RTI Matter

भारतीय कृषि अनुसंधान परिषद
INDIAN COUNCIL OF AGRICULTURAL RESEARCH
कृषि भवन : नई दिल्ली
KRISHI BHAVAN : NEW DELHI

No. F.1(4)/2010 – CR(A)&RTI **Dated** : **November 03 ,2010**

To

The Directors1 Appellate Authorities/CPIOs/APIOs of all ICAR Institutes/NRCs/ PDs/ Bureaux/ ZPDs.
All Appellate Authorities/CPIOs at ICAR Hqrs.

Subject : **Important Decisions of Central Information Commission – reg.**

Sir/Madam,

I am to draw your kind attention that Institute of Secretariat Training & Management (ISTM), Ministry of Personnel, Public Grievances & Pensions, Government of India has compiled a book on "Important Decisions of Central Information Commission". The aforesaid book has been uploaded at ICAR's website under Right to Information Act with the heading **"RTI – Important Decisions of CIC"** for information and guidance of all concerned.

Apart from the above, it may be observed that on the website of Central Information Commission (CIC) at http://cic.gov.in, decisions of CIC in various appeals under Right to Information Act are available. It is requested that the officers dealing with the implementation of the RTI Act may be advised to study/refer to the decisions of the CIC on regular basis so as to enable them to deal with the requests received for seeking information under the RTI Act efficiently and in the right perspective.

Yours faithfully,

(SANJAY GUPTA)
DIRECTOR (ADMN.)
Tel. 011-23384774

Copy for information to:

1. All DDGs, ICAR.
2. PSO to Secretary (DARE) & DG, ICAW PPS to AS(DARE) & Secretary, ICAW PS to AS&FA, DARE/ICAR/ SA to Chairman, ASRB.
3. ADG(PIM)/ADG(CDN)/Proj. Dir.(DIPA), ICAR.
4. Dir.(DARE)/DS(DARE).
5. All Officers/ Sections at ICAR Hqrs. at KB/KAB-I/KAB-II/ NASC Complex.

Important Decisions
of
Central Information Commission

Compiled by
Institute of Secretariat Training & Management
(Department of Personnel & Training)
Government of India
Old JNU Campus
New Delhi – 110 067.

Under
Centrally Sponsored Plan Scheme
of
Department of Personnel and Training
for
"Strengthening, Capacity Building and Awareness Generation for Effective Implementation of RTI Act"

July, 2010

COMPILATION TEAM

Direction:

Dr. Khwaja M. Shahid, Director, ISTM

Compilation:

Sh. Mahabir S. Kasana, Joint Director, ISTM
Sh. Apendu Ganguly, Deputy Director, ISTM
Sh. K. Govindarajulu, Deputy Director, ISTM

Support Staff:

Smt. R. Mahalakshmi, PA
Sh. Jitendra Bharti, PA

While all efforts have been made to make this compilation as accurate and as elaborate as possible, the information given in this book is for reference and must not be taken as binding in any way. This compilation is intended to provide guidance to the readers. It cannot be a substitute for the Act and the rules made there under.

Compiled by Institute of Secretariat Training & Management, Old JNU Campus, New Delhi – 110 067, Under Centrally Sponsored Plan Scheme - "Strengthening, Capacity Building and Awareness Generation for Effective Implementation of RTI Act" of Department of Personnel and Training, Government of India. For comments and suggestions please contact compilation team at ISTM, Tel 011-26177058, 26185316, 26180589.

email: ms.kasana@nic.in, kg.rajulu@nic.in

Institute of Secretariat Training and Management (ISTM)
Department of Personnel and Training

The Institute of Secretariat Training and Management (ISTM), Department of Personnel and Training, Government of India is a multi-disciplinary organisation specializing in capacity building, consultancy and research support particularly for the Central Secretariat, Government of India. It was established in 1948 and is committed to the ideal of "Efficiency and the Public Good". ISTM's main concern is to help develop the professional competence of officers to promote good governance. Focus areas of training by ISTM are Good Governance, Right to Information, Personnel Administration, Office Management, Financial Management, Management Development & Services, Information-Communication Technology, Behavioural Techniques and Training of Trainers. ISTM has been conducting International Training Programmes for participants from Afro-Asian Countries sponsored by Ministry of External Affairs, Government of India under ITEC / SCAAP schemes, WHO and GTZ. ISTM has also been associated in various consultancy assignments under DFID funded projects for capacity building for poverty reduction programme sponsored by ARP&G, GOI.

Capacity building for implementation of Right to Information in India has been one of the ISTM's high priority areas. We have conducted over 200 workshops on RTI covering around 5000 participants from wide spectrum of more than 350 organisations and have developed vast faculty and training material resource on the RTI domain. In November 2009 ISTM has organised an international Training programme on Right to Information for Asia region commonwealth countries, sponsored by commonwealth secretariat London. ISTM has also been involved in various activities undertaken by Government of India under capacity building for access to information (A GOI- UNDP Initiative).

ISTM has faculty strength of 29 experienced training professionals drawn from government and a panel of eminent guest faculty from Universities, NGOs and professional experts. It has a learning resource centre of more than 16000 books besides a video collection and two state of art computer labs. The Institute has built up a rich reservoir of training material on various Government functioning. It also has a hostel to accommodate outstation participants.

To learn more, please visit: www.istm.gov.in

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Introduction to the Compilation

The enactment of the Right to Information Act, 2005 (RTI Act) is a historic event in the annals of democracy in India. Information is power and now a citizen has the right to access information "held by or under control of" the public authorities. Concurrently, it is the duty of all public authorities to provide information sought by citizens. A sea change can be achieved towards transparency and accountability in governance by implementing the Act in letter and spirit.

The Act mandates a legal-institutional framework for setting out the practical regime of right to information for every citizen to secure access to information under the control of public authorities. It prescribes mandatory disclosure of certain information to citizens, and designation of Public Information Officers ("PIOs") and Assistant Public Information Officers ("APIOs") in all public authorities to attend to requests from citizens for information within stipulated time limits. It provides for appeal against the decisions of PIOs to an Appellate Authority within the Public Authority, who is an officer senior in rank to Public Information Officers. It also mandates the constitution of a Central Information Commission (CIC) and State Information Commissions (SICs) to inquire into complaints, hear second appeals, and guide implementation of the Act.

CIC Website (www.cic.gov.in) has uploaded all their decisions till date, including full bench decisions of the Commission. Available decisions explain and elaborate various provisions of the RTI Act and provide valuable guidelines to the public authorities, first appellate authorities and public information officers to discharge their mandated functions.

Institute of Secretariat Training and Management (ISTM), New Delhi is involved in capacity building initiatives of Department of Personnel and Training, Government of India since 2005 and has organised around 200 training programmes till March 2010 covering over 350 organisations. ISTM has also carried out studies on training requirements and conducted audit of United Nations Development Programme (UNDP) supported 'Capacity Building for Access to Information' (CBAI) Project of proactive disclosures of various ministries of Central Government under the Department of Personnel and Training (DoPT), Ministry of Personnel, Government of India. .

The training programmes organised by ISTM includes Training of Trainers on RTI (who in turn would conduct training programmes at their organisations / Institutes), Records Management for RTI, Process re-engineering for RTI and workshops for various other stakeholders to guide smooth implementation of the Act and undertaking other advocacy and dissemination activities.

As part of the centrally sponsored plan scheme of Department of Personnel and Training - "Strengthening, Capacity Building and Awareness Generation for Effective Implementation of RTI Act", ISTM is publishing this compilation of important CIC decisions for use by various stakeholders including public authorities (APIOs, PIOs and Appellate Authorities), Civil Society and Citizen groups as comprehensive guidelines for effective implementation of the Act.

Chapter 1 of the compilation provides the Scope & Ambit of Right to Information Act and Chapter 2 highlights the CIC pronouncements on the same. Chapter 3 presents an over view of Records management and Suo- motu Publications. Chapter 4 discuss the CIC decisions thereon. Chapter 5 discusses Appointment of Public Information Officers (PIO) and Assistant PIOs and their role. Chapter 6 provides CIC decisions on appointment of PIOs, Assistant PIOs and their responsibilities. Chapter 7 provides the procedure for handling RTI request and Chapter 8 gives insight into the CIC interpretations of provisions in sections 6 & 7 of the Act. Chapter 9 discusses exemptions from disclosures and Chapter 10 gives useful guidelines as emerging from CIC decisions to facilitate the application of exemptions appropriately. Chapter 11 provides for Complaint, Appeal and Penalties procedure and Chapter 12 discusses the CIC decisions on the same. Chapter 13 elaborates law relating to exempted organizations and schedules two of the ACT as amended. Chapter 14 discusses CIC decisions relating to organizations specified in schedule -II of the ACT.

The sequence of Chapters 1 – 14 mentioned above is based on the sequence of sections and structure of the RTI Act 2005. Some components of the Act like preamble and Chapter 1 which encompassed short title and definition have been clubbed together under the Chapter -1 under Scope and Ambit of the Act.

Over and above the 14 Chapters, Chapter – 15 covering a residual area has been included as miscellaneous.

Appendix- 1 provides Government of India RTI (Regulation of fee and cost) Rules. 2005 with amendments

Appendix- 2 Web Site resources

The compilation team hopes that the contents of this book would be of assistance to all stake holders in discharging their commitment as per the provisions of the RTI Act, 2005.

LIST OF ABBREVIATIONS

1.	CIC	Central Information Commission
2.	SIC	State Information Commission
3.	AA	Appellate Authority
4.	PA	Public Authority
5.	PIO	Public Information Officer
6.	APIO	Assitant Public Information Officer
7.	CGG	Centre for Good Goverernance
8.	SAA	Second Appellate Authority
9.	RTI	Right to Information

Chapter-I

1.0. Scope & Ambit of RTI Act

1.1 Background

Lal Singh a small farmer from Sohangad village while addressing a group of officer trainees at HCM, RIPA, the officer training institute in Jaipur said: 'without the RTI, we feel our survival is at stake. You are clearly worried; he said looking at the future officers, that with the right to information, the survival of your power is at stake He concluded, But our collective concern should be about the survival of our democratic nation."

1.1.1. In three short sentences, Lal Singh brings out clearly the implication of the object of the Act i.e. democracy requires an informed citizenry and transparency of information which are vital to its functioning and also to contain corruption and to hold governments and their instrumentalities accountable to the governed.

1.1.2. The enactment of the RTI Act, 2005 has introduced at the practical plane participatory governance which begins with the seeking of information. Democracy, without correct and relevant information would assume a form, where people will have no effective participation in governance. A govt. by the people, for the people and of the people will perhaps remain in the text books only.

1.1.3. Section-2(f) of the Act states "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.

1.1.4. Section 2(j) takes it further and much beyond documents, manuscript or file. It includes inspection of work, documents, records, samples of material, diskettes, floppies, tapes, video cassettes.

1.2. Practical regime to secure access to information

1.2.1. The RTI Act, 2005 provides for setting out the practical regime of right to information for citizens to secure access to information under the control of public authorities. The legal- institutional frame work comprises the following authorities:-

i.	Appropriate Govt.	S2(a)
ii.	CIC	S2(b)
iii.	CPIO	S2(c)
iv.	CI Commissioner	S2(d)
v.	Complaint authority	S2(e)
vi.	Public Authority	S2(h)
vii.	Other Officers	S5(4)
viii	Appellate Authority	S19(1)

1.3. Inclusive definition of public authorities

1.3.1. The definition of public authorities has a sweeping coverage. It takes within its ambit not only the officers, organizations, etc. under the three organs of the govt. viz. Executive, Legislature and Judiciary but also any authority or body or institution of self government established or constituted by or under the Constitution & Parliament. The Act also takes within its ambit body owned controlled or substantially financed and non-govt. organisation substantially financed directly or indirectly by funds provided by the appropriate govt.

1.4. Private bodies

The long arm of RTI Act, 2005 even reaches out to the private bodies through in a indirect manner. Section 2(f) brings within its ambit information relating to any private body which can be accessed by a public authority under any other law for the time being in force.

1.5. Preamble of the Act

1.5.1. The preamble of the Act spells the purpose of the RTI Act as under:

(a) Setting out the practical regime of right to information for citizens.
(b) Secure access to information under the control of public authorities.
(c) Promote transparency & accountability in the working of every public authority.
(d) Ensure informed citizenry and transparency in governance.
(e) Contain corruption and to hold Govt. & their instrumentalities accountable to the governed.
(f) Harmonise conflicting public interests in disclosure and exemptions.

Chapter-II

Scope and Ambit of RTI Act

2.0. The following CIC decisions interpreting preamble and section (2) of the Act give valuable clarification in defining the scope and ambit of the ACT.

2.1 Frivolous requests

In the case of Sh. A.P. Tripathi Vs IIT Delhi. (No CIC /OK /A/2006 /00655 dt. 28 March 2007), the applicant had applied for long list of varied information pertaining to GATE and JEE for the last 20 years.

Judgment: It was held by the commission that this amounted to a making a mockery of the Act. It must be remembered that though the Respondents are duty-bound to supply information asked for by the Appellants, the Appellants are also required to keep in mind the objectives of the RTI Act as outlined in the Preamble to the Act: and that is, to introduce the elements of transparency and accountability in the functioning of the public authorities and to contain corruption. The Commission failed to appreciate how these objectives would be met with if the Appellant asked for such diverse and lengthy information which seemed to be designed only to put the public authorities under undue and uncalled for pressure. In this particular case, the Commission, in fact, appreciated the effort of the public authority to collect and provide as much information to the Applicant as possible and dismissed the case as frivolous and inconsequential.

2.2. Optimum use of limited fiscal resources:

In the case of Sh. Hitesh Kumar Vs Oriental Insurance Company Limited (Decision No. 570/ICPB/2007 F.No. PBA/06/562 dt. 15th June 2007))the appellant sought for copies of documents & various other details in 62 serials covering the entire gamut of functioning of the insurance company. The respondent while furnishing a copy of the annual report expressed their inability to collect the other information sought for as being voluminous, and is beyond the available fiscal and human resources of the organisation. He also advised the appellant to visit their website where relevant information was available.

Judgment: Commission was in full agreement with the decision of CPIO and the AA. The information sought for is so voluminous covering practically the entire gamut of functioning of the company, that it would definitely cause a lot of pressure on the resources of the company. The appellant is at liberty to ask for specific information which would not cause enormous time and efforts to collect and furnish.

2.3. Held by or under the control of Public Authorities: [Section 2(j)]

In the case of Sh. Priyavadan H Nanavati Vs Institute of Chartered Accounts of India appeal no. CIC/AT/A/2007/00327 dt. 30th May, 2007 the applicant had requested for a copy of the complaint file against him before ICAI. Before this complaint could be registered the ICAI had returned the complaint to the complainant to rectify defects etc. preparatory to its registration for the enquiry to commence. Therefore the point to be established was whether the information which respondent have returned to the person who filed it can be said to be 'held' or be 'under the control of' the respondent in terms of section 2(j) of the RTI Act.

Judgment: The respondents during the hearing before the Commission stated that they cannot be said to be 'holding' this information, which they have admittedly returned to its originator. Till such time as the respondents received the information back and registered it, they could not be said to be 'holding' it or 'be in control of' it. According to them, arguably, the complainant to whom the documents have been returned may choose not to resubmit them. In such an event, the respondents providing the documents to the present appellant will be wholly untenable because then they would have supplied to the appellant an information which they did not even 'hold'.

The expression 'held' or 'under the control of' used in the subsection 2(j) of the Act are significant. These expressions mean that information can be said to be under the control of a public authority only when such public authority holds that information authoritatively and legitimately. Information which a public authority might receive casually or, which it had returned to its point of origin for supplying omissions, will not qualify to be 'held' or 'under the control of' the public authority.

The present information solicited by the appellant falls in this category. Having been returned by the public authority the respondents herein, to its originator, the information cannot be said to be under the control of the respondents.

2.4 Meaning of information and its coverage [Section 2(f)]

In the case of Sh. Vibhor Dileep Barla Vs Central Excise & Customs (Appeal No. CIC/AT/A/2006/00588 dated 9 July 2007), the appellant put questions in the form of inquiry which was rejected by the CPIO on the grounds that they did not fall within the ambit of RTI Act, 2005. This issue was heard in decided by the full bench of the Commission and decided as under:

Judgment: The Right to Information Act, 2005 was enacted in order to promote transparency and accountability in the working of every public authority. The Act however recognizes that revelation of information in actual practice could conflict with other public interests, which may include preservation of confidentiality of sensitive information. The principal object of the Act is therefore to harmonize these conflicting interests by preserving the paramountcy of the democratic ideal. In this perspective, enshrined in the Preamble to the RTI Act, 2005, it may be inferred that a public authority is obliged to provide access to information to a citizen unless furnishing of such information is covered by one of the exemptions provided for in the Act either under Section 8 or under Section 9.

Right to Information Act confers on all citizens a right to access information and this right has been defined under Section 2(j) of the said Act. An analysis of this Section would make it clear that the right relates to information that is held by or under the control of any public authority. If the public authority does not hold information or the information cannot be accessed by it under Section 2(f) or if the information is non-est, the public authority cannot provide the same under the Act. The Act does not make it obligatory on the part of the public authority to create information for the purpose of its dissemination. The definition also makes it clear that the Right to Information includes the right to inspection of work, documents or records or taking notes, extracts or certified copies of documents or records or taking certified samples of material or obtaining information through some electronic device.

It will be pertinent to refer to the definition of the word `information' itself appearing in Section 2(f) of the Act and which reads as under: (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;

The definition of the word `information' has to be read in conjunction with the definition of `record' appearing in Section 2(i) of the RTI Act which reads as under:

(i) “record” includes—
(a) any document, manuscript and file;
(b) any microfilm, microfiche and facsimile copy of a document;
(c) any reproduction of image or images embodied in such microfilm (whether

enlarged or not); and

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

Thus, information would mean any material in existence and apparently it cannot mean and include something that is not in existence or has to be created. An "opinion" or an "advice" if it is a part of the record is "information" but one cannot seek from a PIO either an "opinion" or an "advice" as seeking such opinion or advice would be in effect seeking a decision which the CPIO may not be competent or authorized to take. Similarly, the existing report is information but preparing a report after an enquiry cannot be treated as available "information". Likewise, the data maintained in any electronic form is "information" and the whole of such data or a part thereof can be made available to an applicant by a public authority under the RTI Act. But making an analysis of data or deriving certain inferences or conclusions based upon the data so collected cannot be expected to be done by the CPIO under the RTI Act. On the same analogy, answering a question or proffering advice or making suggestions to an applicant is clearly beyond the purview of the Right to Information Act.

The case of the applicant seeking information from the respondent Public Authority need be analysed in view of what has been observed in the preceding paragraphs.

It is true that it is not the duty of the CPIO to cause an enquiry or undertake an investigation or prepare answers to the questions posed by the appellant. But the CPIO is certainly obliged to locate the information available with the public authority and held by it so that it could be made available to the information seekers under the RTI Act, seeking the assistance of any officer u/s 5(4).

2.5 RTI is not about seeking answers and asking questions [Section 2 (j)]

In the case of Sh. Saidur Rehman Vs CIC (Appeal Nos. CIC/AA/A/2006/00032&00034 dt. 22 June, 2007.). The appellant put the following questions to CIC:-

(I) As to who is responsible for delay in dispatch of a letter from the office of the Commission.

(ii) As to why paragraphs 2 & 3 of the rejoinder submitted by him in his appeal petition were not taken into account while deciding the matter.

(iii) Under which Rule the public authority can demand fee for a document if it has not been supplied within the specified time limit.

(iv) Does the Information Commissioner has power to pass an order contrary to the

provisions of the RTI Act and if there is no such power then why the order passed in the aforesaid appeal case be not recalled.

Judgment: In this case the CIC has given a crucial decision that the RTI is not about seeking answers or asking questions.

"Right to Information" has been defined in Section 2(j) of the Right to Information Act, 2005 which reads as Under:-

(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 any other electronic mode or through printouts where such information is stored in a computer or any other devices;"

Prime facie, therefore, the right to information is not about seeking answer or asking questions. It is more about inspection of documents or records or taking notes, extracts or certified copies of the documents/records.

Although the definition of the right to information is an inclusive one but still it has to be information available and existing. It must also be either held by or under the control of the concerned public authority. A non- est information is no information. Similarly, in the name of seeking information, one cannot demand what is not there on the record.

The appellant at the time of hearing was explained that what he is demanding is not information but only a decision. The CPIO did provide a copy of the document that was specified by the appellant in his RTI application dated 05.04.2007. Some of the issues was raised by the appellant are primarily legal issues pertaining either to interpretation of the RTI Act or the procedure followed by the Commission in regard to the appeals.

The CPIO cannot answer questions regarding either interpretation of law or as regards the correctness or otherwise of a decision passed by the Commission in connection with a judicial proceeding. The CPIO cannot provide what he does not have and since he did not have any information concerning the issues raised by the appellant, he was left with no other alternative but to inform the applicant that no such information is available in this regard.

2.6. CPIO is not required to interpret law and rules. [Section 2(j)]

In the case of Sh. Rakesh Kumar Gupta Vs Income Tax appellate Tribunal (ITAT) (Decision No. CIC/AT/A/2006/00185 dt. 18th September, 2006) the appellant put up question such as the following:-

I. What are the circumstances, when party other the litigant can inspect the records of other persons?

ii. As per rule 4 A sub-rule (XI), it is the duty and power of the Registrar (ITAT) to allows inspection of records of the Tribunal.

iii. In what circumstances Bench Member/President of ITAT interfere in the inspection process.

iv. Why Bench Member interferes (inspection work) in the working of Registrar office working?

It is seen from the questions that the appellant has requested the CPIO to interpret rules.

Judgment: It is noticed that the purpose of Shri Gupta filing this appeal before the Commission is essentially to obtain an interpretation of Appellate Tribunal Rules 50(1) and 50(3) as well as other Rules in order to access information of a third party. The ITAT, through its order had apparently barred that information from disclosure and Shri Gupta was attempting the RTI-route in order to circumvent the Tribunal's orders.

This is the first time a party has come up to the Commission asking for interpretation of a given law/rules as well as the interpretation of the powers of quasi-judicial body. The proper Forum to test the order of a Tribunal is as laid down under the appropriate Act or a provided in the Constitution. It would be wholly inappropriate to invoke the provisions of the RTI Act for the interpretation of laws and rules. It should be made clear that the laws and rules are themselves" information' and being in public domain are accessible to all citizens of the country.

2.7. Public Authority Sec 2(h)

In the case of Smt. Raj Kumari Agrawal and others Vs Jaipur Stock Exchange Ltd. (Decision No. CIC /A 2006 /00684&CIC /AT/ A/2007/ 00106 dt. 25.4.2007) the applicant wanted to know the status of various representations submitted by her to the Jaipur Stock Exchange Ltd. regarding amount of various deposit lying with them. The Jaipur stock exchange did not give any reply to her RTI request. The

issue for determination was "Whether the Jaipur Stock Exchange Ltd. and the National Stock Exchange of India Ltd. are a "Public Authority" within the meaning of Section 2(h) of the Right to Information Act, 2005"

Judgment : Commission stated that "public authority" has been defined under the Right to Information Act, 2005 under section 2(h), according to which it means any authority or body or institution of self government established or constituted –

(a) by or under the Constitution;
(b) by any other law made by Parliament;
(c) by any other law made by State Legislature;
(d) by notification issued or order made by the appropriate Government, 1 and includes any –

(i) body owned, controlled or substantially financed;
(ii) non-Government organization substantially financed directly or indirectly by funds provided by the appropriate Government;

In the case of SEBI Government control can be inferred from some of the provisions of the Securities Contracts (Regulation) Act, 1956 which are enumerated hereunder:

• Section 4 empowers the Central Government to grant recognition to stock exchanges subject to the conditions imposed upon it upon satisfying itself that it fulfills the criteria thereof. Section 4 lays down the conditions for the grant of recognition to the stock exchanges.
• Recognition of the Stock Exchange under the Section is required to be published in the Gazette of India. The rules of the recognized stock exchanges can be amended only upon approval of the Central Government. Section 5 provides for withdrawal of recognition.
• Section 6 empowers the Central Government to call for periodical returns or direct enquiries to be made.

