLIC INFORMATION OFFICERS**

1. All public authorities have to appoint Public Information Officers. It would be preferable not to have more than one PIO at one location for a department; also it is necessary that all independent administrative units have their own PIO. Administratively it would be a good idea to

internally draw up a list of 'deemed PIOs', i.e. Officers to whom RTI application would be sent for specific matters. These officials would be deemed PIOs under Section 5 (5) of the Act. If too many PIOs are appointed in a department at one location, it will mean more unnecessary work for all PIOs to keep forwarding the applications to the appropriate PIO.

2. Asst. PIOs are to be appointed only at locations where there are no PIOs, and are basically expected to act as postmen, for forwarding applications to PIOs. The Act under Section 5(2) envisages Assistant PIOs at 'sub divisional level or other sub-district level'. Hence, appointment of APIOs at locations where PIOs exist is superfluous and serves no purpose. This is the reason why the Central Government has started a system of having post offices acting as APIOs.
3. It would of course be a good idea to have officials in rural areas acting as PIOs for matters directly in their control.

#### **IV. SUGGESTED TIME PLAN OF ACTION**

- RTI application received - **30 days clock starts.**
- In cases where the life or liberty of a person is involved, information has to be provided in **48 hours.**
- It must be ensured that all RTI applications reach the PIO on the same day.
- Within one day of the receipt of the requisition for information, please check the following:
  1. Has the **application fee** been paid? For Central Govt. bodies, a Citizen can pay 10 rupees by cash, banker's cheque, Indian Postal order or in a designated Post office.
  2. Is the applicant's **contact information** provided?
  3. Is the 'information' requested covered by **Section 2 (f)**?

If the answer is '**no**', please intimate the requisitioner that what has been asked for is not 'information' as defined by Section 2 (f) of the RTI Act.

If the answer is '**Yes**', i.e. what has been asked for is 'information' as defined by the Act, it may be given.

- See if the information falls under your 'public authority'.
- If the whole or part of it is available with another public authority, please transfer the entire or part of the application to such other PIO. As per Section 6(3) this must be done **within five days** of receiving the application with an

intimation to the Applicant. Hence, it would be advisable to do this immediately.

## V. SECTION 4 COMPLIANCE

If the information is with your public authority, see if it falls under Section 4, RTI Act. If so, this information should have been provided *suo moto*. In this case if the information has been already published, offer to provide it to the Citizen on payment of the applicable fees, and also tell the Applicant where it is available free of cost. If it has not been published, obtain the information, give it to the Applicant, and get your department to publish it.

## VI. EXEMPTION

Please check if the information is exempt under **Section 8 (1)** RTI Act.

Given below are the exemptions under Sections 8 and 9 for your convenience:

8. (1) *Notwithstanding anything contained in this Act, there shall be no obligation to give any citizen,-*
  - a. *information, disclosure of which would prejudicially affect the sovereignty and integrity of India, the security, strategic, scientific or economic interests of the State, relation with foreign State or lead to incitement of an offence;*
  - b. *information which has been expressly forbidden to be published by any court of law or tribunal or the disclosure of which may constitute contempt of court;*
  - c. *information, the disclosure of which would cause a breach of privilege of Parliament or the State Legislature;*
  - d. *information including commercial confidence, trade secrets or intellectual property, the disclosure of which would harm the competitive position of a third party, unless the competent authority is satisfied that larger public interest warrants the disclosure of such information;*
  - e. *information available to a person in his fiduciary relationship, unless the competent authority is satisfied that the larger public interest warrants the disclosure of such information;*
  - f. *information received in confidence from foreign government;*
  - g. *information, the disclosure of which would endanger the life or physical safety of any person or identify the source of information or assistance given in confidence for law enforcement or security purposes;*
  - h. *information which would impede the process of investigation or apprehension or prosecution of offenders;*
  - i. *cabinet papers including records of deliberations of the*

*Council of Ministers, Secretaries and other officers:*

*Provided that the decisions of Council of Ministers, the reasons thereof, and the material on the basis of which the decisions were taken shall be made public after the decision has been taken, and the matter is complete, or over:*