• Section 7 provides for annual reports to be furnished to the Central Government.

• Section 9 empowers the Stock Exchange to make bye-laws. These bye-laws are statutory in nature and courts have held them to override certain statutory provisions like the Arbitration and Conciliation Act and Limitation Act.

• Section 10 also empowers the Central Government to make or amend bye-laws of recognized stock exchange.

• Section 11 empowers the Central Government to supersede governing body of a recognized stock exchange. Section 12 empowers the Central Government to suspend business of recognized stock exchanges.
Section 12A of the SCRA provides for issuing of directions by the SEBI to stock exchange to prevent the affairs of such exchange from being conducted in a manner detrimental to the interest of the investors or securities market.

• It has been held that the power of declaring a member as a defaulter is a quasi-judicial order and thus subject to judicial review.

It was submitted on behalf of the SEBI that in Delhi Stock Exchange Vs. K.C. Sharma, the Hon'ble Delhi High Court held that besides being under the deep and pervasive control of the Government as appears from the various provisions of SCRA, a stock exchange performs functions of public character. Therefore, it **falls within the definition of "state" as given in the Article 12 of the Constitution of India** and hence a writ is maintainable against a stock exchange. The Hon'ble Supreme Court has affirmed this judgment of the Delhi High Court in K.C. Sharma v. Delhi Stock Exchange (2005) 4 SCC 4 and thus now it is beyond the pale of argument that an exchange is or is not "State".

Section 11 of the SCRA confers powers on the Government and the SEBI to supersede the governing body of a Stock Exchange. The Government's control can be further inferred from the provisions of Section 11 of the SCRA which enables the Government and the SEBI to supersede the governing body of a stock exchange. The Central Government also has powers to suspend the business of the stock exchange. Thus, a stock exchange starts its function only after recognition and even while so functioning remains under the implicit control of the Government through SEBI, which has to be categorized as "pervasive".
In view of the decision of the Delhi High Court cited above which has been affirmed by the Hon'ble Apex Court, a stock exchange is a "state" within the meaning of Article 12 of the Constitution of India and as such it is amenable to the writ jurisdiction of the superior courts. In view of this it was submitted on behalf of the SEBI that the term 'public authority' is broader and more generic

than the word 'state' under Article 12 of the Constitution of India. Every authority or institution which is a 'state' has to be a public authority under Section 2(h) of the Right to Information Act, 2005. Even a non-governmental organization if substantially financed directly or indirectly by funds provided by the Government may be a public authority. Even a private institution substantially financed by an appropriate Government can also be a 'public authority' but such non-governmental bodies or such private institutions or bodies may not be categorized as 'state' but they would be public authorities within the meaning of Section 2(h) of the RTI Act.

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

2.8. Non-Govt. Org. substantially financed [Section 2 (h)]

In the case of Sh. Veeresh Malik, New Delhi Vs Indian Olympics Association/Deptt. of Sports (Decision No. 163/ICPB/2006 F.No. PBA/06/158 dt. 28 November 2006) the applicant requested the IOA for the following information:

i. Full particulars of APIO, CPIO and appellate authorities at Indian Olympics Association, as per the requirements of the RTI Act as on date.

ii. Full particulars and status of the latest audited accounts for Indian Olympics Association for the fiscal Years 2004-05 and 2005-06.

iii. Full particulars of expenses incurred by IOA in connection with visit by any person to Melbourne or any other destination in connection with Commonwealth Games for the period from 1st Jan. to 15th April, 2006.

Since the applicant did not get any response he filed a complaint with the Commission. The Ministry of Sports who were consulted in the matter also could not deicide whether IOA is public authority and requested the Commission to decide the matter. The Commission proceeded to examine the matter from the angle whether IOA is substantially financed either directly or indirectly by funds provided by the Govt.

Judgment: The term "Substantially financed" is not defined in the RTI Act. When a term is not defined in an Act, the normal rule is to find the definition of the term in a relatable statute or legislation and apply the same. In the present case, as submitted by the Ministry, CAG conducts the audit of IOA and therefore, it would be appropriate to apply the definition given in Section 14(1) of CAG Act-1971 for the term "substantially financed". According to this Section, when the loan or grant by the government to a body/authority is not less than Rs 25 lakhs and the amount of such loan or grant is not less than 75% of the total expenditure of that body/authority, then such body/authority shall be deemed to be substantially financed by such grants/loans. Direct funding could be by way of cash grants, reimbursement of expenses etc., and indirect funding could be meeting the expenses directly or in kind. The learned counsel for IOA did not challenge the details given by the Ministry of financial assistance given to IOA by the Government, from which it is clear that substantial funding not only for IOAs discharging its function but also towards construction of its building has been provided by the Government. The annual accounts of IOA for the year 2003-04. was examined and it was found that the total expenditure incurred is Rs.392 lakhs, the financing by the Central and State governments, either by way of grants or otherwise is found to be of about Rs 320 lakhs constituting roughly to 80%% of the expenditure. Thus, not only the financing by the Government is more than Rs.25 lakhs but the same constitutes more than 75% of the expenditure of IOA. Considering also the fact as submitted by the Ministry that the audit of IOA is being conducted by CAG, IOA must have been substantially financed by the Government in previous years also. This would indicate that without the financial assistance of the Government, IOA is unlikely to be able to discharge its functions under the Olympic Charter. Therefore, since IOA is found to be substantially financed either directly or indirectly by the funds provided by the Government. Commission held that it is a public authority governed by the provisions of the RTI Act.

2.9. File noting: Both the words 'information' and 'record' are inclusive definitions- An inclusive definition not only signifies what it generally connotes but also what is specifically included. [Section 2 (f) & (I)]

In the case of Sh. Pyare Lal verma Vs Ministry of Railways (CIC Appeal No. CIC /OK /A /2006 /00154 dt. 2 Jan. 2007) where the issue was relating to disclosure or otherwise of the file notings, the Commission made a close analysis of what constitutes "records" and "information" within the preview of RTI Act, 2005.

Judgment: Additional Solicitor General in his submission quoted two decisions of the Hon'ble Apex Court, which provide valuable guidance, while interpreting any statute: Baldev Singh Baijwa vs. Munish Saini 2005(12) SCC T 18 Ilaichi Devi vs. Jain Society for Protection of Orphans & ors. 2003(18) SCC 413 In this connection, the following observations of the Hon'ble Apex Court are worth mentioning:

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

Thus, it is very clear that when the language used in the statute is plain and unambiguous, effect must be given to that. Insofar as the RTI Act, 2005 is concerned, the word "information' has been defined under section 2(f) of the Act which reads as under:

"information" means any material in any form, including records, documents, memos, e-mails, opinions, advices, press releases, circulars, orders, logbooks, contracts, reports, papers, samples, models, data material held in any electronic form and information relating to any private body which can be accessed by a public authority under any other law for the time being in force." (Emphasis added) And Sec.2 (i) of the Act defines 'records' as under:

(a) any document, manuscript and file;
(b) any microfilm, microfiche and facsimile copy of a document;
(c) any reproduction of image or images embodied in such microfilm (whether enlarged or not); and
(d) Any other material produced by a computer or any other device.

It is pertinent to note that the definitions of both the words "information" and "record" are inclusive definitions. It has widened the meaning of both the words, as under the settled law of legal interpretation an inclusive definition not only signifies what it generally connotes but also what it specifically includes. Looked from this viewpoint, unless "file notings" are excluded specifically from the word

"file", the file would include both parts – the part containing correspondence and the part containing opinions and advices which is commonly known as "notings".

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

(i) to set out a practical regime of RTI

(ii) to secure access to information under the control of public authorities,

(iii) to promote transparency and accountability in the working of every public authority.

The Act, therefore, aims at bringing total transparency. The Preamble clearly states that it intends to harmonize the need to keep certain matters secret but at the same time reiterating the paramountcy of the right to know. Thus, the Act intends to bring in a total change in the mindset of "secrecy" generated by the colonial legislations such as the Official Secrets Act and the Law of Evidence. The Preamble also outlines the grounds that may necessitate withholding of the information from the citizens. The Preamble permits non-disclosure of information that is likely to cause conflict with public interests including:-

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

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

In this connection, it must be pointed out that the definitions of the words "records", "information" and "Right to Information" were almost the same under the Freedom of Information Act, 2002. But it was for explicit provision in section 8(1) (e) of the said Act that the "file notings" were exempted from disclosure. The section 8(1) (e) of the Act of 2002 reads as under: Section 8(1) – Notwithstanding anything contained in this Act, there shall be no obligation to give any citizen, -

(e) “Minutes or records of advice including legal advice, opinions or recommendations made by any officer of a public authority during the decision making process prior to the executive decision or policy formulation” While, the Act of 2005 incorporates other exemptions provided for in section 8 and 9 of the Act of 2002, it has not incorporated any such provision which will exclude the “file notings” from disclosure. Contrary to what has been submitted before us by the DOPT, it appears that the Parliament, in fact, intended that the “file notings” are no more exempted and, as such, these are to be made available to the people. **The reason for deletion of these specific words from the draft of the Act as mentioned by ASG in his arguments is more likely to be because the definitions cited above are clear and comprehensive on the subject and inclusion of the words would be rendered redundant** as pointed out by Information Commissioner Prof. MM Ansari during the hearing. Attention here is drawn to the definition of the word 'file' as contained in the 'Manual of Office Procedure' of the DoPT. As will be seen, **Section 27 of Chapter II: 'Definitions',** clearly states, 'File means a collection of papers on a specific subject matter assigned a file number and consisting of one or more of the following parts:

(a) Correspondence
(b) Notes
(c) Appendix to Correspondence
(d) Appendix to Notes'

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

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

2.10. Third Party [Section 2(n)] : The RTI Act does not give to an individual or a third party an automatic veto on disclosure of information pertaining to him which may be held by a public authority.

In the case of Sh. K.K. Mahajan Vs. Cantonment Board (Decision No. CIC/AT/A/2006/00014 dt. 22nd May 2006.) the appellant asked for information relating to the departmental inquiry against an officer which the CPIO treated as a third party information under section 11 of the Right to Information Act, 2005. The third party on being consulted rejected the request of the CPIO and based on this rejection the CPIO rejected the request for information by the requester. The Commission went into the question whether the third party has a automatic veto on disclosure of information.

Judgment: The appellant approached the CPIO, for information related to the departmental inquiry against one Shri X. The CPIO treated information sought by the appellant as third party information under Section 11 of the RTI Act. CPIO formally requested Shri X the third party for his willingness to disclose the information sought by the appellant. Shri X objected to the disclosure of this information, following which the CPIO rejected the petition. The appellate authority also upheld the rejection of the appellant's petition by the CPIO.
During arguments in the appeal it turned out that the appellant is seeking information regarding the conduct and disposal of the disciplinary proceedings against Shri X (third party) because it is the appellant's apprehension that Shri X has been exonerated in a case in which the appellant has been punished, in spite of the facts, the witness and their depositions in the case being identical. From this angle, the information in the disciplinary proceedings against Shri X has a bearing on the case of the appellant.

We noticed that the appellate authority in this case has rejected the appellant's plea on two grounds. Firstly, the appellate authority upheld that the information should not be disclosed since the third party had objected to it and secondly, that matters relating to inquiries and departmental proceedings could not be disclosed.

The CPIO rejected the appellant's case under Section 11 (1) of the RTI Act. The appellate authority did not mention the provision of the RTI Act against which the appellant's request for information was tested. It is presumed that he was upholding the CPIO's conclusion that the appellant's request for information regarding Shri X's disciplinary case was to be examined under Section 11(1) of the Act. Obviously, the implication of Section 8 (1) (j) for the appellant's case has been

examined neither by the CPIO nor the appellate authority.

It is important that the appellate authority applies his mind afresh to the circumstances of the appellant's case as well as the objection of the third party, Shri X's in terms of both Section 11(1) and Section 8 (1)(j) of the RTI Act. The appellate authority will need to form a clear opinion about whether the case attracted the "privacy" provision of Section 8 (1) (j) or/and the 'confidential entrustment' provision of Section 11(1) of the RTI Act. This should be done by properly assessing the facts and the circumstances of the case. A speaking order should thereafter be passed. **We need emphasize that the RTI Act does not give to an individual or a third party an automatic veto on disclosure of information pertaining to him which may be held by a public authority. The PIO and the appellate authority are required to examine the individual or a third party's case in terms of the provision of Section 8 (1) (j) or Section 11(1) as the case may be and arrive at a finding. The appellate authority has erred in holding that a mere objection by a third party to disclosure of an information (when the information pertains to a third party) is enough reason to embargo the disclosure of such information. The Law requires application of the CPIO and the appellate authority's minds regarding the pros and the cons of the proposed disclosure on the basis of the facts of each case in terms of the norms set out in Section 8 (1) (j) and Section 11 (1) of the RTI Act**.
The case is remitted back to the appellate authority with the direction to issue fresh notices to the appellant and the third party and give a finding after examining all the aspects and circumstances of the case in terms of the two sections of the RTI Act which deal with third party information and personal information viz. Section 11 (1) and Section 8 (1) (j).

2.11 Interpretation of the term citizen (Sec-3)- Does it include companies, associations, societies etc.

In the case of Sh. Deepak Gupta, Chairman, All India NGO Welfare Association Vs MCD(Decision No. CIC/WB/A/2006/00590,639,677,754 to 758 dt. 16.5.09) the applicant filed an application for information in the capacity of Chairman All India NGO Welfare Federation. The MCD took a view that the Federation is a legal entity and can not be taken as citizen, therefore his application as well as first appeal is not maintainable.

Decision: The stand taken by the appellate authority is that the applicant cannot be treated as a citizen u/s 3 being Chairman of an NGO in which capacity he has made the application. This therefore becomes a question of whether an NGO or Company will fall under the definition of citizen under Section 3 of the RTI Act, 2005.

A company or a Corporation is a "legal person" and, as such, it can be said to have a legal entity. This legal entity is distinct from its shareholders, Managers or Managing Directors. This is a settled position in law. They have rights and obligations and can sue and are sued in a Court of Law. Section 3 of RTI Act confers "Right to Information" on all "citizens". Article- 5, part II of the Constitution of India , deals with "citizenship" and declares that 'Citizen' can only be a naturally born person and it does not even by implication include a legal or a juristic person. Section 2(f) of the Citizenship Act defines a person as under:

"person" does not include a company, an association or a body of individuals whether incorporated or not."

The objective of the Right to Information Act is to secure access to information to all citizens in order to promote transparency and accountability. The Act specifically confers the right of information on all "citizens" and not on all "persons". A plain reading of the provisions of the Act read with the provisions of the Article- 5, Part II of the Constitution and the Citizenship Act, 1955 makes it clear that the right of information can not be claimed by a company or by an association or by a body of individuals.

Is it still necessary to determine the question as to whether a company or a corporation can seek information under the RTI Act and can approach this Commission for enforcing their rights? In this context it is pertinent to note that the Right to Information has always been treated as an integral part of the Right to Freedom of Speech guaranteed under Article 19(1) (a) to the Constitution. Be it mentioned that Article 19 also confers the rights to all "citizens" unlike Article 14, which confers "Right to Equality" to all persons. Thus judicial pronouncements in this context can provide suitable guidance as this vexed question has come up before the Superior Courts many a times. In 1955 this issue came up before the Hon'ble Punjab High Court and Justice Harnam Singh. After stating his reasons held as follows:

"I think that a corporation is not a citizen within Article 19, Constitution of India. That being so, the Companies cannot raise the question that the impugned legislation takes away or abridges the rights conferred by Article 19 (1) (f) and (g), Constitution of India."

Justice Soni also observed in that case as follows: “I am of the view that Article 5 applies to natural born persons and not to artificial persons and a reading of the next Article of Part II in which Article 5 finds a place makes it abundantly clear that what is intended by the word 'citizen' is a natural born person and not an artificial person.” This decision was cited with approval by Justice Upadhyay in Amrita Bazar Patrika Ltd. vs. Board of High School and Intermediate Education, U.P. and Anr. (AIR1955 All 595) “In State Trading Corporation of India Ltd. vs. Commercial Tax Officer, Vishakapatnam, and Tata Engineering and Locomotive Co. vs. State of Bihar, the Apex Court has held that a Corporation was not a citizen within meaning of Article 19 and, therefore, could not complain of denial of freedoms guaranteed by Article 19 to a citizen. These two decisions are an authority for the proposition that an incorporated Company being not a citizen cannot complain of violation of fundamental rights guaranteed to citizens under Article 19. In fact in Tata Engineering and Locomotive Co. Ltd. the company wanted the corporate veil to be lifted so as to sustain the maintainability of the petition, filed by the company under Article 32 of the Constitution, by treating it as one filed by the shareholders of the company. The request of the company was turned down on the ground that it was not possible to treat the company as a citizen for the purposes of Article 19.These two decisions were cited with approval by the Court in Delhi Cloth and General Mills Co, Ltd. vs. Union of India (AIR 1983 SC 937 at Para12.)

However, in R.C. Cooper vs. Union of India (Bank Nationalisation Case) the Hon'ble Supreme Court entertained a petition under Article 32 of the Constitution at the instance of a Director and the Shareholder of a company and granted relief. The Hon'ble Supreme Court in Bennett Coleman & Co. and Ors. Vs. Union of India (decided in the year 1973) held that a shareholder is entitled to protection of Article 19 and that an individual's right is not lost by reason of the fact that he is a shareholder of the company. The Bank Nationalization case 1975 has also established the view that the fundamental rights of shareholders as citizens are not lost when they associate to form a company. In Delhi Cloth and General Mills Co. Ltd. (decided on 21.7.1983), the Apex Court observed that the judicial trend is in the direction of holding that in the matter of fundamental freedoms guaranteed by Article 19, the right of shareholder and the company which the shareholders have formed are rather co-extensive and the denial to one of the fundamental freedoms would be denial to the other. (Para 12) Even though, the companies and Corporations have not been held to be a citizen, there are number of cases where the Apex Court has granted relief to the petitioner companies.

One of the cases which can be cited as an example, is the Express Newspaper Case. But in such cases, the petitioners have claimed fundamental rights as shareholders or editors of the Newspapers companies. The same was the situation in Sakal Papers Pvt. Ltd. Case. A question may arise as to whether the case of a Firm is different from that of a company? In this regard following observations of Chief Justice Chagla in Iron and Hardware (India) Co. v. Firm Sham Lal and Brothers, (AIR 1954 Bom 423)are pertinent: "In my opinion **it is clear that there is no such legal entity as a firm. A firm** is merely a compendious way of describing certain number of persons who carry on business as partners in a particular name, but in law and in the eye of the law the firm really consists of the individual partners who go to constitute that firm. Therefore, the persons before the tribunal are the individual partners of the firm and not a legal entity consisting of the firm."

In Agrawal Trading Corporation and Ors. Vs. The Collector of Customs and Ors.(AIR1972SC648) it was argued that , the definition of the word 'person" as given in Section 2(42) of the General Clauses Act 1897 includes any company or association or body of individuals whether incorporated or not. It was contended that this definition does not apply to a firm, which is not a natural person and has no legal existence. The Apex Court upheld the High Court decision that once it is found that there has been a contravention of any of the provisions of the Foreign Exchange Regulation Act read with Sea Customs Act by a firm, the partners of it who are in-charge of its business or are responsible for the conduct of the same, cannot escape liability, unless it is proved by them that the contravention took place without their knowledge or they exercised all due diligence to prevent such contravention. It is an established fact that **all superior Courts have been admitting applications in exercise of their extraordinary jurisdiction from Companies, Societies and Associations under Article 19 and very few petitions have been rejected on the ground that the applicants/ petitioners are corporate bodies or Companies or Associations and, as such, not "Citizens".**

The Commission also has been receiving a number of such applications from such entities. If the Courts could give relief to such entities, I think, the Commission also should not throw them out on mere technical ground that the applicant /appellant happens to be a legal person and not a citizen.

However, the Commission takes into account the following:

1. A company or a corporate body is a legal entity distinct from its share holders and that it is not a citizen. An application or appeal filed by a company before this

Commission is generally not maintainable **except when :**

I) A **Share holder or a Manager or a Director** is also party or an additional party. In the latter case such applications, if filed by or on behalf of the company, may be returned back with a direction that it can be resubmitted before the Commission by a Shareholder /Manager /Director.

ii) If the CPIO /Appellate Authority has not taken the plea of citizenship either while denying the information or while denying it partially, the Commission will not on its own reject the application / appeal merely on the ground that the applicant or the appellant is not a citizen. In the present case the PIO had taken no such stand. **What applies in case of a company should also mutatis mutandis apply to the societies,** including Cooperative Societies registered under the Societies Registration Act or under any other law providing for constitution and registration of such societies. A society is not a citizen as it also has its distinct legal entity different from its members. In such cases, the CIC has a more liberal attitude as **generally an office bearer who submits an application on behalf of such a society is submitting the application/ appeal on behalf of its members and normally it is for common benefit of the members who are citizens. The application/ appeal from an Association or a Partnership Firm or a Hindu Undivided Family or from some other group of individuals constituting as a body or otherwise is to be accepted and allowed.**

2.12. Request to relate only to single subject matter.

In the case of Shri Rajendra Singh vs Central Bureau of Investigation, (CBI) Complaint No. CIC/WB/C/2007/00967 dated 17.12.2007. The applicant has sought answers to 69 questions pertains to various subject.

Judgement: The issue hinges around the application required to be made for obtaining information u/s 7 (1). Under this clause a CPIO. on receipt of 'a request' is expected to deal with it expeditiously when with accompanied with a fee. **It is, therefore not open to the applicant under the RTI Act to bundle a series of requests into one application unless these requests are treated separately and paid for accordingly. In our experience in disposing of appeals that in fact many such have been treated as one application even though they contain a multiplicity of requests. However, we concede that a request may be comprised of a question with several clarificatory or supporting questions stemming from the information sought. Such an application will indeed be treated as a single request and charged for accordingly.**

Chapter-III

Records Management and Suo- motu Publications -(Sec-4):

3.1 Cataloguing, Indexing and Computerization of Records

3.1.1 Records Management:

A record is a document or other electronic or physical entity in an organization that serves as evidence of an activity or transaction performed by the organization and that requires retention for some time period. Records management is the process by which an organization:

- Determines what types of information should be considered records.

- Determines how active documents that will become records should be handled while they are in use, and determines how they should be collected once they are declared to be records.
- Determines in what manner and for how long each record type should be retained to meet legal, business, or regulatory requirements.
- Researches and implements technological solutions and business processes to help ensure that the organization complies with its records management obligations in a cost-effective and non-intrusive way.
- Performs records-related tasks such as disposing of expired records, or locating and protecting records related to external events such as lawsuits.

3.1.2. Improving Records Management

At the core of the right to information are records - papers, documents, files, notes, materials, videos, tapes, samples, computer printouts, disks and a range of other things. Without an effective system for creating, managing, storing and archiving records, implementation of RTI laws will be more difficult. It will be harder to reply to applications within the time limits set by the law, if the information requested cannot be located in a timely manner. It will also undermine the law if information has been stored so badly that the records are no longer in a fit state to be inspected or copied.