*Provided further that those matters, which come under the exemptions specified in this section, shall not be disclosed;*

- j. *Information which relates to personal information the disclosure of which has no relationship to any public activity or interest, or which would cause unwarranted invasion of the privacy of the individual unless the Central Public Information Officer or the State Public Information Officer or the appellate authority, as the case may be, is satisfied that the larger public interest justifies the disclosure of such information:*

*\* Provided that the information, which cannot be denied to the Parliament or a State Legislature shall not be denied to any person.*

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

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

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

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

(\* this is clarificatory clause. Public servants are used to providing answers to Parliament and State legislature, and this clause can help the PIO to take a decision easier.)

- If the requisition concerns the 'life and liberty' of a person, talk to the appropriate people and **provide the information immediately.**
- ***Information over 20 years old***

If the information asked for is over 20 years old only exemption clauses under Section 8 (1) (a), (c) or (i) apply. This means only three of the ten exemption clauses apply, if the information is over twenty years old. Thus seven of the exemption clauses do not apply to information which is over 20 years old.

➤ ***Public Interest***

If the exemption clauses apply, but there is an overriding public interest, information must be disclosed. **The Applicant need not show any public interest to justify the demand for information.** Only if one of the exemption clauses applies, then information would have to be provided if a larger public interest is shown. *Only if an exemption clause is applicable, the applicant can be asked to show a larger public interest in disclosure.*

➤ ***Severability of Information***

If the exemption clauses apply, see if any of the information asked for can be severed and given (Section 10). If so, give the information which is not exempt, and give reasons why some of the information cannot be given. After the first few times, this exercise will not take more than a few minutes. The PIO is expected to act judiciously and remember that his role is to give information if possible, not to deny it.

➤ ***Third Party***

If the information asked for has been provided by a third party, and the third party has *earlier stipulated that it is confidential*, you must give notice to the third party about your intention to give the information. The third party must give you reasons which exemption clause applies, and if you are satisfied, you may deny the information. If you are not convinced that an exemption applies, you must inform the third party, who may go in appeal if he wishes (Section 11 (4) ).

➤ ***Fees***

If prima facie you see that information must be provided, see if you have the information with you. If so, see if any fee can be levied as per the rules. For Central Government the prescribed fees are Rs. 2 per page for A4 size photocopy or collated and typed. Intimate the Applicant of the calculations and the total amount payable and ask him to pay the amount. If there are items whose cost has not been specified in the rules, e.g. samples, please make a reasonable estimate. On payment of the amount release the information. If some information is not being provided, indicate clearly which information is not being provided and give the reasons as to how any of the exemption clauses are applicable.

➤ **Section 5(4)- requisition of information from other officials**

If the entire or part of the information is not available with you, please requisition it from the official or officials who might have it (Section 5(4)). Do ensure that you put your request in writing and do it as soon as possible. If the other official, deemed PIO, does not give the information, the responsibility shifts to him. It is also worthwhile for public authorities to identify the appropriate official to be contacted by the PIO for information about specific matters, and agree that the deemed PIO will give the information within 15 days of receiving the requisition from the PIO. The deemed PIO should also give a calculation of the additional fees to be charged for the information. If the deemed PIO claims that the information is exempt, ask him to give the reasons in writing as to which exemption clauses apply and why. Based on this communication, intimate to the Citizen why the information cannot be provided. If the PIO requests for information from the appropriate official without delay, the responsibility for delay, if any, is of the deemed PIO.

In most offices the internal processes of identifying the people and ensuring that the deemed PIOs will send their response in writing within 15 days is non-existent, with the result the entire load is transferred to the PIO. Ideally the head of the department should do this, but if this has not been done, the PIO should persuade the head of the department to implement this. If Section 4 of the RTI Act is properly implemented, this would become easy. Also, in certain cases, unnecessary records are kept which are never used and cannot be accessed. If it is seen that in many cases it takes more than 10 days to provide the information, it is an indication that the record keeping is poor, and this will impact the effective working of the office. In US and Mexico, the time limit is 20 days. Consider a proper record maintenance schedule, and put it among your Section 4 declaration. Many PIOs feel they should send the intimation only towards the end of the mandated period. This leads to the PIO having to carry the burden of remembering the last dates for the RTI applications, and sometimes missing them, because of some work pressure building up right then. It is a good practice to send the replies to applications as soon as possible.

## **VII. A FEW SUGGESTIONS**

1. When deciding on what information should be given, look at the matter **logically**. See if the information asked for falls in the exemption list. If you think it does, think of the reasons how the clauses apply and provide them in writing to the applicant. This will reduce the incidences of appeals.

If you think larger public interest would be served by disclosing the information, discuss this with a colleague or senior officer. If he agrees with your perception, provide the information.

2. Providing information is not an unnecessary activity, and the Citizen is not harassing you by asking for information. Just as accounts have to be maintained, internal reports have to be made, Income Tax returns and Sales tax returns have to be submitted, so also giving of information is a statutory requirement and has to be fulfilled. You are actually making a major contribution to bringing about participatory democracy, and should feel justifiably proud to do this work.
3. It may be a good practice to calculate if you are providing the information in over 95% cases in time. If not, do ask yourself, if you are correct in your approach.
4. **Fees for information:** The fees are meant to be a token amount. Do not try and make unreasonable demands. The Citizen owns the information. Also, for information for which fees are not specified, like samples, the fees have to be reasonable.

<b>VIII. SOME SUGGESTED FORMATS FOR REPLYING TO APPLICANTS</b>
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➤ *Sample I*

**Reply in regard to application under Right to Information Act 2005**

From: Name and Designation of PIO  
Address and Phone number.

To  
(Name and address of the applicant)

Your RTI application dated ..... received on .....

Sir,

With respect to your above mentioned application, we regret to inform you that the information requested by you, cannot be provided for the reasons given below:

- a) Information refused
- b) Exemption clause
- c) Reason/s why the exemption clause/s applies.

If you wish to appeal against this decision you can appeal within 30 days to:  
Name, address and telephone number of Appellate Authority.

Signature of PIO

➤ **Sample II**

**Reply in regard to application under Right to Information Act 2005**

From: Name and Designation of PIO  
Address and Phone number

To  
(Name and address of the applicant)

Your RTI application dated ..... received on .....

Sir,

With respect to your above mentioned application, we are pleased to inform you that the following information can be provided to you on payment of fees as shown below:

1. A4 size pages	nos. @ Rs. 2 each	
2. Other size papers	nos. @ Rs. each	
3. Floppies or CDs	nos. @ Rs. 50 each	
4. Inspection	estimated time....	
	estimated cost.....	
5. Postage charges		_____
Total		Rs. _____

Please pay the fees at .....(place), or send a demand draft or IPO in the name of ..... so that we may give you the information.

We wish to inform you that the following information is not being given to you, since the following exemption clauses apply:

- a) Information severed
- b) Exemption clause
- c) Reasons, how the exemption clause/s applies

If you wish to appeal against this decision you can appeal within 30 days to:  
Name, address and telephone number of Appellate Authority.

Signature of PIO

## IX. IMPORTANT PRONOUNCEMENTS BY THE COMMISSION

### 1. *No Imagined Exemptions*

This Commission is conscious of the fact that it has been established under the Act and being an adjudicating body under the Act, it cannot take upon itself the role of the legislature and import new exemptions hitherto not provided. The Commission cannot of its own impose exemptions and substitute their own views for those of Parliament. The Act leaves no such liberty with the adjudicating authorities to read law beyond what it is stated explicitly. There is absolutely no ambiguity in the Act and tinkering with it in the name of larger public interest is beyond the scope of the adjudicating authorities. Creating new exemptions by the adjudicating authorities will go against the spirit of the Act.

Under this Act, providing information is the rule and denial an exception. Any attempt to constrict or deny information to the Sovereign Citizen of India without the explicit sanction of the law will be going against rule of law.