It is clear that when preparing to implement an RTI law it will be essential to review the records management system in place to make sure that it is functioning properly and can meet RTI needs.

Section 4(1)(a) of the Central Act specifically requires that records should be

managed in a way that facilitates access. In practice, this will require regular review of current records management processes, not only in terms of collation and storage, but classification and archiving as well. The Central Act goes further and also requires that as many records as possible are computerised and connected through a network all over the country (subject to financial resources).

Best practice requires that records are created and managed in accordance with clear, well-understood filing, classification and retrieval methods established by a public office as part of an efficient records management programme. With new technology being developed all the time, it is important that records management guidelines deal with how to manage electronic records as well. A good system will develop guidelines for all four stages in the 'life' of a record:

- the creation or acquisition of the record;
- its placement within a logical, documented system that governs its arrangement and facilitates its retrieval throughout its life;
- its appraisal for continuing value, recorded in a disposal schedule and given effect at the due time by appropriate disposal action;
- its maintenance and use, that is, whether it is maintained in the creating office, a records office, a records centre or an archival repository, and whether the use is by its creator or a successor in function or by a third party, such as a researcher or other member of the public.

3.2. Sec 4(1)(b)(i)- Suo- Motu Publication of 17 manuals

3.2.1. Section 4(1)(b) requires every Public Authority to publish complete details of its functioning, its powers, responsibilities, duties, the name of all its employees, their salaries, the documents held by them, the budget available etc. and the facilities for the common public to access information in all these offices.

3.2.2. Section 4(1)(b) prescribes as many as 17 manuals in which complete information regarding the functioning of every Department and Public Authority has to be published on the public domain. Every Public Authority was obligated to publish complete information under section 4 (1) (b) within 120 days from the enactment of the Act, that is, before 12th October, 2005.

3.2.3.Sec 4(i) (b)(iv) The norms set by it for the discharge of its functions.

The functions of the organisation are sought to be discharged in an efficient and effective manner through a variety of norms, rules and guidelines set for the purpose.

Example: Norms set for discharge of functions in CIC

The appeals/complaints are taken up for hearing on first come first serve basis. Wherever the Respondents/Appellants have number of cases, efforts will be made to club such cases so that they could be heard on a single day. Preference may also be given to Senior Citizens and physically challenged persons for an out of turn hearing.

3.2.4.Sec 4(i) (b)(ix) A directory of its officers and employees

Directory of officers and employees along with their names and designation is enclosed herewith:

SNO.	IDNO	NAME	DESIGNATION	DEPARTMENT

3.2.5 Sec 4(i) (b)(x) The monthly remuneration received by each of its officers and employees, including the system of compensation as provided in its regulations

The Employees and Officers appointed by the organisation on its permanent roll receive remuneration on a monthly basis. There are certain categories of remuneration, however, which are expressed and settled on annualized basis. While the monthly remuneration received by employees and officers includes elements such as Basic Pay+ Grade Pay (including special pay), Dearness Allowance, City Compensatory Allowance, the remuneration expressed and paid on annual basis include variable compensation based on collective performance of the corporation in terms of employee incentive scheme etc. Detail structure of remuneration received by various categories of officers and employees are furnished herewith:

SNO.	IDNO	NAME	DESIGNATION	MONTHLY REMUNERATION

The details furnished therein may vary depending on nature and frequency of changes /amendments in rules governing them.

3.2.6. Sec 4(i) (b)(xi) The Budget allocated to each of the agency, indicating the particulars of all plans, proposed expenditures and reports on disbursements made ;

EXAMPLE: The total Budget Estimate (BE) under the Revenue Head comprising of Personnel, Administration & Issue expenses etc. proposed for the year 2008-09 is Rs 10979 lacs. The following are the key expenditure heads :

S.No	EXPENDITURE HEADS	AMOUNT (Rs. in lacs)
1.	Personnel Expenditure (Salary, Allowances, Lease, PFC etc) 4317	
2.	Administration Expenses 4507	
3.	Advertisement and publicity440	
4.	Travelling & Conveyance 490	
5	Capital Expenditure575	
6	Staff Advances650	
	TOTAL10979	

3.2.7. Sec 4(i) (b)(xii) The manner of execution of subsidy programmes, including the amount allocated and the details of beneficiaries of such programmes;

Government of India provides and allows subsidy under any organisation functions.

3.2.8. Sec 4(i) (b)(xiii) Particulars of recipients of concessions, permits or authorizations granted by it, recipient of the above subsidy (concession) include central / state power sector utilities who are eligible for the purpose.

Recipient of subsidy provided by organisation under its function who are eligible for the purpose.

3.2.9. Sec 4(i) (b)(xiv) Details in respect of the information, available to or held by it, reduced in an electronic form;

EXAMPLE:

1. Organization related information
2. List of shareholders & Directors

3. List of products & services offered by the Company
4. List & addresses of its offices
5. Annual Reports
6. Roles & responsibilities of different offices/ departments of the organization
7. Directory of Employees
8. Tender notices & tender documents.

3.2.10. Sec 4(i) (b)(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;

3.2.11. Sec 4(i) (b)(xvi) The name, designation and other particulars of the Public Information Officer;

A directory of PIOs and APIOs and appellate authorities with their names, addresses, and phone numbers in local language at district level should be made available. Display of name plates of PIOs in the office is essential.

Public Information Officer

Name	Designation	Address	Telephone No.	Fax No.	E-mail

The responsibility of PIO is to provide information to the persons requesting for the information under Right to Information Act, 2005 pertaining to the Head Office in Delhi & Regional offices in Chennai & Mumbai

Appellate Authority

Name	Designation	Address	Telephone No.	Fax No.	E-mail

3.2.12. Sec 4(i) (b)(xvii) such other information as may be prescribed and thereafter update these publications every year.

Section 4(1)(xvii) of the Central Act allows additional categories of information to be added to the proactive disclosure obligations under the law. This section could be used, for example, to require the regular publication of information about all government contracts that are awarded. In fact, in the spirit of open government your organisation should strive to disclose information regularly that is of interest to the public generally, as well as information, which, if published, would serve to

meet the Central Act's objectives of government transparency and accountability All Organisations are not involved in the same type of activities, so it has to have different documents, if anything of such nature has to be published every year.

3.2.13. Updating Information

Once you have produced this information for the first time, you will need to make sure that it is regularly updated. Section 4(1)(b) of the Central Act requires that, at a minimum, information should be updated every 12 months. However, some information may need to be updated more regularly if it is to be useful for the public. For example, names and contact details of Public Information Officers (see s.4(1)(b)(xvi)) should be updated at least every month. Likewise, information on subsidy schemes (see s.4(1)(b)(xii)) needs to be published and updated monthly if it is to be of any real use in helping the public monitor whether they are receiving their correct entitlements. Furthermore, subsidy information needs to be published so that it is relevant to the locale - ie. each village should proactively publish subsidy information relevant to their village

3.3. Sec 4 (1) (c) publish all relevant facts while formulating important policies or announcing the decisions which affect public

Section 4(1)(c) requires all Public Authorities to publish all relevant facts on policy formulation within their domain. Section 4(1) (d) requires the Authorities to provide reasons for their administrative or quasi-judicial decisions to affected persons.

The remaining portions of section 4, that is sections 4 (2), 4(3) and 4(4), require the Public Authorities to provide suo motu information to the Public from time to time, to disseminate such information widely in such form and manner as is easily accessible to the public, and place it to the extent possible in electronic format.

3.4. Sec 4 (1) (d) provide reasons for its administrative or quasi-judicial decisions to affected persons

INFORMATION DISSEMINATION

Dissemination of information is defined as the distribution of information to the public. It is usually initiated or sponsored by the government of a country or an agency authorised for the purpose of dissemination of information by any public Authority.

In simple terms, the term dissemination of information is defined as the process of making information available to the public. The government must not only regulate the quality and quantity of information that it can disseminate to the public, but it must also be systematically disseminated to a select group of people. For example, sensitive information, such as secrets of the armed forces or the ministry that looks after defence, must not be divulged to the public.

The dissemination of information is a one-way process. The disseminated information flows down from the source (an agency of the government) to the target audience (the public). There may or may not be any feedback from the public.

Chapter-IV

CIC Decisions on Records management and Suo- motu Publications

4.0. The following CIC decisions interpreting section-4 of the Act give valuable clarification in defining the obligations of Public Authorities under RTI Act.

4.1. Cataloguing, indexing and computerization of records.

In the case of Shri. Ishwar Lal vs Indian Oil Corporation Ltd. Decision No.4620 /IC(A) /2009 F. No.CIC /MA /C /2009 / 000578 Dated, the 7th October, 2009. The CPIO has furnished partial information while the remaining information has been refused on the ground that relevant files are not traceable and the record in question is too old.

Judgement: The commission has made the following observations. The CPIO, has furnished partial information while the remaining information has been refused on the ground that relevant files are not traceable. Under section 4 (1) (a) of the Act, every public authority is required to '**maintain all its records duly categorized and indexed in a manner and the form which facilitates the right to information.** In view of this, denial of information on the basis of non-availability of records is not acceptable. The CPIO, is held responsible for violation of **section 7 (1) of the Act since he has refused to provide the information without reasonable cause..**

In case he has sought the assistance of the concerned officers, **who may be deemed PIO, u/s 5(4) of the Act, he should identify and advise them to be present in the hearing to explain as to why penalty should not be imposed** on them also, on the ground of mis-management of records and/or creation of obstacles in sharing of information.

The public authority, IOCL is also held responsible for improper record management, due to which vital information relating to allotment of LPG dealership have gone missing. This reflects both lack of proper record management by the concerned officials who were associated with the LPG dealership selection process as well as lackadaisical attitude of officials, who chose to refuse the information on the ground that 'files are not traceable' which is not an acceptable ground for denial of information to the affected persons. The respondents have also not submitted relevant evidence of having made sincere efforts to search and trace the file.

Commission is having the view that the respondents are **suppressing vital facts for malafied reasons.** Due to this, the appellant has surely suffered all kinds of losses, including mental harassment and right to pursue a profession due to non-availability of information, which is clearly related to his livelihood. **He therefore needs to be compensated, u/s 19 (8) (b) of the Act.**

The Commission, therefore, holds that the respondent's CPIO, has deliberately provided incorrect and misleading information without any reasonable cause and is therefore held responsible for providing false and misleading information for which he is liable to pay a maximum penalty of Rs.25,000/- (Rupees Twenty Five Thousand only), u/s 20(1) of the Act. The above amount of penalty is thus imposed on him.

An amount of Rs.50,000/- (Rupees Fifty thousand only) is also awarded to the appellant u/s 19(8)(b) of the Act, to compensate for all types of losses - time and resources, in seeking access to information about the outcome of the selection process initiated by the respondent.

4.2. Suo-motu Publication

In the case of Mr.Harpal Singh Rana Mr. Pushkar Sharma PIO Municipal Corporation of Delhi Office of the Superintending Engineer Civil Lines Zone. Decision No. CIC /SG /A /2009 /000891 /3620, Appeal No. CIC /SG /A 2009 /000891 dated 9 June 2009.

The appellant had sought information about the Depts/offices, employees, vacancies, details of work, guarantee and time limit, population density and total area, excavation work for the propose of road making, the details of expenditure and deposited amount by agencies in different wards. Out of 9 points only 4 were answered by the CPIO and the FAA ordered information on points 4, 5, & 6 should be given.

Judgment: The nature of information sought by the appellant should have been provided suo moto by the public authority. It is apparent that this is not been done and MCD is not fulfilling its basic duties under Section 4 of the RTI Act. The CPIO is also guilty of not providing information in time and not complying with the direction of the first appellate authority.

The information sought by the appellant must be provided and MCD must ensure

that this must available suo moto in fulfilment of its duties under Section 4 of the RTI Act. Directions were also issued to ensure that the Section 4 compliance is done and information of this nature should be available on the website of MCD.

4.2.1. Suo-motu Publication

In the case of Er. Sarbajit Roy vs Delhi Development Authority, (DDA) Complaint No. CIC/LS/C/2009/00322 dated 8-5-2009. The applicant sought action against Secretary, DDA for non-compliance of directions of Commission for publication of Rules/ norms / procedures / powers of the authority and it's officers etc.

Judgement: Commission observed that a reasonable time has now passed from the time of promulgation of the Act in 2005, the Public Authorities should now take urgent steps to have their records converted to electronic form, catalogued, indexed and computerized for easy accessibility through the network all over the country, as mandated in section 4 (1) (a) of the Act. The computerization, dissemination and updating of record is an ongoing and continuous process and all Public Authorities should put a proper system in place to make such sharing of records an automatic, routine and continuous process, so that access to such records is facilitated.

4.2.2. Suo-motu Publication

In the case of Mr.A.N.Prasad vs Mr. Shalender Singh Chauhan PIO Deshbandhu College, (University of Delhi), Kalkaji, New Delhi-110019. Vide Decision No. CIC /SG /A /2009 / 001125 /3905. The applicant sought the following Information :

1. What steps have been taken by the college to meets its obligation under Sec 4(1) (a). Please provide details of steps, mechanisms, process and/or systems adopted by the college to fulfil this responsibility.

2. Certified copies of the instructions/orders etc. received from superior authorities with respect to implementation of the RTI Act, 2005.

3. With regard to Section 4 (2) compliance:-

(a) Has the college suo motu made public, information falling under all the 17 points listed under section 4(1) (b).?

(b) If yes, provide information regarding the medium and format in which the information has been displayed.

(c) Is this information easily accessible? Please list the options available to the public to access this information.

(d) What steps has the college taken to provide as much information as possible suo motu to the public so that they do not have to apply under section 4(2) of the RTI Act, 2005? Provide details of steps taken.

(e) What steps have been taken by the college to disseminate widely the information w.r.t. section4(1), in a manner easily accessible to the public, details of the steps taken for dissemination.

(f) Has the college updated the information listed in the 17 points under section 4(1) (b)? If yes, then provide the dates on which the information was updated, the process undertaken to update the information, the officer(s) in-charge of ensuring that the information is updated and made available under section 4(1) (b).

(g) Has the college put up notice boards, giving the details about the CPIO etc., in its office, subordinate offices. If yes, then provide certified copies of office orders issued/sent to the concerned offices and action taken report received from them.

4. Has the college published all relevant facts while formulating policies or announcing decisions that affect the public as required under Section 4(1) (C)

(a) If yes, then provide certified copies of notifications, orders, government resolutions, circulars and any other means of communication or documents, files (including file notings) through which the same was carried out.

5. What steps have been undertaken by the college to ensure that it provides reasons for its administrative or quasi-judicial decisions to affected persons? Provide details of the process, mechanism and/or systems that are in place to meet this obligation under Section 4(1) (d).

Judgement: The appeal is allowed. The PIO will provide the complete information to the appellant before 15 July 2009. The FAA Principal Dr. A.P.Raste commits that the updation of the Section (4) disclosure will be done before 30 July 2009. He will also ensure that this is available on the website before 15 August 2009 and updated every week.

4.3. Publication of manuals under Sec 4(1) (b) :

In the case of Mr. Rakesh Agarwal vs PIO, Joint Commissioner (Ops), Transport Department,5/9 Underhill Road,New Delhi-110054.vide DecisionNo. CIC /SG /A /2009 /000754 /3467 & Appeal No. CIC /SG /A /2009 /000754, 28 May 2009.

The Appellant had sought for the following information:

(a) the date on which the existing 17 manuals were uploaded.

(b) a copy of the latest 17 "correct and comprehensive" manuals

(c) the names, addresses and other available information about all recipients of TSR permits as available on your record,

(d) the process followed for maintaining and keeping the manuals updated

(e) name & designation of the person responsible for maintaining the manuals

(f) all methods adopted by you for dissemination of information as per section 4(3) and 4(4) of the RTI Act.

(g) facilities available at your various offices for accessing information. and asking the following information: (a) the process followed for maintaining and keeping the website updated; and (b) name & designation of the person responsible for maintaining the website. The PIO provided information stating that the web site is updated by the IT department As the rules are being followed and important notices/information are being made to public through news papers and notice board as well as posted on web-site of transport department. Regarding 2(g) Information are available on notice board at zonal offices.

Judgement: The Commission stated that the information requested is very valid and it has been pointed out that **section 4** compliance of the public authority is very poor. **The Commission with the help of the PIO tried to access the Section 4 manuals of the department on the website and discovered that the webpage was not opening.**

The Commission directed that the manuals must always be available on department website and also in hardcopies at all the field offices. The Commission also points out to the public authority that responsibility of making the Section 4 manuals and making them available to the citizens was meant to the implemented latest by 12 October 2005. The public authority must at least now ensure that this is done and the process by which updation will be done should also be declared transparently.

4.3.1. Publication of manuals under Sec 4(1) (b)

In the case of Shri BS Alagu vs Customs Case No. CIC/AT/A/2009/ 000759 dated 13th January, 2010.

The following issues were before the Commission for its consideration:

i) Whether compliance of section 4(1)(a) of the RTI Act has been done?
ii) Whether compliance of section 4(1)(b) has been done as per the 17 items given under section 4(1) (b) of the RTI Act?

Judgement : With regard to compliance of section 4(1)(a), the RTI Act states that every public authority shall 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 computerized are, **within a reasonable time and subject to availability of resources,** computerized and connected through a network all over the country on different systems so that access to such records is facilitated.

It has been observed that section 4(1) (b) of the RTI Act has not been complied with as per 17 items given therein. Section 4(1)(b)(ix) is relating to a directory of officers & employees; but in the Annex-I given by CPIO, there were no telephone numbers of the officers concerned. Similarly, section 4(1)(b)(x) is regarding monthly remuneration received by each officer; but in the Annex-II provided by CPIO, only pay scale of the officers have been given.
Therefore, under section 25(5) of the Right to Information Act, 2005, Commission recommends to the Chairman, Central Board of Excise & Customs to issue directives to all officers subordinate, to implement the provisions of Section 4(1)(a) & 4(1)(b) within a definite time-frame for which necessary budgetary support may be provided.

4.4. Details regarding budget allocation, subsidy programme, permits or authorization granted etc.

In the case of Ms. Gita Dewan Verma Delhi Metro Rail Corporation vide Complaint No.CIC/WB/C/2007/00120 dated 28.3.2007.

In this case issue was related to the budjet allocated to agencies of DMRC particulars of plans , proposed expenditure and reports of dispersment made, particulars of concessions and permits or authorisastion granted by DMRC.

Judgement: The commission observed that all the required information relates to various subsection of sec 4(1) (b). After examination of the details of information uploaded on the website and discussions with respondents, the following are commissions directions:

1. A statement will be added to the disclosure u/s 4(1)(b)(xi) that there are no agencies other than those for which information stands published, whose budgets are controlled by DMRC.

2. A statement of the funding pattern has to be added to the disclosure u/s 4(1)(b)(xii)

3. A statement has will be uploaded to the disclosure u/s 4(1)(b)(xiii) that there are no permits/ authorization, issued by the DMRC

4. (i) A statement has to be uploaded in compliance with Section 4(1)subsection (c) as to the source of to access for information on land acquisition for DMRC/rehabilitation programmes, neither of which are administered by the DMRC.

(ii) A link has to be created to ease access to information on the present and proposed network of the Delhi Metro.

(iii) Details of regulation of compensation for possible mishaps.

5. At present there is no disclosure u/s 4(1)(d). A statement will be uploaded that DMRC has quasi-judicial function. However, linkages will require to be created for details of administrative decisions regarding tenders awarded, property development projects and consultancy projects of DMRC and any other issue that the DMRC considers appropriate to meet the requirement of the public u/s 4(1)(d) of RTI Act.

4.5 Norms for the discharge of functions Sec 4(1) (b) (iv):

In the case of Shri S.C. Sharma vs Central Bank of India AGM & CPIO Appeal No.747/ICPB/2007 F.No.PBA/07/28 August 1, 2007 .

The applicant contending that after the new CMD of the bank has taken over, the officers of Central Bank are backing out from the already settled compromise between the bank and the parties, the appellant sought for copies of directions issued by the head office to the branches before and after the present CMD has taken over charge.
The public authority claimed the exemption on the ground that the information sought is of commercial confidence and trade secret. The instructions given by the head office to branches were only for their guidance and to safeguard the interest of the bank in case of dispute. Appellant has argued that in terms of Section 4(1) (b) (iv), every public authority has to publish the norms set by it for the discharge of its functions and what the appellant has sought are only the norms prevailing before and after the present CMD took over.

Judgement: The commission stated that they have gone through the case and it is observed that the instructions given by the head office to branches were only for their guidance and to safeguard the interest of the bank in case of dispute and these instructions cannot be used to alter/modify the terms of an existing agreement with a customer. Commission was also of the view that any internal instructions of the head office for guidance of the officers cannot be deemed to be public documents and in terms of Section 4(1) (b) (iv) of the Act, a public authority has to publish the norms set by it for discharge of its function and from the web site of the Bank and it is published the same.

4.6 . Access to meetings of boards, councils, committees and other bodies or the minutes of such meetings.

In the case of Shri M.S.Sidhu, CPIO, Oriental Bank of Commerce, Appeal No.CIC / PB /A / 2008 /01274 & 01275-SM

The issue involved was access to the minutes of the meeting related to grant of VRS to an employee. Public Authority claimed that under 4(1) (b)(viii) they have taken a decision not to disclose the same as it was not related to any public activity.

Judgement: The Respondents were present and submitted that nearly all the information sought had already been provided to the Appellant except the Board

note of the Bank. They argued that the Bank had already announced through the pro active disclosure under Section 4(1) (b) (viii) of the Right to Information (RTI) Act that the Board proceedings would not be disclosed and, therefore, the CPIO was right in not providing a copy of the relevant Board note.
Commission did not agree with the contention of the CPIO and the Appellate Authority that the Board note on VRS can be withheld under any of the exemption provisions of the RTI Act.

4.7. Directory of officers and employees Sec 4 (1) (b) (ix):

In case of Shri R.K. Arya vs Deputy Commissioners Police (DCP), Economic Offences Wing (EOW). Appeal Nos. CIC/WB/A/2007/001547 dated 3 -12-2007.

Both these Appeals in f**ile Nos. CIC/WB/A/2007/001547 and CIC/WB/A/2007/001610** are identical except in that the information sought is with regard to two different Police Officers: Inspector Shri R.K. Gulia in File No. **CIC/WB/A/2007/001547** and Sub Inspector Shri Suresh Lakra in File No. **CIC/WB/A/2007/001610.** The information sought in both the cases is about residential address of the officials.

Judgement: The question before the commission is that in providing the directory of employees and information regarding their remuneration, is the public authority required to include information regarding personal residence particularly if that personal residence is not in government accommodation. This would require to be decided keeping in view that even if a government employee does not reside in accommodation provided by the Government his rent is subsidised by government allowance in the form of HRA. Moreover, every govt. official is required to provide a residential address to the office in which he/she is working The issue, therefore, is, can disclosure of this information amount to invasion of privacy which would lead to exemption under sub Section (j) of Section 8 (1).

The commission stated that each Government official up to the level of President has an official residence which is official because it is occupied by him in the capacity of the official position which he/she holds. It is quite possible that an official does not actually occupy his or her official residence, but retains the same only for official purposes. The official residence will be that which has been notified by the official to his or her department which is in any case required to be done and necessary for a Dep't in providing a directory of its officials on its website. A public

authority is, therefore, required not only to publish the address and contact information including telephone numbers of an official serving in that public authority but also the residential address of his/her official residence together with telephone numbers, all of which are paid for through the public exchequer. In this matter it is clear that even if an official opts to retain his private residence as his official residence he is entitled to a house rent allowance to cover the cost of the rent of that accommodation. We cannot, therefore, hold that disclosure of the residential address of an official holding public office is private information exempt from disclosure under sub-Section (j) of Section 8 (1) of the RTI Act 2005. This information merits uploading as part of a directory of officials on the website of every public authority as mandated under sub-Section (ix) of Section 4 (1) (b).