Right to information as part of the fundamental right of freedom of speech and expression is well established in our constitutional jurisprudence. Any restriction on the Fundamental Rights of the Citizens in a democratic polity is always looked upon with suspicion and is invariably preceded by a great deal of thought and reasoning. Even the Parliament, while constricting any fundamental rights of the citizens, is very wary. Therefore, the Commission is of the view that the Commission,- an adjudicating body which is a creation of the Act,- has no authority to import new exemptions and in the process curtail the Fundamental Right of information of citizens.

#### **REFERENCE:**

*Mangla Ram Jat v. PIO, Banaras Hindu University*  
Decision No. CIC /OK/A/2008/00860/SG/0809

### 2. *Alternative Routes to access Information*

No claim has been made by the PIO of any exemption under the RTI Act to deny the information. **If a Public authority has a process of disclosing certain information which can also be accessed by a Citizen other than the route provided by the Right to Information Act, it is the Citizen's right to decide which route he wishes to use.** The existence of another method of accessing information cannot be used to deny the Citizen his freedom to use his fundamental right codified under the Right to Information Act. If Parliament wanted to restrict his right, it would have been stated in the Law. Nobody else has the right to constrain or constrict the rights of the Citizen.

There is no provision in the Right to Information Act which restrains the Citizen's right to use it, if another route to access information has been offered or is available. It is a Citizen's right to use the most convenient and efficacious means available to him.

**REFERENCE:**

*Dharmender Kumar Garg v. PIO, Registrar of Companies & CPIO, NCT Delhi and Haryana*  
Decision No. CIC/SG/C/2009/000702/4128

**3. *Reasons For Claiming Exemptions***

Since Right to Information is a fundamental right of Citizens, where denial has to be only on the basis of the exemptions under Section 8 (1), **it is necessary to carefully explain the reasons of how any of the exemptions apply, when a PIO wishes to deny information on the basis of the exemptions. Merely quoting the Subsection of Section 8 is not adequate. Giving information is the rule and denial the exception.**

In the absence of any reasoning, the exemption under Section 8 (1) ( ) is held to have been applied without any basis.

**REFERENCE:**

*G.S. Gangadharappa v. Sr. Personnel Officer & PIO, Rail Wheel Factory, Ministry of Railways*  
Decision No. CIC/SG/A/2009/000889/3615

**4. *Fiduciary***

The traditional definition of a **fiduciary** is a person who occupies a position of *trust* in relation to someone else, therefore requiring him to act for the latter's benefit within the scope of that relationship. In business or law, we generally mean someone who has specific duties, such as those that attend a particular profession or role, e.g. financial analyst or trustee. The information must be given by the holder of information when there is a choice- as when a litigant goes to a particular lawyer, or a patient goes to particular doctor. It is also necessary that the principal character of the relationship is the trust placed by the provider of information in the person to whom the information is given. An equally important characteristic for the relationship to qualify as a fiduciary relationship is that the provider of information gives the information for using it for his the benefit of the giver. When a committee is formed to give a report, the information provided by it in the report cannot be said to be given in a fiduciary relationship. All relationships usually have an element of trust, but all of them cannot be classified as fiduciary.

**REFERENCE:**

*Rakhi Gupta v. Jt. Director & PIO, National Institute of Open Schooling*  
Decision No. CIC/SG/A/2009/001343/4053

**5. *Sub Judice***

The appellate authority had claimed exemption under Section 8 (1) (e), but the PIO has given no reason to justify how Section 8 (1) (e) can apply.

The CIC decision cited by the respondent states 'The matter is sub judice. The

appellate authority has correctly advised that information in question could be obtained through Court, which is examining the matter.' No reasoning has been offered as to which exemption clause of the RTI act applies. The only exemption of Section 8 (1) which might remotely apply is Section 8 (1) (b) which states, '*information which has been expressly forbidden to be published by any court of law or tribunal or the disclosure of which may constitute contempt of court;*' can be denied.

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

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

**REFERENCE:**

*Ashwani Kumar Goel v. Joint Secretary (Home) & PIO, Office of the Registrar Coop. Societies, GNCTD,*  
Decision No. CIC /WB/A/2008/00838/1777

**6. Privacy**

Under Section 8 (1) (j) information which has been exempted is defined as: "information which relates to personal information the disclosure of which has no relationship to any public activity or interest, or which would cause unwarranted invasion of the privacy of the individual unless the Central Public Information Officer or the State Public Information Officer or the appellate authority, as the case may be, is satisfied that the larger public interest justifies the disclosure of such information:"

To qualify for this exemption the information must satisfy the following criteria:

1. It must be personal information.

Words in a law should normally be given the meanings given in common language. In common language we would ascribe the adjective 'personal' to an attribute which applies to an individual and not to an institution or a corporate. **From this it flows that 'personal' cannot be related to institutions, organizations or corporates.** (Hence we could state that Section 8 (1) (j) cannot be applied when the information concerns institutions, organizations or corporates).

The phrase 'disclosure of which has no relationship to any public activity or interest' means that the information must have some relationship to a Public activity. Various Public authorities in performing their functions routinely ask for 'personal' information from Citizens, and this is clearly a public activity. When a person applies for a job, or gives information about himself to a

Public authority as an employee, or asks for a permission, licence or authorization, all these are public activities.

We can also look at this from another aspect. **The State has no right to invade the privacy of an individual.** There are some extraordinary situations where the State may be allowed to invade on the privacy of a Citizen. In those circumstances special provisos of the law apply, always with certain safeguards. Therefore it can be argued that where the State routinely obtains information from Citizens, this information is in relationship to a public activity and will not be an intrusion on privacy.

Certain human rights such as liberty, freedom of expression or right to life are universal and therefore would apply uniformly in all Countries uniformly. However, the concept of 'privacy' is related to the society and different societies' would look at these differently. India has not codified this right so far, hence in balancing the Right to Information of Citizens and the individual's Right to Privacy, the Citizen's Right to Information would be given greater weightage.

**Therefore we can accept that disclosure of information which is routinely collected by the Public authority and routinely provided by individuals, would not be an invasion on the privacy of an individual and there will only be a few exceptions to this rule which might relate to information which is obtained by a Public authority while using extraordinary powers such as in the case of a raid or phone-tapping.**

**REFERENCE:**

*Bishamber Dayal Tyagi v PIO, Delhi Jal Board*  
Decision No. CIC/SG/A/2009/000172/3092

**7. Third Party**

It is clearly stated at Section 11 (1) that 'submission of third party shall be kept in view while taking a decision about disclosure of information'. Section 11 does not give a third party an unrestrained veto to refuse disclosing information. It only gives the third party an opportunity to voice its objections to disclosing information. The PIO will keep these in mind and denial of information can only be on the basis of exemption under Section 8 (1) of the RTI act.

The test of public interest is to be applied to give information, only if any of the exemptions of Section 8 apply. Even if the exemptions apply, the Act enjoins that if there is a larger Public interest, the information would still have to be given. There is no requirement in the Act of establishing any public interest for information to be obtained by the sovereign Citizen; nor is there any requirement to establish larger Public interest, unless an exemption is held to be valid. Insofar as looking at the credentials of the applicant are concerned, the lawmaker has categorically stated that in Section 6 (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.*' Since the law categorically states that no

information shall be required be supplied by the applicant except those that may be necessary for contacting him, it is clear that the credentials of the applicant are of no relevance, and are not to be taken into account at all when giving the information. Truth remains the Truth and it is not important who accesses it. If there is a larger Public interest in disclosing a Truth, it is not relevant who gets it revealed.

Under this Act, providing information is the rule and denial an exception. Any attempt to constrict or deny information to the Sovereign Citizen of India without the explicit sanction of the law will be going against the rule of law. The Citizen needs to give no reasons nor are his credentials to be checked for giving the information. If the third party objects to giving the information, the Public Information Officer must take his objections and see if any of the exemption clauses of Section 8 (1) apply. If any of the exemption clauses apply, the PIO is then obliged to see if there is a larger Public interest in disclosure. If none of the exemption clauses apply, information has to be given.