There can be an exception to this Rule if the position held by the official concerned or the work on which he/she is engaged is of so sensitive a nature that any such disclosure could lead to apprehension of danger to the life of physical safety of the person, in which case it will merit exemption from disclosure of information. However, a conscious decision of this nature will have to be taken with regard to each such official failing which this exemption cannot be claimed in a general manner.

4.8. Remuneration of employee Sec 4 (1) (b) (x):

In the case of Ms Manisha vs Integrated Headquarter of Army, MOD Appeal No. CIC/WB/A/2007/001636-SM dated 20.12.2007

The Appellant had requested the CPIO in her letter dated 08.10.2007 for information regarding the monthly salary details of Capt. Naresh Kundu. The CPIO denied the information treating it as personal information exempt from disclosure under Section 8(1) (j) of the RTI Act. Against this, the Appellant preferred the first appeal before the Appellate Authority who decided her case on 22.11.2007. the Appellate Authority upheld the decision of the CPIO denying the information sought has exempt under Section 8 (1) (j) of the RTI Act. She has approached this Commission in second appeal.

During the hearing, she submitted that as the wife of Capt. Kundu, she had right to know about his salary details. The Respondents argued that the salary details of their officers could not be shared with anyone else as it would amount to invasion of that officer's privacy and, in any case, this was personal information having no bearing on public interest. The Appellant referred to a decision of the Central Information Commission in a similar case, namely, Appeal No.

CIC/MA/A/2008/00332 dated 22.05.2008 (Vishnu Bhagwan Sharma Vs Department of Posts) in which the Appellant had sought information about the salary details of an employee.

Judgement: The Commission had held as follows. As per Section 4(1) (b) (x) of the Act, "the monthly remuneration received by each of its officers and employees, including the system of compensation as provided in its regulations" should be put in public domain. The CPIO is, therefore, directed to examine the application for information in the light of the above provision and accordingly furnish the information."

Section 4(1) (b) (x) reads as follows:

The monthly remuneration received by each of its officers and employees, including the system of compensation as provided in its regulations".

It is evident from the above that the details of remuneration etc., of an employee were to be disclosed by the Public Authority as a part of sue-moto disclosure under Section 4(1) (b) of the RTI Act. In other words, information in respect of the salary and other remunerations of an employee are not privileged information and will have to be placed in the public domain. If the Public Authority concerned has not done so yet, it must immediately place such details in the public domain. We direct the CPIO and the Appellate Authority to provide the information.

4.9. Information relating to schemes and plans Sec 4 (1) (b) (xi):

In the case of Sh. Karthik Jayashankar vs Ministry of Environment & Forests (MoEF) Complaint No.CIC /WB /C /2007 /00345 dated 16.5.2007.

The applicant applied to CPIO, Ministry of Environment & Forests seeking information on five points relating to "Construction and Development activities/ visitors facilities inside the Zoological Parks of the country involving use of notified "forest" lands and felling of trees." The five points are as below on 29.1.07:

1. "List of Construction and Development activities / visitors facilities inside the Zoological Parks of the country involving use of notified "forest" lands for which clearance under the FC Act have been granted by the MOEF, GOI from1.1.83 along with letter numbers and dates be provided.

2. List of such clearances given for schemes executed by different zoological parks with assistance from the Zoo Authority of India, under the administrative control of the MOEF, GOI along with letter numbers and dates be provided.

3. List of Management Plans for felling of trees for construction and development activities /visitors facilities inside the zoological park of the country involving use of notified "forest" lands received from the zoological parks rejected and approved by MOEF, GOI from12.12.96 along with letter numbers and dates be provided.

4. If no such clearances have been obtained what action has been taken against the concerned state governments and their officers for violation of FC Act 1980 and orders of the Hon'ble Supreme Court in T.N.Godhavarman Thirumalpad vs. Union of India –W.P. 202 of 1995,on 12.12.96.

5. If no action has been taken till now what action is contemplated or proposed to be taken?"

The public authority failed to provide the information stating that ***the information asked for requires obtaining and processing of information from various records, which is not possible.***

JUDGEMENT: Commission opined that none of the grounds invoked by public authority for denying information is valid. Commission expressed surprise to find that the Ministry of Environment & Forests, the ultimate authority charged with the conservation of rapidly depleting forest cover in the country, has abdicated this authority by failing to keep a record of all diversion of forest lands for construction activity, even if this be only for zoos. Information regarding forest land, its diversion or its depletion must be a matter of record with the Central Government and would qualify for suo moto publication under sec. 4(1) sub section b) (xi), sub sec. c) and sub sec. d). Under the authority vested in us u/s 25(5) of the RTI Act, therefore, we recommend to the MOEF the documentation of the above information on forest land and this may be published as warranted u/s 4(1).

4.10. Recipients of Concessions, permits or authorizations Sec 4 (1) (b) (xiii):

In the case of Shri. Intekhab Alam vs (1) I.O.C.L. (2) B.P.C. No.3915 /IC(A) / 2009, F. Nos.CIC /MA /A /2009 / 000125, CIC /MA /A /2009 /000214, CIC /MA /A /2009 /000254, Dated, the 24th April, 2009

The appellant has filed three separate appeals against the decisions of the respondents. In his RTI applications, he has raised almost identical issues relating to the supply, distribution and delivery of LPG cylinders and indulgence of the Dealers in such corrupt practices as adulteration and black-marketing of petroleum products.

The applicant has sought for access to the list of registered consumers so as to identify the fictitious names of consumers. The CPIO has refused to provide the list.

Judgement: The commission stated that, Under Section 4(1)(b)(xiii) of the Act, every public authority is required to disclose particulars of recipients of concessions, permits or authorizations granted by it. Since the domestic gas is highly subsidized to the registered consumers and that a large number of dealers are appointed on various social considerations for the promotion of general welfare of people, there is no justification for withholding information relating to the details of the beneficiaries of domestic gas, including the supply and distribution of petroleum products.

The respondents are, therefore, directed to furnish the requested information, failing which penalty proceedings u/s 20(1) of the Act would be initiated.

The commission further directed that the CPIO of IOCL, who should get the allegations investigated as per the established procedure, within two months from the date of issue of this decision. Accordingly, suitable action should be taken on the basis of the findings of the investigation report, to which the appellant should also have access as per the provisions of the Act.

4.11. Details regarding beneficiaries of old age pension scheme Sec 4 (1) (b) (xii) and (xiii):

In the case of Ms Saroj of Sheik Sarai and others vs Deputy Commissioner (DC) South, Municipal Corporation of Delhi (MCD) Complaint Nos.CIC/WB/C/ 2007/ 00803, CIC /WB /C /2007/00804, CIC /WB /C/2007 /00805, CIC /WB / C/ 2007/00806, CIC /WB /C /2007 /00887 to CIC /WB /C /2007 /00896, & CIC/WB/C/ 2008/ 00047 dated 14/15.11.2007 to 7.2.2008

Complainants: - Ms. Saroj of Sheikh Sarai. ,Ms. Bhola Devi. ,Ms. Vimla ,Ms. Ram Vati Ms. Kishni Devi , Ms. Jay Devi , Ms. Meera Devi , Ms. Shanti Devi. , Ms. Deepali Adhikari., Ms. Manju Devi. , Ms. Zaibunnnisa. Mr.. Suraj , Ms. Krishna , Ms. Maya.

The complaints received pertains to providing detailed information regarding beneficiaries of '**Old Age pension Scheme':**

In all these cases the prayer of complainants is as follows:

The applicant mentioned that she is fully dependent on pension granted by Municipal Corporation of Delhi and pulling on only through this pension. Because of non-payment of pension since April, 2007 she had to face several problems and my financial position has become worst. Many a times she had to take both ends meals from the neighbours. If M.C.D. had given information u/s 4 of the RTI Act to all, she would not have suffered so much. Non-providing of information by the M.C.D. is violation of RTI Act 2005. Therefore, for the problems/difficulties faced by me, she should be paid compensation of Rs. 10,000/- u/s 19(8)(b)."

Judgement : The commission stated that 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: Every public authority shall publish within one hundred and twenty days from the enactment of this Act the manner of 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:

Sec. 4(1)(d)

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/s19 (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 paya ble to complainants by the public authority.

Chapter-V

5. Appointment of Public Information Officers (PIO) and Assistant PIOs.

5.1 Designation of PIOS

Section 5(1) of the Act requires that all public authorities must appoint as many Public Information Officers (PIOs) as required in "all its administrative units and offices" as are necessary to provide the public with access to information. In practice, this means that virtually every government office should have someone designated as the PIO who will be responsible for receiving and processing applications.

5.1.1 Ideally, the PIO should be a senior person in the office so that they have the authority to make decisions on whether to disclose information or not. Otherwise, if junior person is nominated he or she may be reluctant to release information for fear of making a mistake and getting into trouble. This may make them err on the side of caution - as a result of which they may undermine the spirit of transparent government that the Act seeks to establish.

5.2. Designation of APIO Section 5(2) of the Act requires all Public Authorities to designate Assistant Public Information Officers at each sub divisional level or other sub district level to receive and forward request and appeals, and to forward these to the PIO concerned.

5.3. Role and functions of PIOs.

- To receive applications from Public for information or appeals under this Act.
- To deal with requests of persons seeking information and render reasonable assistance to the persons seeking information.
- Applications pertaining to other Public Authority to be transferred with in five days .
- To respond to requests
- To follow the process of consultations with third party.

5.4. Deemed PIO

The Public Information Officer, may seek the assistance of any other officer as he or she considers it necessary for the proper discharge of his or her duties. Such other officer whose assistance has been sought is under obligation to render all assistance and for the purposes of any contravention of the provisions of the Act shall be treated as a PIO.

Chapter-VI

CIC Decisions on Appointment of Public Information Officers (PIO) and Assistant PIOs.

6.0 The following CIC decisions interpreting section-5 of the Act give valuable clarification regarding designating the PIOS/APIOs and their role .

6.1. Designation PIOs (Sec 5(1)

In the case of Shri Hemant Goswami vs. Administrator, U.T., Chandigarh Complaint No.CIC/WB/C/2008/00020 dated 25.1.2008. The applicant had applied for info under RTI but he received reply as Administrator UT Chandigarh is not a Public Authority and accordingly no PIO has been appointed.

Judgment : Commission observed that the Administrator is a public authority and, under sec. 5(1) was required within 100 days of the enactment of this Act to designate a Public Information Officer. It is another matter that because the present Administrator holds concurrent charge of Governor, Punjab for which there is a separate established office, a tradition since 1985. This office is therefore expected to appoint a PIO. It is however up to the Administrator in what manner the Administrator will make such an appointment. It is open to him to give this as an additional charge to an officer functioning as CPIO in the office of Governor Punjab, or Chief Secretary UT of Chandigarh or of the Home Secretary. Whenever the information sought is not held by the Administrator, since as pointed out by respondent there is no physical office in which he sits, this may be transferred u/s 6(3)(1) of the RTI Act by such CPIO. However, in making such an application sec. 6(1) will also have to be kept in mind by an applicant, which requires that application should be made to the CPIO of the "concerned" public authority, which would imply the public authority which holds the information and therefore designating a PIO is necessary.

6.1.1. Designation PIOs/APIOs (Sec 5(1)&(2):

In the case of **Shri Bimal Kumar Khemani and Shri M.L. Sharma vs Northern Railway & North Eastern Railway, decision No.CIC/OK/A/2008/00226, 00490 & 00569, Dated: 24 November 200**8. Appellant seeking information relating to the appointment of PIOs and APIOs at important Railway Junctions.

Judgment: The Commission agreed with the submission made by the Appellants that the Railways did not have any RTI-personnel in the way of APIO or PIO at important Railway Junctions to receive the applications and forward them to the concerned PIOs. The Respondents stated that actually there are Complaint Registers at every station and also with the Guards and Conductors and that passengers could note down their complaints in these Registers, entries of which are taken seriously by the authorities. After listening to both the parties, the Commission still felt that arrangements could be made at Railway Junctions to declare a senior official like the Station Master or his immediate subordinate to act as an APIO to receive RTI-applications together with the fee and provide a receipt to the Applicant, and forward them to the concerned PIOs as suggested by the Applicants.

The Commission, therefore, recommends to the authorities to examine the feasibility of this suggestion and implement it as early as possible.

6.2 Deemed PIO responsible for any contravention of the ACT sec 5(4) & 5(5).

In the case of Mr. Ashkeen Ahmed Vs Superintendent Engineer & PIO Public Work Development M-21, Nizamuddin Bridge, Delhi-91. Vide Decision No. CIC/SG/A/2009/001306/4013 dated 7 July 2009 and Appeal No. CIC /SG /A /2009 /001306.

Appellant had asked various information regarding a Road which is in front of Manglam Hospital, West Vinod Nagar Delhi-110092.

Reply of PIO: The PIO (Zone M-2) had transferred the Appellant's application to Superintendent Engineer, PWD, M-21, Nizamuddin Bridge, East End, Delhi-91.

Grounds for Second Appeal : The issue before the Commission is of not supplying the complete, required information by the PIO within 30 days as required by the law. During the second appeal hearing the Respondent states that after transfer of the application it was received on 18.02.2009. The PIO sought the assistance of Mr. Tejinder Singh, Suptd. Engineer, on 24.02.2009 **under Section 5(4).** Mr. Tejinder Singh sought the assistance from Executive Engineer M211. Mr. M.C. Yadav on 27/02/2009. Mr. M.C. Yadav has given a reply to the appellant on 01.05.2009 which doesn't provide the information sought by the Appellant. The Public Authority seems to be taking the RTI very casually. So far no information sought by the Appellant has been supplied to him.

Judgment: Commission allowed the appeal and directed the PIO to supply the information to the Appellant before 30th July 2009. From the facts before the Commission it is apparent that the deemed PIO Mr. M.C.Yadav is guilty of not furnishing information within the time specified under sub-section (1) of Section 7 by not replying within 30 days, as per the requirement of the RTI Act. It appears that the deemed PIO's actions attract the penal provisions of Section 20 (1). A show cause notice was accordingly issued to the deemed PIO.

6.2.1. Deemed PIO responsible for any contravention of the ACT sec 5(4) & 5(5).

In the case of Sh. OP Dhingra Vs. Delhi SC/ST/OBC, Minorities & Handicapped Financial & Development Corporation Limited (Decision No. CIC/WB/C/2007/00261 dated: 7.10.2006) the applicant applied to the Commission for delay in receipt of reply from the public authority. The CPIO explained the delay for having to obtained the requisite information from different Section/Division/Zones of the Corporation. In this point the Commission invoked Section 5(4) suo moto and brought within the RTI ambit all officials who required to supply the requisite information to the CPIO.

Judgment: However, while admitting the delay he has explained before us that the information being of technical nature had to be gathered from different sections/divisions/zones of the Corporation, thus resulting in delay. He has, therefore, pleaded that the penalty imposed be waived.

From the above it is clear that the default has occurred in this case with regard to provisions of response to appellant u/s 7(1). This Commission has no authority for a simple waiver of penalty u/s 20(1). In this case PIO has pleaded that supply of information was to be obtained. This would fall within Section 5.

However, the delay in submission of information on the part of all those officials who were asked by the CPIO to supply information will require to be explained if we are to arrive at the conclusion that there was a reasonable cause for delay. The CPIO is therefore, directed to make a detailed inquiry into the delay as directed in other cases referred to him, which have been admitted by him to have been given a delayed response, fixing responsibility for each day's delay on the part of concerned officials and submit report.

6.2.2. Deemed PIO responsible for any contravention of the ACT sec 5(4) & 5(5).

In the case of Mr. Kanhyia Lal vs Mrs. Indira Rani Singh, Public Information Officer/DDE(W-B), Directorate of Education, G-Block,Vikaspuri, Delhi. Decision No. CIC /SG /A /2009 /000713 /3494 penalty July 6, 2009 and Appeal No. CIC /SG /A /2009 / 000713. The applicant filed a RTI application dated 19.12.2008 to the PIO seeking specific information for release of list of admission in all streams in Govt. Co-Ed School, B-4, Paschim Vihar, New Delhi for the year 2008-2009. However, no reply was given by the PIO to the Appellant.
The issue involved is the responsibility of officers whose assistance has been sought for responding to RTI request.

Judgement: The Commission was of the opinion that all authorities and officers who hold information are duty bound to provide the information when a PIO seeks assistance under Section 5(4). Any public servant no matter how high, will have to provide the assistance so that the PIO can discharge his duty under the RTI act. Respondent was found guilty of not providing the requisite information to the Appellant within 30 days. The Commission thereby directed the deemed PIO Mrs. Sunita Kaushik RD (North) to provide the complete information to the Appellant before 15/06/2009.

The deemed PIO Mrs. Sunita Kaushik was found guilty of not furnishing the information within the time specified under sub-section (1) of Section 7 by not replying within 30 days, as per the requirement of the RTI Act. The Commission indicated that the PIO perhaps careless in her approach to work. When the RTI application has been marked four times, she should have woken up and, if necessary- telephoned the officer who had send the query to her instead of blindly sending it to west zone. Whereas she has expressed her regret, the Commission is not able to see any reasonable cause for the refusal to give the information. It was found that such actions of PIO's attract the penal provisions of Section 20(1). Commission directed the Chief Secretray of GNCT of Delhi to recover the amount of Rs.25000.

6.2.3. Deemed PIO responsible for any contravention of the ACT sec 5(4) & 5(5).

In the case of Mr. Kuldeep Singh Yadav vs Mr. NP Grover , UDC, Municipal Corporation of Delhi and Mr. NN Singh, JE, Deputy Director Horticulture,

Slum & JJ Dept. Community Hall, C-Block, Raghubir Nagar, Delhi 110027, Decision No. CIC /SG/ A/2009 /001609/4505penalty and Appeal No. CIC/SG/A/2009/001609.

The Appellant has sought the informations regarding Ekta Enclave Janta Flats, near Piragadhi Chowk, before Metro Station: Date of construction of the said colony and the day when MCD overtook it. Appellant has received Incomplete and unsatisfactory reply form the PIO.

Judgement: Commission stated that the delay has been clearly there and no reasonable cause has been offered for the delay. However, the Commission accepts that both the deemed PIOs should be given a reduction of 7 days to account for the time it would have taken them to provide the information. The Commission therefore penalizes Mr. NN Singh at Rs. 250/- per day of delay as per Section 20(1) for 29 days Rs 7250 and Mr. NP Grover at Rs. 250/- per day for a delay of 68 days Rs. 17,000/-. The Commissioner, Municipal Corporation of Delhi is directed to recover.

Chapter-VII

7. Request for obtaining information and disposal of request (Sec-6&7)

7.1 Request for obtaining information: Any 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 Local Language in the prescribed form along with the requisite fees to the Public Information officer (PIO) or APIO specifying the particulars of the information sought by him or her.

7.1.1 Applicant seeking information has to submit the application to the Central Public Information Officer , along with an application fee of rupees 10/- by way of cash against proper receipt or by money order or demand draft or bankers cheque or postal order payable to the Drawing and Disbursing Officer, of that particular public authorities.

7.1.2. Methods of Requesting Information

- In writing Vernacular Language/English.
- By Electronic Media like Email/Fax etc.
  where such request cannot be made in writing the PIO shall render reasonable assistance to reduce the oral request in writing.

• **7.2. No reason to be given:** The citizen making the request shall not be required to give any reason except details necessary for contacting him.

7.3. Transfer of application: Where the subject matter of the information is related to another public authority then the public authority shall transfer the request to another public authority at the earliest but not later then 05 days.

7.4 DISPOSAL OF REQUESTS FOR INFORMATION (Sec-7): The application / request for information must be disposed off either by providing the information fully or partly or rejecting the request applying the exemptions, within the prescribed period in the Act. The RTI is clearly sets the time limit for disposal of requests by the PIOs so that the citizens do not have to run around the public authorities for information.

7.5. Time limits for disposal of requests sec 7(1).

(a) If the request has been made to the PIO, the reply is to be given within 30

days of receipt.

(b) If the request has been made to an APIO, the reply is to be given within 35 days of receipt. 05 days shall be added to the above response time, to enable APIO to forward the application to Public Information Officer.

(C) Where a decision is taken to provide the information on payment of further fees then the period intervening between intimation and payment of fees shall be excluded.

(d) 48 hrs for information, in case, it is concerning the life and liberty of a person.

(e) If the information relates to a Third Party then the time limit will be 40 days (maximum period plus time given to the third party to make representation).

(f) Information concerning corruption and Human Rights violations by scheduled Security agencies (those listed in the Second Schedule to the Act) is to be provided within 45 days but with the prior approval of the Central Information Commission.

7.6. Information to be provided Free of Charge: If information is not provided within this period, it is treated as deemed refusal. Refusal with or without reasons may be the ground for appeal or complaint. Further, information not provided in the times prescribed is to be provided free of charge.

7.7. No fees from BPL: AS per the fees rule Rs. 10 for filing the request, Rs. 2 per page of information and Rs. 5 for each hour of inspection after the first hour. If the applicant is a **Below Poverty Line Card holder,** then no fee shall apply. Such BPL Card holders have to provide a copy of their BPL card along with their application to the Public Authority.

7.8. Receiving and Managing Applications: One of the first duties of the APIO and/or PIO is to receive information requests. Sections 6(1) of the Central Act also specifically places a duty on these officials to assist information requesters to complete their applications for information properly. On receipt of application PIO is required to provide requesters with a receipt/acknowledgement of their application. Even if the relevant Rules do not require this, in the spirit of proper implementation of the law, a receipt should be given to all requesters.

7.9. Tips for PIOs/APIOs: Here are some suggestions for how APIOs and PIOs can effectively deal with people trying to submit requests for information:

(a) Meet requesters with politeness

Public officials are in the service of the public. Every person who requests information should be met as a customer. You should treat all customers as equal, and meet them with politeness. It is important to identify with the citizen and help

them with their requests. The citizen will not be aiming to make your life difficult by requesting information. It is important to remember that under the RTI law, citizens have a RIGHT to access information, and organisations covered by RTI law have a duty to assist them to exercise that right.

(b) Direct requesters to where information can be found already

If the information requested is already publicly available, for example on your organisation's internet site, in information bulletins, in an annual report or in publications for sale, you should indicate to the requester where he/she can find the information. If your organisation does not hold the information the requester is looking for, you should direct him/her to the correct person or body where the information can be found.

In such situations, the requester will not only save money by not submitting a request - but you will also save time because you will not have to process the request.

(c) Assist people to make their request properly

Most of India's laws require PIOs to assist requesters to make their applications. For example, some laws require that PIOs give special assistance to applicants who cannot read or write, don't speak/write the local language, or are disabled. **Section 6(1) of the Central Act** requires the PIO to accept the application orally and then help the requester to put their request into writing. The final application which is produced should include the date and the PIOs name and position, and a copy should be given to the person making the request.

Commonly, RTI laws also require that PIOs assist applicants to amend their applications, if they are likely to be rejected because they are too general or too ambiguous. You should note though, that the law does not require a requester to specify the exact title or reference of the record he/she is seeking. All that is required is that the description is sufficiently clear to enable the official to identify the information being requested.

Even where the law doesn't place a duty on a PIO to assist a requester, it is in your interest to help. Often requesters don't know what information your organisation holds and therefore, they can't work out exactly what they're looking for. As a result, some requesters will draft very broad requests, for lots of documents - even if they don't necessarily need them all. If the PIO assists a requester develop their application though, the PIO can help them develop a more targeted request, which might reduce the PIOs workload in the long run.