#### **REFERENCE:**

*Mahesh Kumar Sharma v. PIO, Delhi Jal Board* Decision No. CIC /AT/A/2008/01262//SG/2109

#### **8. Assets of Public Servant**

The Commission can allow denial of information only based on the exemptions listed under Section 8 (1) of the Act.

Under Section 8 (1) (j) information which has been exempted is defined as:

"information which relates to personal information the disclosure of which has no relationship to any public activity or interest, or which would cause unwarranted invasion of the privacy of the individual unless the Central Public Information Officer or the State Public Information Officer or the appellate authority, as the case may be, is satisfied that the larger public interest justifies the disclosure of such information:"

To qualify for this exemption the information must satisfy the following criteria:

##### **1. It must be personal information.**

Words in a law should normally be given the meanings given in common language. In common language we would ascribe the adjective 'personal' to an attribute which applies to an individual and not to an Institution or a Corporate. **From this it flows that 'personal' cannot be related to Institutions, organisations or corporates.** (Hence we could state that Section 8 (1) (j) cannot be applied when the information concerns institutions, organisations or corporates.).

##### **2. The phrase 'disclosure of which has no relationship to any public activity or interest' means that the information must have some relationship to a Public activity.**

Various Public authorities in performing their functions routinely ask for 'personal' information from Citizens, and this is clearly a public activity. When a person applies for a job, or gives information about himself to a

Public authority as an employee, or asks for a permission, licence or authorisation, all these are public activities. The information sought in this case by the appellant has certainly been obtained in the pursuit of a public activity.

We can also look at this from another aspect. **The State has no right to invade the privacy of an individual.** There are some extraordinary situations where the State may be allowed to invade on the privacy of a Citizen. In those circumstances special provisos of the law apply, always with certain safeguards. Therefore it can be argued that where the State routinely obtains information from Citizens, this information is in relationship to a public activity and will not be an intrusion on privacy.

**Therefore we can state that disclosure of information such as assets of a Public servant, -which is routinely collected by the Public authority and routinely provided by the Public servants,- cannot be construed as an invasion on the privacy of an individual. There will only be a few exceptions to this rule which might relate to information which is obtained by a Public authority while using extraordinary powers such as in the case of a raid or phone-tapping.** Any other exceptions would have to be specifically justified. Besides the Supreme Court has clearly ruled that even people who aspire to be public servants by getting elected have to declare their property details. If people who aspire to be public servants must declare their property details publicly, it is only logical that the details of assets of those who are public servants must be considered to be disclosable. Hence the exemption under Section 8(1) (j) cannot be applied in such a case.

**REFERENCE:**

*Rajbir Singh v. PIO, MCD (CED)* Decision No.CIC/SG/A/2009/001990/5042

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## **9. No requirement of Public interest in seeking information.**

Any refusal of information has to be only on one or more grounds mentioned in section 8 (1) or Section 9. The Act gives no scope to the adjudicating authorities to import new exemptions other than those that have been provided under the Act and thereby deny the information. In a democracy the Government belongs to the people and therefore the rights of the owner to access this information has to be respected very carefully. Since in Section 3 it has been stated that ‘subject to the provisions of this Act, all citizens shall have the right to information’, it follows that denial of information can only be on the basis of the exemptions in the Act and no other grounds for denial are valid.

A similar question relating to revealing information regarding exam details came up for consideration under the Act before the Hon’ble High Court of Calcutta in the matter of *Pritam Rooj v. University of Calcutta and Ors.*(AIR2008Cal118). This judgment which was pronounced on 28/3/2008, - after the orders of the Commission which have been relied upon by the respondent,- states:

*“The umbra of exemptions must be kept confined to the specific provisions in that regard and no penumbra of a further body of exceptions may be conjured up by any strained devise of construction”.*

Going through the decision in Appeal No. 845/ICPB/2007 titled as *B.L.Goel v. AIIMS* relied upon by the respondent, the Commission finds that none of the exemptions as required under the Act to deny information have been relied upon by the Hon’ble Commission while deciding the said appeal. The Commission is of the view that the aforesaid appeal was decided citing argument of ‘public interest’, which is not an exemption under the Act. While deciding the said appeal, the Hon’ble Commission came to the conclusion that ‘*by disclosing this information we will not be able to protect any larger public interest*’. However, this Commission, after going through the above quoted sections of the Act is of the view that nothing in the Act envisages denial of information on the ground that the information will not be able to protect any larger public interest.

The test of public interest is to be applied to give information, only if any of the exemptions of Section 8 apply. Even if the exemptions apply, the Act enjoins that if there is a larger Public interest, the information would still have to be given. There is no requirement in the Act of establishing any public interest for information to be obtained by the sovereign Citizen; nor is there any requirement to establish ‘protecting of any larger Public interest’. Therefore, in view of the above provisions of the Act, the denial of information in the Commission’s orders are ‘*per incuriam*’. I therefore, respectfully differ with the view taken by the Commission in *B.L.Goel v. AIIMS*.

Reference:

Mangla Ram Jat vs. PIO, BHU Decision No. CIC/OK/A/2008/00860/SG/0809

**10-** The appellant had sought information about the transactions with customers of the bank. The Bank has denied the information claiming exemption under Section 8(1)(e) of the RTI Act. Section 8(1)(e) of the RTI Act exempts information which is held in a fiduciary capacity by the public authority.

Section 8 (1) (e) of the RTI Act exempts from disclosure ‘information available to a person in his fiduciary relationship, unless the competent authority is satisfied that the larger public interest warrants the disclosure of such information;’

The traditional definition of a **fiduciary** is a person who occupies a position of *trust* in relation to someone else, therefore requiring him to act for the latter's benefit within the scope of that relationship. In business or law, we generally mean someone who has specific duties, such as those that attend a particular profession or role, e.g. doctor, lawyer, financial analyst or trustee. Another important characteristic of such a relationship is that the information must be given by the holder of information who must have a choice,- as when a litigant goes to a particular lawyer, a customer chooses a particular bank, or a patient goes to particular doctor. An equally important characteristic for the relationship to qualify as a fiduciary relationship is that the provider of information gives the information for using it for the benefit of the one who is providing the information. All relationships usually have an element of trust, but all of them cannot be classified as fiduciary. Information provided in discharge of a statutory requirement, or to obtain a job, or to get a license, cannot be considered to have been given in a fiduciary relationship.

In the instant case very clearly a fiduciary relationship exists, since customers of a Bank come to it because of the implicit trust they have; and they provide information to the Bank for their own benefit. Customers also have a choice of which bank they wish to approach. Hence unless a large public interest is shown the information is exempted from disclosure. In the instant case no larger public interest has been demonstrated.

**Decision:**

The appeal is disposed.

The information sought by the Appellant is exempted under Section 8(1)(e) of the RTI Act.

Reference: Decision No. CIC/SG/A/2011/002126/16346 Mr. Murlidhar Mishra VS Syndicate Bank on 15 December 2011

**11-** The PIO has refused to give the information regarding the transactions in a Kisan Credit Scheme Account Holder. The Commission recognizes that normally the information about a customer is held by the Bank in a fiduciary capacity and hence information about such accounts or transactions need not be provided, since it is exempt under Section 8(1)(e) of the RTI Act.

However, under Section 4(1)(b) (xii) &(xiii) of the RTI Act information regarding subsidies, beneficiaries and concessions given by the government policy have to be declare suo-motu by all public authorities. In view of this information related to such transactions would have to be provided under RTI and cannot to be considered exempt. The Commission rules that in the instant case the claim for exemption held by the PIO in not upheld.

**Decision:**

The appeal is allowed.

The PIO is directed to provide the information sought by the Appellant as per available records before 10 December 2011.

Reference: Decision No. CIC/SG/A/2011/001822/15722 Mr. Pradeep Kumar Gupta Vs. Bank of India on 17 November 2011