Requesters also often don't know which body they should be applying to, they don't understand how the government is set up and so they often don't know which body holds the information they want. PIOs can assist requesters to decide which is the best body for them to submit their information application to. In addition to speeding up the process for the requester, this will help reduce the number of requests which the PIO has to ***transfer*** to another body.

(d) Do not ask the requester the "purpose" for their request

Section 6(2) of the Act explicitly states that an applicant making a request shall not be required to give a reason for their request. The principles of ***maximum disclosure*** recognise that every person has a right to access information unless an exemption applies. Their motive for wanting the information is irrelevant. You should NOT reject an application or request it to be resubmitted simply because a requester has not explained the purpose for which they need the information.

(e) Provide requesters with a receipt and advice on the process

The Act provides that when the requester submits his/her request to you, it may be submitted either in person, by post or electronically (eg. by email or possibly even by telephone). In some cases, the application has to be submitted along with ***a prescribed application fee.***

In all cases, when a PIO receives an application, they should provide the requester with a receipt/acknowledgement. At a minimum, the receipt should include the receiving officer's name, position in the department, the date the application and the amount of any fee received. Ideally, the receipt should also mention the date by which a response should be sent out (usually 15-30 days later) and the rights of the requester if no response is received on time.

(f) Provide requesters with advice on the process

On acceptance of the request, it is important that the PIO explains to the requester what will happen next. This will reduce the PIO's workload because they will not have to receive lots of inquiries during the processing period, if the requester already understands what will be happening with their request. The PIO should explain, in accordance with the provisions in the law:

- The maximum time limit within which the organisation must respond to the request;
- When it will be necessary to pay a fee and what the fee structure is;
  The different options for providing access to the information (inspection,

certified copy, floppy diskettes, CD, etc);

- If the information request is refused, that a written explanation will be provided and an appeal is possible.

7.10 In cases of rejection of requests:

(a) The CPIO is required to communicate to the applicant in writing –

- The reason/s for rejecting the request;
- The period within which the applicant may appeal against the rejection;
- The particulars of the appellate authority.
-

(b) In cases where the CPIO decides to provide information he should ensure the following:

- BPL applicants are exempted from paying fees/cost for securing the information;
- If for some reason the requested information is not provided within the deadline the requestor has a right to receive such information free of cost.
- The CPIO has a duty to inform the applicant in writing the details of calculation of additional fee.
- The applicant may request information that might have to be extracted or compiled from one or more public records or documents. Furthermore the applicant may request that the information be provided in a specific form. Ordinarily, in such cases the PIO is required to provide information in the form sought by the applicant unless such extraction or compilation –
- Will divert disproportionately the resources of the organisation.
- Will adversely affect the safety or preservation of the relevant record/s.

Chapter-VIII

CIC decisions on request for information and disposal of request (Sec-6 & 7)

8.0 The following CIC decisions interpreting section- 6 & 7 of the Act give valuable clarification in receiving request and providing information under RTI Act.

8.1. Motive of person in seeking the information is not to be explored Sec (6.2) .

In the case of Sh. A.S. Lall Vs. Jt. Commissioner of Police & Appellate Authority (F.No. CIC/AT/A/2006/00075 dt. 2nd June 2006) the applicant sought among other thing copies of license for certain reference and also the dates of inspection carried out by the Delhi Police. The respondents went into the motive for asking these information for deciding about the response. This issue was examined by the Commission and have clearly rejected the procedure of exploring motives.

Judgment: The information solicited by the appellant is about a licenced activity viz. setting up and running restaurants and eating houses. The question is whether a private business requiring licence from various public authorities, qualifies to be a public activity? In this particular case there is an added dimension as well, i.e. the business activity licenced to be carried out viz. restaurant/eating houses, involves the public, both as clients and as common citizens, whose rights or whose convenience and welfare, may be impacted by such business activity. Licensing of such a business activity is meant to impose conditions which would ensure not only that the activity conforms to pre-determined norms, but also that that citizen's rights, his comfort and welfare are duly safeguarded. In essence, licencing is, therefore, not just a matter between a licensor and a licensee, but is an activity meant to subserve public good. The information solicited here may pertain to a private person, who might be the owner of a restaurant/eating place, yet the activity undertaken by him has a strong public face. A citizen is entitled to know whether the letter of law is followed by the licensing authority in authorizing such a business activity.

There is no merit in the argument that a restaurant-business is a private matter of its owner, or that it is a matter between the police as the licensing authority and, the restaurant-owner, in which no citizen will, or can, have any interest. Such an interpretation of the law will only help encourage those who tend to benefit from violating laws rather than complying with them.

We are surprised that the appellate authority characterizes the relationship between the licensor and a licensee as falling within the definition of commercial confidence, trade secret or Intellectual Property Right. The police, as the licensing authority were neither required to keep the commercial confidence or maintain trade secrets or to defend the Intellectual Property Right of the licensee.

Similarly, given the nature of the information, it would be stretching the point to say that the information was held by the licensing authority i.e. the police, in a fiduciary relationship attracting the exemption of Section 8(e). On the subject of whether the information solicited bore the characteristic of personal information, we are clear in our mind that this information does not answer to the definition of personal information.

We also notice that the AA has come up with a rather ingenious argument that since there were ownership and property related disputes between the appellant and the third-party-licensee, an information related to the licence of the business (restaurant) premises of the third party-licensee, ceases to be public information. If accepted, this argument will lead to a rather untenable inference that a public-information will cease to be public if the person seeking the information has a private dispute with the third party to whom the public information may relate. Such an argument has no validity in view of the clear stipulation of Section 6 (2) of the RTI Act. The CPIO, the AA or the Commission will not, and cannot, explore the motive of a person in seeking information to determine his eligibility to receive it. The principal factors determining, whether disclosure of an information can be authorized, is whether it answers to the definition of "information" and whether it is barred by exemptions provided in the Act.

We, therefore, hold invalid the AA and the CPIO's orders that the information about licencing and related matters about the functioning of the restaurants/eating places did not amount to 'public activity' or have had no 'public interest'. As licensing authorities it is the duty of the police to disclose all information about licences, they may have issued for such public activities as running restaurants and eating houses and to enjoin the owners of such businesses to display the relevant details on their premises. To characterize such information as "private" to the licensee, attracting the exemptions contained in Sections 8(e), 8 (j) or Section 11 (1) of the RTI Act, shall be reading meaning in the Sections they not have.

We have also considered the objections of the third party, who is the owner of the property of these restaurants/eating places. The sections of the RTI cited by the appellate authority i.e. Sections 8(d), 8(e) and 8(j) in defence of its conclusions, are so clearly inapplicable in the present case. Section 8(d) exempts from disclosure "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."

We reiterate that in issuing a licence for carrying out a defined public activity or business, the licensing authority discharges a public function. Such a function is not a privileged relationship between the licensor and the licensee, it involves the public. It is hereby directed that the CPIO shall furnish to the appellant the information.

8.1.1. No reason to be given for requesting information sec 6(2):

In the case of Lakshya A Relief Organization vs Consumer Dispute Appeal No.CIC/WB/A/2006/00431 dated 11.7.'06.

The appellant Lakshya, an NGO sought the information from the PIO, Consumer Dispute Redressal Forum: ie Detail of all consumer cases in all consumer district redressal forums of Delhi (nine forums) with the name, address, phone & mobile number of the complainants."

PIO replied as follows: The nature of information being sought by the appellant is neither feasible nor available nor easily accessible under the law. In his judgment, however, the question is repeatedly raised by the appellate authority as to the purpose for which information has been sought.

Judgement: CIC pointed out that the appellant a public authority cannot, under Section 6 (2), require an applicant making a request for information to give any reason for requesting the information or any other personal details except those that may be necessary for contacting him. Even though concern for the purpose for which the information has been sought is therefore misplaced, however, the final decision of the appellate authority Justice Kapur has not been determined by this question, but by the nature of information being sought, which he has held is not available nor easily accessible under the law Although, the public authority can justifiably argue that the information sought would disproportionately divert its resources given its huge requirements u/s 7 (9), this

cannot exempt the public authority from providing the information in a form more convenient. In this case the concerned applicant has agreed to provide every assistance in accessing the information sought and it is open to that public authority to indicate to the applicant the cost of providing the information as determined by the PIO together with calculation made to arrive at that amount, requesting the applicant to deposit the fees u/s 7(3). However, the information provided can only be that which is actually held by the public authority and applicant cannot demand the creation of information which is not already held by or under the control of the public authority. Under these circumstances while the appellant has been advised to apply a fresh application to the PIO for the information required, the PIO is directed to provide such information as is held by the public authority to appellants on payment of the cost of collating that information and, at the public authority's discretion, making use of the assistance offered by appellants for this purpose within the parameters laid down under Section 7 of the RTI Act.

8.1.2. No reason to be given for requesting information sec 6(2):

In the case of Shri Kailash Lamba vs New Delhi Municipal Council (NDMC) Appeal No.CIC/WB/A/2007/01157 dated 18.11.2007 .

The appellant has requested various informations related to Hotel Diplomat, mainly functioning and its development plan: Copy of the Inspection Report on unauthorized construction, If copy of Report can not be given details of unauthorized construction noted. What follow up has been taken. What are the terms and conditions for operating the Hotel Diplomat, the number of rooms and size/area of restaurant sanctioned? Does the sanction of restaurant include operation of a very Big BAR and Nigh Club?. Can permission be granted to increase the area of the original small restaurant to include the total Ground Floor and Lawn.

Has permission been given for renovation work in progress and permission/ license to operate the proposed new Restaurant & Bar/ Night Club? If permission not sought and Restaurant with a Big Bar and Nigh Club is opened what action will be taken?

The information was not provided by the PIO because of the objection raised by Shri Kailash Lamba, Managing Partner, Hotel Diplomat against disclosure of the information under RTI Act- 2005. Upon this the appellant moved a first appeal before First Appellate Authority, Dep't. Of Architect & Environment, NDMC. FAA

has ordered to provide the information. Against this order the third party has moved an appeal before the commission.

Judgement: Commission stated that; **Sec. 6(2) of the RTI Act 2005 reads as under :**
"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".

Under the circumstances the plea of third party Shri Kailash Lamba on the intent of Shri Kohli seeking information, as contained in Para (i) of his appeal, is without merit. The only issue for consideration is whether disclosure of the information on each of the points sought will "harm the competitive position" of M/s Hotel Diplomat and is held by the NDMC in commercial confidence or as a trade secret. Even if it is so found, then such exemption has to be applied in accordance **with Sec. 10(1) which would require that information other than that which is exempt from disclosure u/s8(1)(d) and** sought by Shri Vijay Kohli in any of the nine points quoted above, will still be required to be disclosed.

8.1.3. No reason to be given for requesting information sec 6(2):

In the case of Shri J. Shiva Kumar vs Indian Institute of Astrophysics, Appeal No. CIC/WB/A/2006/00768 dated 11-10-2006.

The applicant has sought the following information from the CPIO Indian Institute of Astrophysics (IIA), Koramangala, Bangalore:

1. Copy of the appointment order in respect of Sri Narasimha Murthy as Section Officer at Hosakote office of Indian Institute of Astrophysics.
2. Bio-data of the selected candidate including his educational qualification, length of experience in Government service, pay scale, etc.
3. Whether the post has been filled by open recruitment or deputation?
4. Whether the candidate selected belongs to SC/ST/OBC, If he belongs to the reserved category, a copy of his caste certificate.
5. Copy of the age proof of the selected candidate in question.
6. Whether any other candidates were called for interview before final selection? If so, copies of all the call letters, so issued, if any.
7. Response of the candidates called for interview, if any.
8. Copies of the file notings of the decision of the Department in the said selection process from initial stage of receipt of application to the final selection and order.

9. Reason of refusal of my candidature to the post of Section Officer at Hosakote.

To this he received a reply from PIO on 7-7-06 regarding appointment of Section Officer in the IIA. The appellant then moved a second application dated 29-7-06 before the same CPIO seeking the following information:

1. File noting copies from the initial stage of receipt of application till the issuance of final order of selection in respect of Sri Narasimhamurthy, SO, IIA, Hosakote, Bangalore.

2. Bio-data, indicating qualification, age, experience, length of service, pay scale, etc. in respect of all the 12 candidates called for the interview for the post of SO at Hosakote (except Sri Sri Narasimhamurthy, SO, which was already sent to me).

3. On which date, month and year the interview for the post of SO at Hosakote took place and venue of the conduction of the interview.

4. When did Prof. Siraj Hassan, Director took over as Head of IIAP, Bangalore.

5. When was the decision to appoint Prof. Siraj Hassan as Director of IIAP, Bangalore first communicated from New Delhi to Bangalore office. By what means, fax message or letter? Copy of this communication may kindly be furnished to me.

6. Recruitment Rules pertaining to the filling up of the post of SO adopted by IIAP, Bangalore.

To this, however, he received a reply from Shri A.J. Ragupathy, A.O. stating as follows:

The information sought by you and which is relevant to the subject matter namely, the appointment of Sri Narasimhamurthy as SO has been furnished to you. The appointment or non-appointment of a person is not a matter concerning public interest. In the present case, the so-called public interest is really your personal interest. It is reiterated that noting in the file are confidential and not relevant to your enquiry; they would be shown to the competent authority if call for. Further the information regarding when Prof. Siraj Hasan took over as Director of the Institute and how the decision regarding his appointment was communicated are wholly irrelevant and outside the purview of the subject matter of appointment. The Act is not meant to provide for a roving enquiry into all matters.

The appellant moved his first appeal before the Chairman, Governing Council, IIAP protesting the response received from the IIAP and seeking information of six items raised in his application except serial Nos. 2 and 3. Not getting proper reply from FAA, the appellant moved his second appeal to CIC. Seeking to impose stringent penalties on the First AA and CPIO, u/s 20 (1) of the RTI Act 2005 for not providing the required information and also for providing partial, false, incorrect and misleading information. To grant compensation to the Appellant u/s 19 (8) (b) of the RTI Act 2005 for the hardship and other detriment suffered".

Judgement: Commission heard the appeal through video-conferencing. In the mean time most of the information has been provided by the respondent, however, the appellant says that the copy of the file noting is not yet given.

The initial response to the request of the appellant in his application is not in order. **In light of Sec 6 (2) it is not for the CPIO to decide whether information sought is "relevant" or not, but simply to provide information sought by an applicant unless exempted u/s 8, 9 or 24.**

This shortcoming has been rectified in the appeal. However, even if there was confusion regarding first Appellate Authority created by the response of the Public Authority to the first request for information from appellant, there is no justification for response having taken the length of time that it has. Insofar as substance of the application for information is concerned we find that this has been addressed. However, the CPIO will now write to the appellant confirming that the information that he has provided is, in fact, a copy of the file noting requested by him.

8.2. Information sought should relate to the functioning of the public authority? [Section 6.1]

In the case of Sh. Gaurav Kisan, New Delhi Vs. National Institute of Health & Family Welfare (Appeal No. 45/ICPB/2006 dt. 10th July 2006) the applicant sought information which did not relate to the functioning of the public authority. They were certain complaints unconnected with the functioning of the public authority. The commission decided that under RTI the Right to seek information has been given to the citizen for transparency of information which are vital to its functioning.

Judgment: Comments were called for from CPIO. In his comments dated 17.6.2006, the CPIO has stated that since the information sought for related

to a third party, the concurrence of third party was sought for, who had not authorized the CPIO to furnish the information. There has been a conflict between the appellant and the third party, which resulted in the arrest of the appellant. Since the appellant was kept in Tihar Jail, he was suspended by the Institute. It is learnt that the appellant has filed a case against Shri Anurag Mittal. Since Anurag Mittal's marital dispute with his wife Dr. Rachan Aggarwal is in the court, the disclosure of any information of Shri Anurag Mittal to the appellant or vice versa may create further complications in the matter.

From the information sought, it is evident, that the appellant is seeking certain communications sent by a third party to the Institute about the appellant. As could be seen from the preamble to the RTI Act, the right to seek information has been given to the citizens so that there is transparency in the working of the public authority and transparency of information which are vital to its functioning. **In the present case, the information sought does not relate to the functioning of the public authority.** They are complaints unconnected with the functioning of the public authority. However, if the public authority had acted on the communications received from the third party, then, perhaps it could be claimed that it relates to the functioning of the public authority and as such becomes "information" in terms of RTI Act. In the present case, there is nothing on record to show that the pubic authority has acted on the e-mail communications received from Shri Anurag Mittal. Therefore, the information sought by the appellant do not seem to fall within the definition of 'information" in the RTI Act. Even other wise, the information sought being personal, having nothing to do with public interest is also exempt from disclosure in terms of Section 8(1)(j) of the RTI Act. In case of third party information, if the said third party, opposes disclosure of the information, it is for the CPIO to decide whether, in public interest, the information could be disclosed. The CPIO has formed an opinion that in view of pending court proceedings, disclosure would result in further complication. Commission do not find any material to disagree with the CPIO other than stating that the provisions of the Act relied on by him in denying the information, as rightly pointed out by the appellant, are not applicable in the present case.

8.2.1. Application must be made to the concerned CPIO Sec 6(1):

In the case of Shri I. Vincent Christopher vs FAA of CIC. No.CIC/AA/A/ 2009/263, dated: 25th May, 2009. The appellant in this case wanted to have some information from –
(I) State Public Information Officer, TNEB, Chennai

(ii) Deputy Secretary (Administration)
(iii) Tamil Nadu Information Commission
(iv) Mettur Thermal Power Station, Mettur.

Since he did not receive the desired information from the above Authorities, he submitted an application under the Right to Information Act, 2005 before the CPIO of this Commission. He desires that the CPIO of the Central Information Commission should obtain the desired information from the above Authorities and make it available to the appellant.

Since he did not receive any information from the CPIO of this Commission, he has submitted an appeal under Section 19(1) of the RTI Act before the First Appellate Authority of this Commission, which was received on 16.04.2009. Another copy of the same application was received on 17.04.2009.

Judgement by FAA of CIC : Decision and reasons: FAA of CIC dismissed the appeal petition.

Section 3 of the Right to Information Act, 2005 confers a right to access information on all citizens. On the other hand, Section 2(j) of the RTI Act defines the "right to information" to mean as right to get information which is held by and under the control of any Public Authority. A Public Authority is, therefore, obliged to provide access to information to every citizen in respect of whatever information is held by it or is available under its control.

In this context, it would be pertinent to refer to Section 6(1) which mandates a citizen to make a request, in writing, or through electronic means, accompanied with such fee as may be prescribed to the CPIO/SPIO of the concerned Public Authority, specifying the particulars of the information sought by him. Section 6(1), therefore, makes it compulsory on the part of the citizen to submit an application under the Right to Information Act, 2005 before the concerned CPIO and not before any other CPIO.

Under Section 6(3) of the RTI Act, Where an application is made to a public authority requesting for an information,— (i) which is held by another public authority; or (ii) the subject matter of which is more closely connected with the functions of another public authority, the public authority, to which such application is made, shall transfer the application or such part of it as may be appropriate to that other public authority and inform the applicant immediately about such transfer: Provided that the transfer of an application pursuant to this

sub-section shall be made as soon as practicable but in no case later than five days from the date of receipt of the application.

The provision under **Section 6(3) has to be read in the context of Section 6(1) of the RTI Act. In other words, Section 6(1) lays down a rule while Section 6(3) is an exception. If every applicant is allowed to submit all petitions concerning various Public Authorities to one single Public Authority, then virtually every Public Authority would be rendered into a Post Office,** whose only task would be to transfer a RTI application to the concerned CPIOs. This will put the whole system unworkable. This could not have been the intention of the Legislature while enacting Section 6(3) that each and every person can submit applications seeking information wherever he likes.

From this view point, the demand of the appellant from the CPIO of this Commission to obtain the information from the above named Authorities and make it available appears to be totally unjustifiable and unwarranted. The appellant, therefore, cannot be held to be entitled to seek this information from the CPIO of this Commission. A right not available under a law cannot be made available through an appeal.

8.3. Use of officials letter heads [Section -6]

In the case of Ms. JD Sahay Vs. Ministry of Finance (Appeal No. CIC/AT/A/2008/00027 & 33 dt. 6.2.2009) an interesting issue whether the application is liable to be rejected on the ground that it was submitted an official letter head was examined by the Commission. The plea taken by the respondent was that information has not been asked for by a citizen of India. It has been asked by the applicant in her official capacity as DG of Income Tax. The decision taken by the Commission is very pragmatic.

Judgement: The respondent Public Authority has submitted that in the instant case, information has not been asked for by a citizen of India. It has been asked by the appellant in her official capacity as Director General of Income Tax (Inv). A perusal of the RTI request shows that the application has been submitted in Form "A", the description whereof is as follows: "Application Form for obtaining Information under Section 6(1) of the RTI Act, 2005.

The application was submitted in the name of the applicant and it has been signed by her in her personal capacity. Of course, she has referred to letter dated 17.8.2008 which enumerates the information asked for by her. This establishes

that the information has been asked by the appellant in her individual capacity. Even assuming that a Government servant uses the letter head of the office for seeking information under Section 6(1) of the RTI Act and pays fees from out of his personal funds, an application submitted under such circumstances cannot be rejected on the ground that the application has been filed not by a citizen but by a Government servant in official capacity. The payment of fee and indication that it is an application under Section 6(1) of the RTI Act is good enough to establish that it is an application submitted by a citizen under the Act and the CPIO is obliged to consider the same.

8.4. Rejection by the PIO with out valid grounds do not take away the legal mandate of providing information with out charge after the time limit Sec 7(6):

In the case of Mr.Rakesh Agarwal, Vs Mr. K.S. Rawat, PIO,Tis Hazari Courts, Delhi. Administration Branch I, Office of the District & Session Judge, Tis Hazari Courts, Delhi-110001Decision No. CIC /SG/A/2009/000675/3390 Appeal No. CIC/ SG/A/2009/000675 .

The appellant sought the information regarding :

1. Whether intimations are sent by each traffic court of Delhi presided over by Spl. M.M.S. as required by Section 210 of the Motor Vehicles Act 1988?
2. If not, reasons for the same.
3. If yes, copies of all such intimations that pertain to convictions on 9 and 10 January 2008 across all traffic courts of Delhi.

PIO replied as given below:

The information requested for was not information held by or under the control of any public authority and therefore did not fall under Section 2 (f), RTI Act. Further, the Appellant was representing the news paper/magazine called "Nyay Bhumi" and within fifteen days had filed three applications vide ID. Nos. 1291, 1290 and 1321. If the Appellant was working for promotion of his business rather then serving the social interest, it was a blatant misuse of RTI Act as held in Appeal no. 23/IC/A/2006.

Appellant was not satisfied with the PIOs reply and gone for First Appeal stating that the PIO's response was wrong and misplaced. FAA allowed the

appeal and directed the PIO to collect the information from the courts of special M.M.s dealing with traffic cases and send it to the Appellant within 20 days. However, PIO demanded payment for providing information thereby violating Section 7(6). The Appellant received the FAA's order on 25/02/2009 thereby exceeding the time limit of 45 days. So he has gone for the second appeal.

Judgement: Reasons / Decision: CIC allowed the appeal and commented on the PIOs refusal to give the information initially claiming what was sought was not information as defined under ***Section 2(f) of the RTI Act. The Commission finds it difficult to imagine how "whether intimations are being sent by each traffic court of Delhi presided over by Spl. M.M.S. as per Section 210, M.V. Act" is not information as defined under the RTI Act.***

The PIO has given written submissions and stated during the hearing "Section 7(1) envisaged that information has been provided or rejected. Section 7(6) states that if information has not been provided by the authority and does not contain the word reject. In the present case I have rejected and the appellate authority has allowed the information and I have collected the information within the period specified by the appellate authority and after that a notice was issued to the appellant for depositing the cost of paper that is rupees Rs.2/- per page. If the section 7(6) is applicable in all cases like this case then the Appellate Authority cannot direct the PIO to provide information free of cost. I have made a decision which is the subject matter of the Appellate Authority to set aside or to accept the same."

Judgement: The Commission finds the position of law as proposed by the PIO with regard to payment of fees untenable. ***Section 7(6) states that ...person making request for 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). Section 7(1) provides "...either provide the information on payment of such fees as may be prescribed or reject the request for any of the reasons specified in sections 8 and 9."***
It is a basic tenet of statutory interpretation that words of a statute should be interpreted keeping in mind the context in which they appear. Information is to be provided free of cost if Section 7(1) is not complied with. If a ground for exemption from disclosure is wrongly relied upon, then it does not amount to 'rejection of a request' as stated in Section 7(1). It is absurd to contend that the Appellant must be made to pay the additional fees when the PIO wrongly denies information. The Commission finds the PIO's deliberate misconstruction of the law unacceptable.

This is an attempt to obstruct the implementation of the RTI Act and to delay the provision of information to the Appellant without any reasonable cause.

The Commission finds that the PIO on several occasions, all of which are on record, has made unwarranted and irrelevant observations which give the impression that the **PIO is malafidely denying information to the Appellant.** The Commission strongly advises the PIO to refrain from making such comments in future. W2

The PIO has also stated in his reply to the First Appellate Authority that as Section 6(1) of the Act includes the word 'specify', the question of the Appellant should be specific and not general. If the information required is general in nature it is not possible for the PIO to give information within the stipulated time. The applicant mentioned in his application 'all courts' which is general in nature. The Appellant's RTI application is specific as he asks for information pertaining to convictions decided on two dates in all traffic courts in Delhi and the PIO's allegation that the request is too general is baseless.

In his reply to the Appellant's RTI application, the PIO writes: "it reveals that you are representing your news paper/ magazine…and within fifteen days you have filed three applications… if you are working for promotion of your business rather then serving the social interest, this is a blatant misuse of Right to Information Act…"

Insofar as looking at the Appellant's reasons for requesting for information is concerned, the lawmaker has categorically stated 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.'

All these instances lead the Commission to believe that the PIO was malafidely denying information to the appellant by making observations which are misplaced in law and fact. From the foregoing it appears that the PIO first refused to give information to the Appellant on a baseless ground that what was sought was not information; then the First Appellate Authority ordered PIO to give the information rejecting his contention. He sought further fees from the Appellant for which he had no valid ground. Thus it appears that the PIO has deliberately and without reasonable cause malafidely denied information to the Appellant.

The appeal is allowed. The Commission directs the PIO to provide the information to the Appellant free of cost.

8.5. Transfer of application wrongly received by the public authority to other public authority including State Government.

In the case of Shri Divya Jyoti vs National Environmental Engineering Research Institute F.No.CIC/AT/A/2008/00980.

The appellant had filed his RTI-application for the certified photo copy of the **NEERI report** on the Restoration of Environmental Quality of the Affected Area Surrounding Village Bichari due to Past Waste Disposal Activities' submitted in April 1994.

CPIO and the Appellate Authority, through his order , informed appellant that although the public authority, viz. National Environmental Engineering Research Institute (NEERI) conducted the study as sponsored by the Rajasthan State Pollution Control Board, Jaipur, the actual custodian of information i.e. the Report prepared by NEERI was the Rajasthan Pollution Control Board (RPCB). They, therefore, advised **the appellant to approach the Rajasthan Pollution Control Board with his request.**

Judgement: Commission stated that it would have been entirely appropriate for the CPIO, **NEERI** to transfer the RTI-application to the appropriate public authority in the State Government of Rajasthan, Rajasthan Pollution Control Board, who is the custodian of the information, **but rather than invoke the provision of Section 6(3) of the Act, the CPIO, NEERI chose to advise the appellant to approach that Board independently. This was done on the basis of the respondents' surmise that since the RPCB the holder-of-the-information was a State Government entity and not a Central Government entity, the stipulation of Section 6(3) would not be applicable in this case.**

It is true that use of Section 6(3) for transferring RTI-queries from a Central Government entity to a State Government entity is not frequent, but that should not be construed to mean that Section 6(3) is inapplicable in the matter of transfer of queries from Central to State Government entities or vice-versa. The Act does not make any marked distinction between the Central and the State Government public authorities for the purposes of Section 6(3). That being so, we do not wish to hold the stand taken by the respondents in regard to this item of query against them since their position was based upon a certain understanding of the RTI Act, which is being clarified only now through this order.

Commission held that the respondents were in error in taking the position which they did. During the hearing, CPIO, NEERI informed that on receiving the hearing notice from the CIC, they contacted the Rajasthan Pollution Control Board treating them as third-party for their clearance regarding disclosure of the requested information. Through their communication, Rajasthan Pollution Control Board gave its no objection to NEERI to disclose the requested information to the applicant. Accordingly, CPIO, NEERI intimated to the appellant that he could collect the information on payment of the prescribed fee.

Now that the respondents are willing to disclose the information as authorized by the Rajasthan Pollution Control Board the third-party the reason for this appeal has ceased.

8.5.1. Transfer of application wrongly received by the public authority to other public authority.

In the case of shri Shri Mahabir Singh vs Municipal Corporation of Delhi, (MCD), West Zone, Appeal No.CIC /WB /A /2007 /00114 dated 6.2.2007. The appellant has requested the following information:

1. Supply the attested/ certified copy of judgment dt. 16.2.06 and further order dt. 24.3.06 passed by the Hon'ble Supreme Court of India in IA No. 22 in WP(C) No. 4677/1985 etc. in the matter of M. C. Mehta v/s Union of India and others.
2. State/ clarify that the contents of the public notice published by Commissioner MCD in the Hindustan Times on 26.3.2006 in connection with the judgment dt. 16.2.06 and further order dt. 24.3.2006 passed by the Hon'ble Supreme Court of India in IA No. 22 in WP (C) NO. 4677/1985, are correct?
3. Supply the certified/ attested copy of the decision of the Monitoring Committee as per letter No. D/158/EE(B)/ WZ/ 06 dt. 8.5.06 issued by the EE (Building), West Zone, MCD.
4. Supply the certified/ attested copy of the decision/ instruction/ direction/ order of the Monitoring 22.5.06 and resubmitted on 17.8.06 in the office of EE (Building) West Zone, MCD.
5. Inform me the day-to-day report on my application dt. 12.4.06 and all documents/ applications/ letters submitted in the office of the DC, West Zone, MCD and office of the EE (Building) West Zone, MCD, after 12.4.06, on the subject: Sealing of commercial activities in the residential area uptill now.
6. Time period for which information is required. 2006."

To this he has received a point wise reply from PIO , D.C. West Zone in his letter in which the answers to Q. Nos.1 & 2 were as follows:

1) The Certified copies of the judgement of the Hon'ble Court can be had from the Hon'ble Court only.
2) Yes, the contents of the Public Notice are correct."

Satisfied with the remaining answers, appellant Shri Mahabir Singh, however, contested the response to Q. Nos. 1 & 2 moving his first appeal before Shri K.D. Akolia, Addl. Commissioner, MCD on 9.10.06. Shri K.D. Akolia Addl. Commissioner (Health) and First Appellate Authority on his part found as follows in his order of 7.11.06:

The MCD can provide attested copy of any document pertaining to the MCD or issued by the MCD. The MCD is not competent to provide certified copy of any Court's orders. The applicant is, therefore, advised to make an application to the office of the Registrar of the Supreme Court of India for obtaining certified copies of the judgments as mentioned in his application.

In his second appeal before us the prayer of appellant Shri Mahabir Singh is:

"It is therefore most respectfully prayed that the CPIO may kindly be ordered to answer every question/ information sought/ demanded by the appellant as per application/ appeal as per the Right to Information Act and punished accordingly in the interest of justice."

He has followed this up with a reminder highlighting the principal issues on which he has sought the action of this Commission as below:

i. That in respect of question No. 1 the PIO could transfer the part of application to the PIO within 5 days as per Section 6(3) of the RTI Act, 2005, the matter was more closely concerned with.

ii. That the PIO has charged RS. 8/- for two copies of information instead of RS. 4/- in respect of question No. 3. May be treated under Section 18(1)(D).
iii. Refund of Rs. 4/- plus Compensation may be considered under Section 19(8) (b) in respect of point ii. Above.

iv. Punishment may also be considered for violation of Section 6(3), 18(1)(e) and 18(1)(d) of the RTI Act, 2005."

In response to the appeal notice Dy. Commissioner (West Zone) has submitted as follows in his letter of 13.11.07:

Whatever information was available with this office has since been provided to the applicant under the relevant provisions of RTI Act. Regarding attested/ certified copies submitted by respective parties in various Courts, it is responsibility of the applicant to procure the same from the concerned Court since the certified/ attested copies are not available with the respondent MCD unless they are specifically required and procured. Moreover, herein the applicant has raised his contentions on the contents of the Public Notice which was published by the respondent MCD and to the best of knowledge of this department the contents were correct and if these contents do not serve the purpose of the applicant then the remedy lies with him to appeal before the Hon'ble Supreme Court.

In his rejoinder to this response Shri Mahabir Singh has submitted as follows at the time of hearing in his letter dated 17.1.'08:

1. PIO/DC, West Zone, MCD did not furnish comments within fifteen days as per notice dt. August 11, 2007 of the Central Information Commission.
2. PIO/DC, West Zone, MCD charged Rupees eight instead Rupees four for just two copies of information, may be treated under Section 18(1)(d) of the Act.
3. Regarding question number 1 to supply the certified copies of Judgment of Hon'ble Supreme court of India, PIO/DC, West Zone, MCD court transfer the same to the Competent Authority i.e. Chief Law Officer, MCD or/ and the CPIO, Hon'ble Supreme Court of India as deemed fit if he did not have the copies of the Judgment of Hon'ble Court and did not have the power of the attestation for the same. May be treated under Section 6(3) of the Act.
4. Regarding question number 2 the reply of the PIO/DC, West Zone, MCD, may be treated under Section 18(1)(e) of the Act.
5. PIO/DC, West Zone, MCD is habitual of violating Section 7(8)(ii) read with 7(8)(iii) of the Act, as he never mentions the particulars of the First Appellate Authority and time period of filling of First Appeal."

ISSUE NO. 1

In light of sec. 6(1) which requires a person seeking information to make application to the CPIO "of the concerned public authority" will Sec. 6(3)(i) to which reference has been made by appellant Shri Mahabir Singh be applicable in this case where the competent authorities prescribing rules for admission of applications in the case of the authority to whom the application is made is

different to the authority with which the application is concerned.

ISSUE NO. 2

Whether the information given in answer to Q. No. 2 is incorrect and hence liable for penalty u/s 20(1) in light of sec. 18(1)(e).

On the question of excess payment of Rs 4/- for the copies provided PIO Shri Hastir has admitted his error and agreed to refund the amount.

Appellant Shri Mahabir Singh has pointed out that the orders of the Supreme Court in WP (Civil) No. 4677 of 1985 Shri M.C. Mehta vs. Union of India are clear. He invited our attention to the following on p 5 of the judgement:

Judgement: Commission has allowed the appeal and stated that the procedure for obtaining certified copies of judgment of the apex Court are laid down in the Supreme Court Rules1966. This Commission has in our decisions found that these Rules are consistent with the RTI Act and, therefore, not overridden by sec. 22 of the RTI Act 2005. Under the circumstances and as prescribed u/s 6(1) of the above Act, application seeking such copies is to be made before the Supreme Court. **This does not, however, exonerate any public authority from applying the provisions of Sec 6(3). In such a case, however, the fees paid in making the application to an authority other than the Supreme Court cannot be taken as the application fee since the rules for application fee in the Supreme Court are different. Whereas we agree that the PIO and Dy. Commissioner (WZ) should have forwarded the request of the CPIO, Supreme Court of India, u/s 6(3) (i) this would have been with the advice to appellant Shri Mahabir Singh to pay the requisite fee as required under the Supreme Court Rules and not under the DoPT Rules issued by the latter u/s 27(1) (a) (b) or (c). The RTI Act cannot be used to circumvent the Rules made in this regard by the Supreme Court, in the case of which the Chief Justice of India is the "competent authority" u/s 2(e)(ii) to make rules regarding fees payable as per Sec 28 (2) sub-sections (i), (ii) and (iii) and the Chief Justice of the High Court in the case of a High Court u/s 2(e)(iii).** The PIO has in fact fulfilled his responsibility by informing appellant Shri Mahabir Singh on the need to obtain such copies of the judgment of the Hon'ble Supreme Court from that Court. The appellant Shri Mahabir Singh should then have made his application direct to the CPIO of the Supreme Court of India instead of which he has taken recourse to appeals under the RTI Act.

8.6. Disproportionately divert the resource. How do you apply Section 7(ix) of the RTI Act.

In the case of Sh. Prem Prakash Kumar Vs. National Fertilizers Limited (Decision No. 210/IC(A)/2006 F.Nos. CIC/MA/A/2006/00374 & 375 dt. 28.8.2006) the applicant asked for information in which he made 89 **queries.** The Commission decision had been to advice the applicant to prioritise and specify the documents that he still needs.

Judgment: The appellant has sought huge information which could have been denied u/s 7(9) of the Act. He has moreover sought the opinion of the CPIO on issues of personal interest that partly relate to his service matters. Even this could haven been denied. Yet, he is expecting a compensation of Rs. 10 lakhs without any justifiable reason. The appellant feels harassed by the CPIO, who, in turn, is equally pained due to a large number of questions raised by a former colleague. In fact, the nature of queries and the exchange of information sought are such that the information seeker would never be satisfied because the promotion of self interest, rather than public, is dominant as the appellant has sought redressal of his grievances.

The appellant is therefore advised to prioritize and 'specify' the documents that he still needs. He ought not seek opinion of the CPIO and that he should ask for the documents that are available in his office. The appellant should verify this before putting up his application. The documents which do not exist or barred from disclosure under the Act cannot be given to the appellant.

8.6.1. Disproportionately divert the resource. How do you apply Section 7(ix) of the RTI Act.

In the case of Shri Chetan Kothari, Mumbai vs President's Sectt, Vice President's Secretariat, Prime Minister's Office (PMO) , Appeal No. WBA-8-658, WBA-8-1453 & 1454, WBA/09/667 dated 24-4-2008 & 16-6-2009.

The appellant has sought the information regarding travel and medical expenses of the present and previous President of India, Vice President of India and the Prime Minister of India. Hon'ble President of India during their tenure as Prescribed of India.

CPIO stated that the information asked for would have to be compiled and would disproportionately divert the resources of public authority and will be detrimental to the normal functioning of the office. Therefore, your application is being rejected under section 7 (9) of the RTI Act, 2005."

Upon this the applicant moved an appeal before Appellate Authority pleading that incomplete information had been provided. FAA directed the CPIO to send another copy of his letter to the appellant." Not satisfied with the information provided the appellant has moved to CIC for second appeal stating that:

Respondents at NIC Studio, President's Sectt

The CPIO, Rashtrapati Bhavan stated that a letter of 15-9-09 received a request from Shri Ashok Dewan for adjournment on the grounds that the Hon'ble Vice President of India will be touring Sriharikota, A.P. on 23-9-2009 to be accompanied by the CPIO and Appellate Authority. However, the detailed written arguments of respondents have been received through his letter of 19-9-09, which have been quoted above in discussing the facts of the case. **We read out the contents of sub Section 9 of Section 7 to CPIO, President's Secretariat. He was asked to identify under what clause of the Act he was authorised to actually refuse information sought, since this clause deals only with the option of providing information in a form other than that asked for. CPIO Shri F.A. Kidwai submitted that according to his understanding this clause entitled the CPIO to refuse the information if it would disproportionately divert the resources of the public authority or would be detrimental to the safety or preservation of the record in question.** He also clarified that the appeal dated 8.3.'08 has been wrongly dated and disposed.

Judgement: CIC allowed Appeals concerning the President's Secretariat. Commission opined that the Sub-section (9) of section 7 does not authorize a CPIO to refuse information under the RTI Act but only allows him to provide the information sought in a form other than that sought. The best way of doing this is to interact with the appellant and provide him the information in alternative form. The decision of the CPIO in both applications to the President's Secretariat is, therefore, invalid. On the question of application of the DOPT's OM quoted above in light of sub Section (i) and (3) of section 6, this OM has to be read in the context of sub Section (1) of Section 7 as we have held in the case of **Rajendra Singh vs. CBI** in appeal No. **CIC/WB/A/2007/00967** announced on 19.6.'09. In that case we found as follows:

The issue hinges around the application required to be made for obtaining information u/s 7 (1). Under this clause a CPIO. On receipt of 'a request' is expected to deal with it expeditiously. When with accompanied with a fee. It is, therefore not opens to the applicant under the RTI Act to bundle a series of requests into one application unless these requests are treated separately and paid for accordingly. In our experience in disposing of appeals that in fact many such have been treated as one application even though they contain a multiplicity of requests. However, Commission concede that a request may be comprised of a question with several clarificatory or supporting questions stemming from the information sought. Such an application will indeed be treated as a single request and charged for accordingly, **Therefore, an application u/s 6 (1) to qualify for the necessary fee cannot contain a multiplicity by requests. In all the present appeals before us from Shri Chetan Kothari there are at least two requests per application – one being for medical expenses and another for travel expenses.**

Although, it may be conceded that supporting questions flow from this single request and therefore may be treated as part of one application, the CPIOs in the office of Vice President of India and Prime Minister of India were justified in advising appellant Shri Kothari to apply to the concerned Ministries to obtain the information sought. The plea of appellant Shri Kothari that a citizen of India has a right to the information that he has sought is conceded for the bulk of the information sought. The question here is only of where he should seek the information, a question on which appellant Shri Kothari has been suitably advised both by the Vice President's and Prime Minister's Office. However, in the more detailed questions put to the PMO and discussed in **File No. CIC/WB/A/2009/00667** it is noted that there is much personal information that has been sought which could amount to an invasion of privacy. These are questions at (a) and part of (c) of Shri Kothari's application which ask for the specific ailments that might have afflicted the Prime Minister. We have no clear definition of what is meant by “invasion of privacy” within the RTI Act. We have no equivalent of UK's Date Protection Act, 1998, Sec 2 of which, titled 'Sensitive Personal Data', reads as follows: “In this Act “sensitive personal data” means personal data consisting of information as to:

a) The racial or ethnic origin of the data subject.
b) His political opinions.
c) His religious beliefs or other beliefs of a similar nature.
d) Whether he is a member of a Trade Union.
e) His physical or mental health or condition.

f) His sexual life.

g) The commission or alleged commission by him of any offence.

h) Any proceedings for any offence committed or alleged to have been committed by him, the disposal of such proceedings or the sentence of any court in such proceedings.

The US Restatement of the Law, Second, Torts, 652 on the other hand, defines the invasion of Privacy in the following manner: One, who intentionally intrudes, physically or otherwise, upon the solitude or seclusion of another or his private affairs or concerns, is subject to liability to the other for invasion of his privacy, if the intrusion would be highly offensive to a reasonable person. If we were to construe privacy to mean protection of personal data, this would be a suitable starting point to help define the concept. And as the UK law, which is more closely defined states, in clause (e) of Sec 2 emphasised by us above, 'sensitive' personal date includes "physical or mental health or condition".

Insofar as expenses are concerned this is indeed information that is disclosable since the expenses made from the public exchequer are accountable. However, the personal ailment of the individual is personal information and in our view disclosure would indeed be in violation of sub Section (j) of Section 8 (1). In this context Shri Chetan Kothari has sought to cite the decision of this Commission in file No. **CIC/AD/A/09/00609** dated 21- 5-09 in the case of Shri Jagdish Chander Jetli Vs. AIIMS in which we have held as follows: "The Respondent submitted that the AIIMS has nothing on record regarding the qualifications of Dr. Panda who conducted the By- Pass Heart Surgery nor have reasons for his selection been recorded. He stated that the decision to invite Dr. Panda was taken jointly by the PMO and family members of the Prime Minister. The Appellant's contention was that the Public has a right.

8.7. Disposal of request with in the specified time period Sec 7 (1).

In the case of shri Ms. Neerja vs Delhi Development Authority (DDA) Appeal No. CIC/WB/A/2007/00666 dated 10-5-2007. The appellant applied for the second appeal in connection with 07 days delay in providing information

Judgment:: Commission directed in their order as follows:

"The application of Ms. Neerja is dated 12-3-2007 and the response has gone to her on 19-4-07. There is therefore a delay of 7 days in providing only part of the information sought. Shri Rakesh Bhatnagar will therefore show cause either in

writing by 10th September, 2007 or through personal appearance on 17th September, 2007 at 10.00 a.m. as to why he should not be held liable for a penalty of Rs. 250/- a day for 7 days amounting to Rs. 1750/- u/s 5 (5) read with Section 20 (1) of the RTI Act for not providing the information within time limit mandated as per Section 7 (1) of the RTI Act." In a detailed response to this direction Shri Rakesh Bhatnagar, Director H-1 and PIO, DDA through a letter of 6.9.07 has stated that the papers were received by him through Central APIO of DDA and, therefore, he be allowed 5 days in computing the response, so the delay in providing information is only two days. In light of this he has further submitted that "all efforts were made to generate and compile the information as requested by the applicant Mrs. Neerja since the same was not available in SFS Branch. In this process, special efforts were made by Dy. Director (SFS) to compile the same from different sources and various staff officials, which resulted in delay of two days in supplying this information". Moreover the information was forwarded to the applicant Ms. Neerja on 19.4.07, the very day it was received from D.D. (SFS). Shri Rakesh Bhatnagar PIO who sought the information from the Dy. Director (SFS) u/s 5(4) has attested before us that in fact every effort was indeed made to compile the information sought by appellant Ms. Neerja. Therefore, there was reasonable cause for the delay. Appellant Ms Neerja also appeared before us, but after the conclusion of the hearing. She made an application for a copy of the response to the show cause notice submitted by respondent Shri Bhatnagar, and also stated that having been out of town she had not received the information stated by Shri Bhatnagar to have been sent to her on 24.8.'07. A copy of each was handed over to her in the hearing. Appellant contested any allowance being given for a further five days and has also invited our attention to the fact that the assistance of DD (SFS) was only sought only on 28.3.'07, when the application was dated 12.3.'07. She also expressed doubts whether the letter stated to have been sent on 19.4.'07 was indeed dispatched on that date or has been back dated. She therefore pleaded for maximum penalty.

We cannot accept the plea that a further 5 days be appended to the time limit mandated by Sec. 7(1) for movement of the record within the same Public Authority. Because the application was received on 12.3.07, the response was indeed due on 12.4.07 but has gone on 19.4.07. We can also find no justification for the delay by PIO in forwarding the request to DD (SFS), but because this had not transgressed the time limit, which was breached only when the matter was pending with DD (SFS), we cannot invoke penalty in this case. **Shri Bhatnagar PIO, is however cautioned to adhere more closely to time limits in addressing RTI applications** However, in light of Shri Bhatnagar's statement before us that he as PIO is satisfied that Director, SFS has acted reasonably and diligently to

supply the information in time, which is the requirement of Proviso II to sec 20(1), and because he was given less than the mandatory 30 days for obtaining the information sought, **we take the delay of 7 days to have been with reasonable cause.** This matter is now treated as closed.

8.7.1. Disposal of request with in the specified time period, incase of life and liberty of a person the information shall be provided with in 48 hrs Sec 7 (1).

In the case of Shri Shekhar Singh, Smt Aruna Roy & others vs Prime Minister's Office, Appeal No CIC/WB/C/2006/00066 Dated: 19/4/'06

The complainants had applied to the PMO on 12/4/'6 for information relating to the recommendations of a Group of Ministers that had recently visited the Narmada valley in connection with resettlement and rehabilitation projects under the Sardar Sarovar Project in Madhya Pradesh at the behest of the Prime Minister. They had invoked proviso to Sec. 7(1) of the Right to Information Act, claiming that the information sought concerned the **life and liberty of 'many Narmada Bachao Andolan activists who are on hunger strike' and the 'thousands of families who are on the verge of losing their homes, their lands and their very means of survival'.** This application was transferred by PIO Kamal Dayani of the Prime Minister's Office under OM No RTI/131/2006-PMA of April 13, 20076 to the CPIO, Ministry of Water Resources. The complainant has therefore made a complaint u/s 18 of the Act to the Commission asserting that the report having been commissioned under the orders of the Prime Minister, the Prime Minister's Office should have provided the information and in the light of 'emergent circumstances' the Commission direct the concerned Ministry to do so immediately.

The report of the group of Ministers has been covered in the press and, on 18/4/'06 been given to applicant Shekhar Singh under the title of "A Brief Note on the Assessment of Resettlement and Rehabilitation (R&R) Sites and Submergence of Villages of the Sardar Sarovar Project". Appellant asked for confirmation that this was the complete report or a summary. It was confirmed that the report given was the report of the GoM. A copy has been placed on file. The main thrust of the application is thus satisfied. However, some critical issues of interpretation have been raised in the hearing as follows:

a) Was the PMO within the law in transferring the case to Ministry of Water Resources?

b) When is the question of life and liberty to be considered a matter of concern?
c) Does the present case cover the definition of 3rd party u/s 11 or protection of commercial confidence u/s 8 1) (d) of the Act?

Judgment: Commission opined that the request for information specifically asked for having been met, the complaint regarding non-receipt of the information requested is dismissed. This also renders in fructuous the 3rd party intervener's claim that the information should not be given. We now come to the peripheral issues defined above:

a) The PMO is indeed the repository of much information that concerns every Ministry/Department of the Government of India. Does this then make it the keeper of information as defined in Section 2(j)? In the normal course the PMO is authorized under Sec 6 (3) (ii) to transfer an application to a public authority more closely connected with the subject of the information sought. This definition will clearly apply in the present case as the matter directly concerns the Ministry of Water Resources and the PMO has functioned as a referral agency. The PMO has transferred the application expeditiously, as clarified in its response to the complaint before the Commission.

b) Whether PMO considered the case to be one concerning life and liberty was not addressed in the original response of PMO to the application. However, in its report to the Commission it has held that Sec 7(1) is not relevant as hunger strike is an 'action voluntarily entered into by the individual concerned and cannot be perceived as a threat to his/her life or liberty'. On the question of the affected public the PMO has held in its response that there was no immediate action that could be taken that could endanger liberties and lives, as there could be no submergence before the monsoon. Even were it accepted as averred in the hearing that an early monsoon is predicted for western India, this still will not constitute invocation of the proviso to Sec 7(1), with the time limits mandated by the Act capable of covering such an apprehension. While therefore we would agree that the imminent threat to the public was not immediate and that Proviso to Sec 7(1) will not apply, we cannot agree that a hunger strike being voluntary cannot be construed to be such a threat. The Commission has therefore treated this matter as a complaint and not advised appeal, and has sought to hear the matter at the first available opportunity. While a postulation as made by PIO Dayani militates against the very foundation of the unique national tradition of satyagraha, it must be acknowledged that if the State does not deem the matter a case of attempted suicide under the IPC which would activate criminal action, it cannot at the same time evade the issue by claiming that being voluntary it does not constitute such a

threat when medical reports claim otherwise. And if the medical reports do so claim, if having access to the information sought, and to ensure adherence to the spirit of the Act the PMO in such cases would be advised to respond treating as a possible threat to life, and seek to save the time spent in transfer to the concerned public authority. This would therefore require the following:

(i) The application be accompanied with substantive evidence that a threat to life exists (e.g. medical report)

(ii) Agitation with the use of ahimsa must be recognized as a bonafide means of expressing 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.

8.8. Charging of additional fees beyond as prescribed by the Government is not permissible.

In the case of Shri Subodh Jain and others vs Deputy Commissioner of Police Delhi and others. Complaint No.CIC/ WB/C /2007 / 00943 along with Appeal No. CIC /MA /A/ 2008/ 01085 Dated 30.10. 2009

ISSUE FOR DETERMINATION IN THE CASE WERE:

I. Whether Section 7(3) of the Right to Information Act, 2005 provides for charging of fees in addition to the fees already prescribed under Sections 7(1) and 7(5) of the RTI Act, or is this, as contended by DoPT (reference underlined by us) only a procedural clause?

II. If further fee is allowed, with whom vests the discretion to charge such fee and what should be the scale at which the fee should be charged and for what specific matters?

DECISION & REASONS:

We first take up the matter regarding the imposition of cost by the respondents on the applicant under section 7 (3) of the Act. The Government has already provided for what it deems reasonable cost under Rules 3, 4 and 5 of the Right to Information (Regulation of Fee and Cost) Rules, 2005. The provision as contained

in Section 4(1) of the Act also provides for maximum disclosure of all disclosable information on the web sites of respective Public Authorities so that the information seekers do not have to incur expenses to get information.

We have examined this matter from the point of view of the reasonableness of the estimated cost imposed, over and above the fee charged to the applicant as prescribed by DoPT under the Rules. In our view, given the type and the nature of the information requested by the applicant, there is no room for forcing them to pay any cost other than the usual fees u/s 7 (1) of the Act read with the Rules. Cost is not admissible in these circumstances. We therefore direct that the information requested by the appellants shall be disclosed to them within 2 weeks time from the date of receipt of this order on payment by them of the usual fees as prescribed by DoPT. **No further fee representing the cost shall be charged.** We have pronounced this decision without prejudice to the determination of the scope of section 7(3) of the Act, which is the subject discussed in the following paragraphs.

The question that arises is whether any public authority under subsection (3) of Section 7 can charge "further fee representing the cost of providing information" in addition to what is already prescribed under Section 7(1) and 7(5) of the Act and, if so, at what scale. Let us examine what Section 7(3) of the Act says:

"Section 7(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 dispatch 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."

It is also pertinent to reproduce Sections 6(1), 7(1) and 7(5) of the Act as under:

"Section 6(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.

***"Section 7(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."

***Section 7(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."
The Act under proviso to sub-section (5) of Section 7 also provides that fee prescribed under sub-sections (1) and (5) of section 7 shall be reasonable and no such fee shall be charged from the persons who are below poverty line as may be determined by the Appropriate Government. The Government has already prescribed fees as deemed reasonable mandated under Sections 7(1) and 7(5) of the Act and in the view of the Commission, there is no provision for any further fee apart from the one already prescribed under Sections 7(1) and 7(5) of the Act.

The Commission has also perused the orders of Hon'ble High Court of Delhi dated 6.4.2009 and 14th July, 2009 of both Single and Division Bench, passed in **Writ Petition (Civil) No.8010 of 2009** and **L.P.** No.200 of 2009 respectively in cases entitled "Sunita Kalra Vs. Central Information Commission & Anr". The Hon'ble Single Bench of the High Court has held that so long as it is not indicated that the amount sought to be charged under Section 7(3) is unreasonable, the Court does not discern any unreasonable or arbitrary approach of the CIC in this respect. The

Hon'ble Division Bench of the High Court has held that if the petitioner finds that the further fee charged is unreasonable or arbitrary, he can approach the Central Information Commission (CIC) to agitate the question about the fees and if such an application is made by the appellant, CIC shall pass appropriate orders/directions in accordance with law.

Thus, there is provision for charging of fee only under Section 6(1) which is the application fee; Section 7(1) which is the fee charged for photocopying etc and Section 7(5) which is for getting information in printed or electronic format. But there is no provision for any further fee and if any further fee is being charged by the Public Authorities in addition to what is already prescribed under Sections 6(1), 7(1) and 7(5) of the Act, the same would be in contravention of the Right to Information Act. The "further fee" mentioned in Section 7(3) only refers to the procedure in availing of the further fee already prescribed under 7(5) of the RTI Act, which is "further" in terms of the basic fee of Rs 10/-. Section 7(3), therefore, provides for procedure for realizing the fees so prescribed.

Even assuming that there is provision for charging additional fee u/s 7(3) as learned Additional Legal Adviser Shri D. Bhardwaj would have us believe, the very fact that the legislature has not made any provision for applicants who are below poverty line as is made under proviso to Section 7(5) makes the legislative intent clear that fee mentioned in Section 7(3) only refers to the fee prescribed under Sections 7(1) and 7(5).

It would be worthwhile to go through what the Ministry of Personnel, Public Grievances and Pensions (Department of Personnel & Training) has prescribed in the Right to Information (Regulation of Fee and Cost) Rules, 2005. Rules 3, 4 and 5 of the said Rules prescribing rates at which fee can be charged under Sections 7(1) and 7(5) of the RTI Act is reproduced below:

A request for obtaining information under sub-section (1) of Section 6 shall be accompanied by an application fee of rupees ten by way of cash against proper receipt or by demand draft or bankers cheque payable to the Accounts Officer of the public authority.

For providing the information under sub-section (I) of Section (7), the fee shall be charged by way of cash against proper receipt or by demand draft or bankers cheque payable to the Accounts Officer of the public authority at the following rates: -
(a) Rupees two for each page (in.A-4 or A-3 size paper) created or copied:

(b) actual charge or cost price of a copy in larger size paper;
(c) actual cost or price for samples or models; and
(d) for inspection of records, no fee for the first hour; and a fee of rupees five for each fifteen minutes (or fraction thereof) thereafter.
(e). For providing the information under sub-section (5) of Section 7, the fee shall be charged by way of cash against proper receipt or by demand draft or bankers cheque payable to the Accounts Officer of the public authority at the following rates: -

(i) for information provided in diskette or floppy Rupees fifty per diskette or floppy; and
(ii) for information provided in printed form at the price fixed for such publication or rupees two per page of photocopy for extracts from the publication."

The Rules too have prescribed charging of actual cost in specific instances alongside the fee u/s 7.1. From this, it can well be seen that reasonableness or otherwise of the fee charged by a CPIO can only be in respect of the fee provided for under clause (c) of Rule 4 of the above Rules. We must then conclude that the provision to review the decision as to the amount of fees charged as contained in clause (b) of Section 7(3) is not in respect of any new or further fee but in respect of the fee provided for under Section 7(1) and Section 7(5) of the RTI Act. The legislative intent as reflected in Section 7(3)(b) is —

(i) right with respect to review the decision as to the amount of fee charged; and
(ii) right with respect to review the decision as to the form of access provided.

The argument that `further fee' is another class of fee which can be charged by the information provider is then, as per present Rules, fallacious because legislative intent can on no account be such as to give unbridled discretionary powers to the information provider without laying any guidelines as to the reasonableness of `further fees' or to give a right to the information seekers, which would then become notional, to obtain a review of decision with respect to `further fee' or reasonableness of `further fee'. Hence we must conclude that the 'further fee' is as prescribed under Section 7(1) and Section 7(5) of the Act.

Chapter-IX

Exemption from Disclosure of Information

9.0 Right to Information as provided in RTI Act, 2005, draws its genesis from Universal Declaration of Human Rights 1986, International Covenant on Civil and Political Rights 1966 and Part III of the Constitution of India enumerate fundamental rights. However, reasonable restrictions on Right to Information have been carved out in each of these cases. Accordingly, for appreciating exemption provided in Section 8 and 9 of the RTI Act 2005, it is necessary to briefly discuss the provision of the said legal testaments.

9.1. Universal Declaration of Human Rights,1948

Right to Information is a human right under Article 19 of Universal Declaration of Human Rights, which states: "Everyone has the right to freedom of opinion and expression; this right includes freedom to hold opinions without interference and to seek, receive and impart information and ideas through any media and regardless of frontiers."

However Article 12 of Universal Declaration of Human Rights imposes reasonable restrictions stipulating that:

"No one shall be subjected to arbitrary interference with his privacy, family, home or correspondence, nor to attacks upon his honour and reputation. Everyone has the right to the protection of the law against such interference or attacks."

9.2 International Covenant on Civil and Political Rights, 1966

Article 14 of International Covenant on Civil and Political Rights also permits restrictions:

The press and the public may be excluded from all or part of a trial for reasons of morals, public order or national security or when the interest of the private lives of the parties so requires or to the extent strictly necessary in the opinion of the court in special circumstances where publicity would prejudice the interests of justice; but any judgement rendered in a criminal case or in a suit at law shall be made public except where the interest of juvenile persons otherwise requires or the proceedings concerns matrimonial disputes or the guardianship of children."

9.3 Fundamental Right under the Constitution of India

Article 19 (1) (a) of the Constitution stipulates that all citizens shall have the right to freedom of speech and expression.

Article 19(2) carves out exception as under:

Nothing in sub-clause (a) of clause (1) shall affect the operation of any existing law, or prevent the State from making any law, in so far as such law imposes reasonable restrictions on the exercise of the right conferred by the said sub-clause in the interests of (the sovereignty and integrity of India) the security of the State, friendly relations with foreign States, public order, decency or morality or in relation to contempt of court, defamation or incitement to an offence.

The freedom to speech and expression enumerated in Article 19(1) is one of those great and basic rights which are recognised as the natural rights inherent in the status of a citizen. But this freedom is not absolute or uncontrolled, for same is liable to be curtailed by laws made or to be made by the State to the extent mentioned in clauses (2) to (6) of Article 19. Clause (2) of Article 19 recognize the right of the State to make laws putting reasonable restrictions in the interests of the general public, security of the State, public order, decency or morality and for other reasons set out in the sub-clause. The principle on which the power of the State to impose restriction is based is that all individual rights of a person are held subject to such reasonable limitations and regulations as may be necessary or expedient for the protection of the general welfare.

In words of Das, J., "social interest in individual liberty may well have to be subordinated to other greater social interest. Indeed, there has to be a balance between individual rights guaranteed under Article 19(1) and the exigencies of the State which is the custodian of the interests of the general public, public order, decency or morality and of other public interests which may compendiously be described as social welfare." (A.K. Gopalan vs State of Madras, AIR 1950 sc 27).

The right to know, receive and impart information has been recognised within the right to freedom of speech and expression in S.P. Gupta v. Union of India, AIR 1982 SC 149. It was admitted that whenever disclosure of a document is clearly contrary to the public interest it is immune from disclosure. But the decision on such immunity will rest with the court and not with the head of government or department. Rejecting the plea for disclosure of the supporting documents and evidence in Vohra Committee Report, the Court held that transactions which have

serious repercussions on public security can legitimately be claimed to be secret in the public interest.

In Prabha Dutt v. Union of India, AIR 1982 SC 6 the Supreme Court directed the Superintendent of the Tihar Jail to allow the representatives of a few newspapers to interview two death sentence convicts under Article 19(1)(a) though with the observation that the right under Article 19(1)(a) "is not an absolute right, nor indeed does it confer any right on the press to have an unrestricted access to means of information." This position has been reiterated in subsequent cases.

9.4. Reasonable Restrictions under Article 19(2)

Clause (2) of Article 19 specifies the limits up to which the freedom of speech and expression (inter-alia Right to Information) may be restricted. It enables the legislature to impose reasonable restrictions on the right to free speech under the following heads:

(1) Security of the State
(2) Friendly relations with foreign States
(3) Public Order
(4) Decency or morality
(5) Contempt of Court
(6) Defamation
(7) Incitement to an offence
(8) Sovereignty and integrity of India

Reasonable restrictions under these heads can be imposed only by a duly enacted law and not by executive action. Now we shall consider each head of restriction in the aforesaid order.

1. Security of the State – Under clause (2) of Article 19, reasonable restrictions on the freedom of speech and expression can be imposed in the interests of the security of the State. The security of the State may well be endangered by crimes of violence intended to overthrow the government, waging of war and rebellion against the government, external aggression or war, etc. All utterances intended or calculated to have the above effects may properly be restrained in the interests of the security of the State. Serious and aggravated forms of public disorder are within the expression 'security of the State'. Every public disorder cannot be regarded as threatening the security of the State. In Romesh Thappar vs. State of Madras AIR 1950 SC 124 case the Supreme Court definitely pointed out that the

expression does not refer to ordinary breaches of public order which do not involve any danger to the State itself.

Incitement to commit violent crimes like murder would endanger the security of the State. Thus, in State of Bihar v. Shailabala Devi, AIR 1952 SC 329 the law which made penal words or signs or visible representations which incited to or encouraged, or tended to incite to or encourage any offence of murder or any cognizable offence involving violence was held by the Supreme Court to fall within Article 19(2). After the amendment of the Constitution in 1951 'public order' has been added as a ground for restrictive laws, and there would hardly be any occasion to draw fine distinctions between the two expressions.

2. *Friendly relations with foreign States* – This ground was added by the Constitution (First Amendment) Act of 1951. The State can impose reasonable restrictions on the freedom of speech in the interest of friendly relations with foreign States. The justification is obvious: unrestrained malicious propaganda against a foreign friendly State may jeopardize the maintenance of good relations between India and that State.

3. *Public order* – The preservation of public order is one of the grounds for imposing restrictions on the freedom of speech and expression. The expression 'public order' is synonymous with public peace, safety and tranquility. It signifies absence of disorder involves breaches of local significance in contradistinction to national upheavals such as revolution, civil strife or war, affecting the security of the State.

4. *Decency or Morality* - Decency or morality is another ground on which freedom of speech and expression may be reasonably restricted. Decency connotes the same as lack of obscenity. Obscenity becomes a subject of constitutional interest since it illustrates well the clash between the right of the individual to freely express his opinions and the duty of the State to safeguard the morals. It is obvious that the right to freedom of speech cannot be permitted to deprave and corrupt the community, and therefore, writings or other objects, if obscene, may be suppressed and punished because such action would be to promote public decency and morality.

5. *Contempt of Court* – The constitutional right to freedom of speech would not prevent the courts to punish, as contempt of themselves, spoken or printed words calculated to have that effect. The expression 'contempt of court' is now defined by Section 2 of the Contempt of Courts Act, 1971 as under:

(a) 'Contempt of Court' means civil contempt or criminal contempt;

(b) 'Civil contempt' means willful disobedience to any judgement, decree, direction, order, writ or other process of a court or willful breach of an undertaking given to a court;

(c) 'Criminal contempt' means the publication (whether by words spoken or written, or by signs, or by visible representations, or otherwise) of any matter or the doing of any other act whatsoever which (i) scandalizes or tends to scandalize, or lowers or tends to lower the authority of, any court; or (ii) prejudices, or interferes or tends to interfere with, the due course of any judicial proceedings; or (iii) interferes or tends to interfere with, or obstructs or tends to obstruct, the administration of justice in any other manner.

Articles 129 and 215 of the Constitution empower the Supreme Court and High Courts respectively to punish people for their respective contempt. The Contempt of Courts Act, 1971, defines the power of the High Court to punish contempt's of its subordinate courts. In E.M.S. Namboodripad v. T.N. Nambiar, AIR 1970 SC 2015 the Supreme Court observed that freedom of speech shall always prevail except where contempt of court is manifested, mischievous or substantial.

6. *Defamation* – Defamatory matter is matter which exposes a person about whom it is published, to hatred, ridicule or contempt. The law of defamation is divided into libel and slander. Defamatory matter, if in writing, printing or some other permanent medium, is a libel; if in spoken words or gestures, a slander.

7. *Incitement to an offence* – This is also a new ground added in 1951. Obviously, the freedom of speech cannot confer a license to incite people to commit offence. During the debate on this clause in Parliament, it was suggested that the phrase should be 'incitement to violence' as the word 'offence' is a very wide expression and could include any act which is punishable under the Indian Penal Code or any other law. The suggestion was rejected. In State of Bihar v. Shailabala Devi, AIR 1950 SC 329 the Supreme Court held that incitement to murder or other violent crimes would generally endanger the security of the State; hence a restriction against such incitement would be a valid law under clause (2) of Article 19.

8. *Integrity and Sovereignty of India* – This ground has been added by the Constitution (Sixteenth Amendment) Act, 1963. The amendment is made to guard from the freedom of speech and expression being used to assail the territorial integrity and sovereignty of the Union. Thus, it will be legitimate for

Parliament under this clause to restrict the right of free speech if it preaches secession of any part of India from the Union. It will be noted here that the restriction is with respect to the territorial integrity of India and not on the preservation of the territorial integrity of the constituent states. The Constitution itself contemplates changes of the territorial limits of the constituent States.

9.5. Exemptions under RTI Act 2005 Sec (8 & 9):

9.5.1 As may be seen from the provisions of Section 8 and 9 of the RTI Act 2005, almost all reasonable restrictions and exclusions discussed under Universal Declaration of Human Rights, International Covenant on Civil and Political Rights and Article 19(2) of the Constitution of India have been imported as exemptions in the Act with additions of few more grounds. Let us discuss Section 8 and 9 of the RTI Act, 2005.

9.5.2: Sec 8(1) of the ACT;

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.

9.5.3: Sec 8(2) of the ACT ;

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.

9.5.4: Sec 8(3) of the ACT;

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.

9.5.5. Sec 9 of the Act: Grounds for rejection to access in certain cases.

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

9.6. Application & Classifications of Exemptions

The most difficult and the most controversial aspect of the RTI Act 2005 is the application of exemptions provided in Section 8 and 9.

It may be useful for the public authorities (P.A.) to attempt to identifying in advance the information held by them which they consider are protected by the exemptions (as given in Section 8 and 9) to enable prompt and immediate responses.

Exemptions under Section 8 and 9 of the RTI Act can be divided into two types:

Absolute exemptions: exemptions which are not subject to public interest test.

Section 9 is the only absolute exemption.

Qualified exemptions: exemptions which are subject to public interest test.

All the exemptions under the section 8(1) are qualified exemptions.

Here, the P.A. must consider whether there is greater public interest in disclosing the information or withholding the information (popularly called – balancing the public interest).

Qualified exemptions can be further divided into –

(i) Class exemptions:

Section 8 (1) (b), (e), (f), (i) contain these exemptions as these provisions exempt all information falling within a particular category. Exemptions in these classes is assumes that disclosure of information of a certain kind, laid out in the section, is harmful. For whole classes of information some sort of harm is presupposed and there is no requirement on the to show what that harm might be.

Here the P.A. need not demonstrate any harm but simply show that the information is exempted under these sub-sections.

(ii) Prejudice-based exemptions:

Section 8(1) (a), (c), (d), (g), (h),(j) contain these exemptions. These exemptions contain the phrases – "would harm", "would prejudicially". The word 'prejudice' is not defined in the Act. In legal terminology, prejudice is commonly understood to

mean 'harm'. While the likelihood of prejudice may not be very high, it should not be negligible. In other words prejudice need not be substantial, but it be more than trivial.

The degree of prejudice is not specified, so any level of prejudice might be argued. However the less significant the prejudice is shown to be, the higher the chance of the public interest falling in favour of disclosure. Whether prejudice exists is matter of fact to be decided on a case by case basis, considered only to the extent to which a disclosure harms the purpose of the exemption.

Time limited exemptions:

Section 8(3) imposes time limit on exemptions. Section 8(1) b, d, e, f, g, h, j are time limited exemptions, which are not valid exemptions after 20 years from the date of creation of the records.

It is implied that Section 8(1) (a), (c), (j) are not time limited exemptions. This means that only these three out of the ten exemption clauses are available, if the information is over 20 years.

Chapter-X

CIC Decisions on Exemptions from Disclosure of Information (Section 8(1) (a) to 8(1) (j) of RTI Act, 2005

10.0. The following CIC decisions interpreting section- 8 & 9 of the Act give valuable clarification in applying exemptions and responding to the RTI applications for providing information under RTI Act.

10.1. Reasons for rejection of requests for information must be clearly provided (Section 8(1) of the RTI Act)

In the case of Dhananjay Tripathi vs. Banaras Hindu University (Decision No. CIC / OK / A/ 00163, dated 7.7.2006), the applicant had applied for information relating to the treatment and subsequent death of a student in the University hospital due to alleged negligence of the doctors attending him.

The appellant was, however, denied the information by the PIO of the University saying that the information sought could not be provided under Section 8(1)(g) of the RTI Act. No further reasons as to how the information sought could not be provided under the RTI Act was given.

Judgement: The Commission held that quoting the provisions of Section 8(1) of the RTI Act to deny the information without giving any justification or grounds as to how these provisions are applicable is simply not acceptable, and clearly amount to malafide denial of legitimate information.

The public authority must provide reasons for rejecting the particular application.

The Commission further held that not providing the reasons of how the application for information was rejected according to a particular provision of the Act would attract penalties under Section 20(1) of the Act.

10.2. No Imagined Exemptions other than grounds available in Section 8 of RTI Act.

Mangla Ram Jat vs. PIO, Banaras Hindu University, Decision No. CIC / OK / A / 2008 / 00860 / SG / 0809, dated 31.12.2008.

In this case Commission explained its role, ambit and scope of exemptions and the context of Right to Information. The 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.

10.3. Reasons for Claiming Exemptions

G.S. Gangadharappa vs. Senior Personnel Officer & PIO, Rail Wheel Factory, Ministry of Railways, Decision NO. CIC / SG / A / 2009 / 000889 / 3615, dated 08.06.2009.

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.

10.4. Copies of document filed at the time of registration to Trade and Taxes Department [Sections 8(1) (a), (d), (e), (g), (h) and (j) of the RTI Act 2005] to be disclosed.

In the case of Rakesh Kumar Sharma vs Deputy Commissioner (VAT), Department of Trade and Taxes (F.No. CIC /SG /A 2009 /001563/ 4440 Adjunct, Appeal No. CIC /SG /A /2009 /001563, dated 13.08.2009), the applicant had sought certified copies of document filed at the time of registration including requests, letters and other related documents to the Trade and Taxes Department, NCT of Delhi.

Judgement: The CIC directed to give the information to the appellant.

The Commission have gone through the submission made by the PIO and the third party who contended that the information is exempted under Section 8(1)(a),8(1)(d), 8(1)(e), 8(1)(g), 8(1)(h) and 8(1)(j) as it relates to commercial confidence and trade secret which can harm the third party and is personal in nature. The CPIO and the third party also raised the issue of information being provided to the department under fiduciary relationship. Commission held that none of the exemptions being claimed is applicable to the information being sought and therefore there is no justification for denying the information. The Commission ordered that the information sought may be provided.

10.5. Documents pertaining to the on going CBI case (Sections 8(1)(e) and 8(1)(h) of the RTI Act 2005)

In the case of A.L. Motwani vs. the CPIO, ITI Limited, Bangalore (F.No. CIC/AD/A/2009/000109, dated 10.02.2009), the applicant had sought documents pertaining to the on going CBI case.

Judgement: CIC allowed the appeal and directed ITI Limited to provide the information sought by the appellant.

It ruled that since the charge sheet has already been submitted and the case is in progress in the CBI Court, disclosing the documents asked for cannot in any way impede the investigation process. The documents asked for by the requestor also do not form the part of Court record and there is also no order of CBI Court restraining the public authority from disclosure of information. Accordingly the provisions of Section 8(1)(e) and 8(1)(h) are not attracted.

10.5.1. Information on ongoing investigation (Sections 8(1)(g) and 8(1)(h) of the RTI Act)

In the case of Ravinder Kumar vs. B.S. Bassi, Joint Commissioner, Police (F.No. CIC/AT/A/2006/00004, dated 30.06.2006), the applicant had sought details regarding the progress of an investigation of a case by the police.

Judgement: The CIC dismissed the appeal relating to the disclosure of information.

It ruled that the disclosure of information, in cases under investigation by the police was exempted, according to the provisions of Sections 8(1)(g) and 8(1)(h) of the RTI Act.

It is justified not to disclose information in cases of ongoing police investigations (which have not yet been completed), because such a disclosure could hamper the investigation process, the Commission held.

10.5.2. Information on an ongoing investigation can be given in special circumstances (Section 8(1)(h) of the RTI Act).

In the case of Mangto Ram vs. Additional Commissioner & PIO, Delhi Police (Appeal No. CIC /AT /A/ 2006 /00355, dated 26.12.2006), the appellant filed an application with the police authorities, asking for information regarding the ongoing investigation into the death of his daughter under mysterious circumstances.

Judgement: The CIC examining the case held that this case was an exception to the general rule laid down in Section 8(1)(h) of the Act, which prohibits the disclosure of information, as the supply of information to the victim's family would not put any obstacles or impede the process of investigation.

The Commission further noted that, "Far from impeding the investigation, taking the appellant into confidence will give a positive direction to the investigation and enable the authorities to swiftly reach the truth."

The Commission ordered the police to provide the status of the investigation to the appellant within three weeks.

10.5.3. Copy of SP, CBI's report (Sections 8(1)(g), 8(1)(j), 8(1)(h) and 10 (1) of the RTI Act)

In the case of D.P. Maheshwari vs. CBI (Appeal No. CIC / WB / A /2008 /0269 and 270, dated 25.8.2009), the appellant sought the copy of the SP, CBI's report. In response to the application, SP, CBI responded that SP's report is an confidential document and hence exempted under 8(1)(h) of the RTI Act. The first appellate authority rejected the appeal on the ground that the matter is pending trial and supply of SP's report at this stage would impede the prosecution of offenders. First appellate authority also mentioned that the document is confidential held under fiduciary relationship and its contents shall not be accessed by any one not authorized to access them.

CBI also took the plea that the SP's report being sought is connected to the high profile scam in the State of Bihar amounting to Rs.200 crores. Disclosing the enquiry report itself will expose the pros and cons of the case and will give undue advantage to those who intend to exploit. Moreover the appellant is not an accused in the case. Disclosure of the information sought will accordingly be not in the public interest. The appellant however mentioned that the investigation report has discussed his role in the scam and he was exonerated of the charges thereafter. He requires to know about his exoneration in the enquiry report so as to obviate further harassment and enquiry in the matter.

CBI argued that the investigation report have details of personal information of many persons and its disclosure would amount to invasion of privacy and thus qualify for exemption under Section 8(1)(j).

Judgement: The plea of exemption under Section 8(1)(j) cannot be applied as the appellant is asking for information about his own case. Even if the report contains personal information about others, the principle of severability under Section 10(1) can be applied. The Commission agreed that disclosure of complete report may impede the process of investigation and amount to invasion of privacy of the persons mentioned in the report. As such Section 8(1)(g) is applicable. However, since the appellant is not the accused the information regarding him can not be held to be such as to impede the process of investigation or prosecution. Accordingly part of information exonerating the appellate may be provided as per Sub Section 1 of Section 10 of the RTI Act.

10.6. Vigilance Report of the Public Authority for obtaining the first stage advice of CVC and copy of the CVC first stage advice (Sections 8(1) (e) and 8(1)(h) of the RTI Act 2005)

In the case Sunil Kumar Bansal vs. Southern Railways, Chennai (F.No. CIC/OK/A/08/00893-AD, dated 15.05.2009), the applicant had sought for copy of the report send by the Southern Railways (Vigilance) to the Railway Board for obtaining the first stage advice of the CVC and also the copy of the full first stage advice of the CVC in the same case.

Judgement: The Commission directed the respondent to disclose the information asked for by the appellant. Commission mentioned that the fact of the case clearly indicates that investigation in the case is already over and the appellate has been charge-sheeted. Hence there can be no justification to seek exemption of disclosure under the provisions of Section 8(1)(h) of the RTI Act, which is available on the grounds that it would impede the process of investigation or apprehensions or prosecution of offenders. Moreover even natural justice demands that the information relevant to the case should be disclosed in order that the accused be granted an opportunity to prove his innocence.

The Commission while considering the second argument in respect of Section 8(1)(e) of the RTI Act, 2005, examined in detail the concept and the meaning of fiduciary capacity and fiduciary relationship and arrived at the conclusion that CVC is not holding any documents in confidence under fiduciary capacity, but inquired into the whole incident and prepared an inquiry report and handed it over to the Southern Railways. Hence the plea of the respondent public authority seeking exemption under the garb of fiduciary relations is incongruous and the Commission decided that the documents are not held in fiduciary capacity as no fiduciary relationship exists. The denial to furnish the information sought by the appellant under Section 8(1)(e) is completely ruled out.

10.6.1. Vigilance report findings can be disclosed (Section 8(1)(h) of the RTI Act).

In the case of P.K. Rana vs. CPIO, Delhi Police and AA, Delhi Police (Appeal No. CIC/AT /A/2006/00322, dated 11.12.2006), the applicant had asked for a report of the vigilance enquiry, which was instituted against her, as an employee of a public authority.

The public authority informed her that the information asked for could not be provided as per the provision of Section 8(1)(h) of the RTI Act, according to which information which would impede the process of investigation cannot be provided.

Judgement: The Commission held that Section 8(1)(h) of the Act does not prohibit the sharing of information in the form of the concluding part of the Vigilance report. The CIC ordered that the concluding part of the vigilance report be disclosed to the appellant.

10.7. Copies of the Confidential Reports (Section 8(1)(j) of the RTI Act, 2005)

In the case of N. Krishnamoorthy vs. MTNL, Mumbai (F.No. CIC/AD/A/X/2009/000154, dated 24.3.2009), the applicant had sought the copies of his own CRs (reporting and reviewing parts) for the 10 years spanning from 1998 to 2008 along with the copies of the certificates regarding completion of CR work and forwarding letters of the applicant's CR.

Judgement: The CIC mandated for disclosure of information sought. The Commission referred to the full bench decision of CIC passed vide Order dated 19.02.2009 in appeal No. CIC/WB/A/2007/00422 concerning disclosure of ACRs and also referred to the Supreme Court's decision in Devdutt vs. Union of India [Ors (2008)8 SCC 723] and decided that the complete information sought by the appellant, meaning certified copies of ACRs shall be provided.

10.8 Tour details, vehicle log books, purpose of visit, over-time payments in respect of officers involved in vigilance functions (Sections 8(1)(g), 8(1)(h), 8(1)(j) and 11(1) of the RTI Act 2005 and also Section 124 of the Indian Evidence Act)

In the case of Nihar Ranjan Banerjee, CVO and B.N. Mishra, DGM (Vig.)/ Tech. Secretary to CVO, Coal India Limited vs. M.N. Ghosh, the applicant had sought details regarding copies of the hired car bills and over time bills for company owned cars being used by CVO and copy of the TA bills of DGM(Vig.) for his tours to Delhi and Nagpur.

Judgement: Ordinarily such information could not be with held from disclosure as it related to a charge made on the budget of the public authority. However, keeping in view the specific set of circumstances, as it involve the functioning of Vigilance officers of the company, the exemption of the documents asked was allowed.

The matter came before the Commission as a review petition against Commission's order dated 25.05.2009 and it was argued by the petitioner that the disclosure of the information may endanger the physical safety of the concerned person revealing his locations and movement for which the state has arranged him security cover on advice of State Police and CBI. Moreover, an investigation in the matter is also going on besides this relates to personal information disclosure of which could cause unwarranted invasion in the privacy of the concerned person. Accordingly exemption under Section 8(1)(g), 8(1)(h) and 8(1)(j) of the RTI Act were invoked.

It was also submitted by the petitioner that the information sought for by the appellant was intended to intimidate and cause embarrassment to the CVO, CIL and Dy.GM (Vigilance), CIL who investigated a complaint against the appellant leading to establishing submission of fraudulent documents for seeking public appointment. The tours undertaken by the officers are for the purpose of vigilance investigation and in relation to enforcement of law, disclosing all details would impede the process of investigation. Review petition also submitted that the information sought in so far as it is related to officers of the vigilance department has been treated as confidential under Section 124 of the Indian Evidence Act, as the officers perform sensitive duties and had to engage on a regular basis with their sources and witnesses sometimes at odd hours.

Commission held that there is ample consistency between Section 124 of the Indian Evidence Act and Section 11(1) of the RTI Act, read with Section 2(n) of the same.

Commission agreed with the review petition that given the specific circumstances and conditions surrounding the set of information requested by the appellant, there is a distinct possibility that disclosure of the said information will compromise the functioning of the vigilance officers and may expose them to physical risk and intimidation and impairing their ability to carry out sensitive assignments. Disclosure may compromise the sources of information or assistance given in confidence for discharging of their law enforcement functions of the vigilance officers.

10.9 Documents regarding installation / use of Unveshak Software and Database being sought under the plea of violation of human rights (Sections 8(1)(a), 8(1)(b), 8(1)(h) and Section 24 of the RTI Act 2005).

In the case of Brig. Ujjal Dasgupta vs. Cabinet Secretariat Decision No. CIC/ WB /A/2009/00182, dated 25.8.2009, the applicant lodged in Tihar Jail applied to the CPIO, RTI Cell, Cabinet Secretariat seeking various informations / documents regarding access to Unveshak Software.

Judgement: The respondent Public Authority argued that the information relates to prosecution and that any disclosure at this stage will affect the prosecution of the appellant. The public authority also claimed that the disclosure of information will prejudicially affect the national interest and security of the State. The Commission in Para -35 of their order has stated that it is not for the Commission to determine as to whether the disclosure of the information adversely affects the security of the State. It is definitely for the concerned authority charged with this responsibility so determined. The Commission is only expected to see as to whether the claim of exemption is prima facie justified or not. The nature of information asked for and the organisation to which it relates gives credence to the claim of the public authority that its disclosure may affect the security of the state. The pendency of a criminal trial in a competent Court leaves no doubt that the disclosure of information in a matter like this may prejudicially affect national security. The Commission accordingly decided that claim to exemption under both Sections 8(1)(a) and 8(1)(h) justified.

The argument of the appellant that the information asked is permissible to be given under proviso to Section 24 as it relates to violation of human right, was also dealt by the Commission in Para 31 of its order. Commission says that trial in a competent Court does not take away human right of a citizen. In our country, fairness in a trial is a matter of presumption and an accused gets a fair opportunity to defend himself. Detentions on the orders of a Court can not be treated as violation of human rights. Section 207 CRPC provide the remedy for seeking documents by moving the trial Court. Accordingly proviso to Section 24 involving violation of human rights is not attracted.

10.10 Copy of the Report of National Commission for Religious and Linguistic Minorities (NCRLM) – Section 8(1)© of RTI Act 2005.

In the case of Sh. Franklin Ceaser Thomas vs. Ministry of Minority Affairs (No. CIC/MA/A/2009/000154, dated 30.07.2009), the applicant had asked for the copy of the report of National Commission for Religious and Linguistic Minorities submitted to the Government by Justice Ranganath Mishra. The Ministry of Minority Affairs has denied the report on the ground that the report has not even been disclosed to the Parliament and as such its disclosure is exempt under

Section 8(1)© of RTI Act. However, from the records made available, it is seen by the Commission that in total 1800 sets of the report were printed and out of that 1750 sets are stated to have been received in the Ministry. As regards the remaining 50 sets, it is submitted that 05 sets were presented to PMO, 2 sets presented to Secretary and Additional Secretary of the Ministry of Social Justice and Empowerment and the balance were retained by the NCRLM for its Chairperson, members and other officers. Many former members of the Commission who are retired are still retaining the copies of the report which means that the reports are available in the private hands. Since the report is already available with many people outside the government, whether it has been placed before the Parliament is not relevant.

Judgement: The ministry has not advanced any argument as how to disclosure of report would be breach of Parliament under Section 8(1)© of the RTI Act. The exemptions under Section 8(1)© may apply when confidentiality has been claimed by the government and the report and part thereof had not been made available to the Parliament or where any information or any report or part thereof is not disclosed even after it has been asked for by the Member of the Parliament. It shall also apply in cases, where Parliament has expressly forbidden the exposure of this report. In this case none of this is proved. If the government does not place any material of report before the Parliament, it cannot claim exemption for giving it to citizens. Ministry is accordingly directed to provide the copy of the report to the requestor.

10.11 Disclosure of Regulatory documents provided by Corporates involved in Field Trials of GM Agricultural Products (Sections 8(1)(d), 8(2) and Proviso to Section 11(1) of the RTI Act 2005).

In the case of Ms. Divya Raghunandan vs. Department of Biotechnology (Appeal No. CIC/WB/A/2009/000668, dated 16.6.2009), the companies involved in the field trials as third party objected to the disclosure of information supplied to Department of Bio-technology on the ground that it contains undisclosable information (trade secrets, like protocols, confidential standard procedures, parental line information, event ID information, data generated from bio-safety states, method, testing locations, etc.) which are sensitive business information of the company and are exempted under Section 8(1)(d).

Judgement: Both in Section 8(1)(d) and 8(2) of the RTI Act, 2005, it is provided that the information may be allowed in public interest, if disclosure out ways the harm to the protected interest. Accordingly, Commission validated that toxicity and allegernicity data of any product is a matter of overriding public interest.

10.12 Information relating to empanelment of officers as approved by ACC for promotion to the higher posts (Sections 8(1)(e), 8(1)(i) and 8(1)(j) of the RTI Act, 2005).

In the case of Ms. V. Chamundeswari vs. Department of Revenue Appeal No. CIC/AT/A/2009/000277, dated 5.3.2009), the applicant had asked for the list of officers who were empanelled as members in Central Board of Excise and Customs. The public authority refused the information on the plea that it was prepared by the DOPT with the approval of ACC and classified as secret and confidential in nature and claimed exemption under Section 8(1)(e), 8(1)(i) and 8(1)9j) of the RTI Act, 2005.

Judgement: Commission in its decision stated that empanelment process and approved list of empanelled officers are by no stretch of imagination, personal information of any third-party. Empanelment is a system established by the government to make informed choices about appropriate officers to man higher positions and thus it is related to governance. Commission also overruled the claim of fiduciary relationship and rejected application of exemption under Section 8(1)(e).

In Para 21 of the decision, Commission mentioned that the Government has removed all secrecy from the approved panels of IAS and IPS officers and accordingly panels of IRS officers should also follow the same policy. Commission accordingly ordered for the disclosure of the information.

10.12.1. Documents relating to empanelment /appointment of senior officers involving Committee of Secretaries and ACC matters (Sections 8(1)(e), 8(1)(i), 8(1)(j), 10(1) of the RTI Act, 2005) – Application submitted on official letter head.

In the case of J.D. Sahay vs. Ministry of Finance, Department of Revenue, New Delhi (Appeal No. CIC / AT / A/2008 /00027 and 00033 dated 6.2.2009), the appellate applied for empanelment and appointment to the post of Member, CBDT twice on 10th May 2006 and 21st November 2006 and was not selected. Aggrieved by non-selection, the appellate sought information / details about ACRs and more importantly documents relating to proceedings of the selection committee like note sheets, minutes, etc. The respondents rejected the application on the ground that the subject matter involves secret / confidential documents vested in the ACC and claimed exemption under 8(1)(i) of the RTI Act. The grounds given in Section 8(1)(j) of the personal information and fiduciary relationship under 8(1)(e) of the

RTI Act were also invoked. The ground that the application was submitted in official letter head by the appellate justifying its rejection was also involved.

Judgement: The Commission decided that the application was submitted by the requestor in his/her own name and signed in his/her personal capacity. The fee has been paid from out of personal funds. Accordingly application can not be rejected on the ground that it has been filed not by a citizen, but by a government servant in official capacity. The matter relating to the disclosure of ACR was decided in favour of the applicant. As regards the documents concerning DPC the public authority was directed to make available information in terms of request of the appellate using severability clause in Section 10(1) of the RTI Act exempting details concerning third party.

10.13 Evaluated answer sheets (Sections 2(n), 8(1)(g) and 11(1) of the RTI Act, 2005 and Section 124 of the Indian Evidence Act).

In the case of Sh. Ashok Kumar Arora vs. IIT, Roorkee (Appeal No. CIC/80/A/2009/00124, dated 29.05.2009), the applicant is the father of an unsuccessful candidate who took the IIT examination in the year 2008. He wishes to have access to the evaluated answer sheets in order to satisfy himself with the quality of the evaluation process. Respondents declined to disclose the information citing Section 8(1)(g). They pointed out that the IIT entrance examination was a mass examination and disclosing evaluated answer sheets will virtually crash the system.

Commission's full bench decision in Rakesh Kumar Singh and others vs. Lok Sabha Secretariat, Delhi Jal Board, etc. (Appeal No. CIC / WB/ A / 2006 /00469 and 00394, etc. date of decision 23.4.2007) was discussed in detail.

Judgement: The full bench decision of the Commission dated 23.4.2007 made a distinction between mass examination and examinations like Department tests conducted by public authority with a limited scope and range and it was emphasized that while in the latter case, answer scripts can be disclosed, but in the mass examination disclosing answer scripts virtually destroy the system. The logic of the decision was derived from provisions in Section 124 of the Indian Evidence Act, Section 2(n) and Section 11(1) of the RTI Act, 2005 – all read together.

Disclosure of the evaluated answer sheets of the IIT examination was denied by the Commission on the grounds that the Public Authority had announced prior to

the conduct of the public examination that the evaluated answer scripts would not be disclosed no matter what the purpose. Accordingly all the stakeholders were aware of the provision before appearing in the examination. The public authority – the holder of the confidential information was a third party within the meaning of Section 2(n) of the RTI Act. Accordingly the plea of the public authority under Section 11(1) of the RTI Act is legitimate that such information should be disclosed only when public interest out ways the protected interest. Section 124 of the Indian Evidence Act also authorizes the public authority to withhold any information confidential or secret in public interest.

Commission agreed that there was public interest in non-disclosing of the information, as such disclosures can bring in the entire system of examination under extreme pressure. The Commission also brought out that information may be blocked from disclosure in case the public authority makes out a persuasive case for non-disclosure under Section 11(1) of the RTI Act over and above the exemptions available in Section 8(1).

10.14 Income and Expenditure shown in the Income Tax Return to prove innocence in a criminal case (Sections – 8(1)(d), 8(1)(e), 8(1)(g) and 8(1)(j) and Section 8(2) and Section 11 of the RTI Act, 2005).

In the case of Sh. Milap Choraria vs. CBDT (No. CIC / AT / A /2008 / 00628, dated 15.6.2009) the daughter-in-law of the applicant has filed criminal case against his son and other family members under Section 498 of IPC read with Section 3 and 4 of the Dowry Prohibition Act and Domestic Violence Act. One of the ground in the FIR accused the family for demanding dowry valued at about 50 lakhs. It is in this context that the appellate has requested for information relating to year-wise income and expenditure shown by his daughter-in-law in her income tax returns for the last few years. CPIO refused to disclose the information in terms of Section 8(1)(d), 8(1)(e), 8(1)(g) and 8(1)(j) of the RTI Act, 2005.

Judgement: The appellant pleaded before the Commission that this information is required by him to defend himself in the criminal case. In Para 12 of the decision, Commission has discussed in detail a number of their decisions on the subject. The Commission held that the information sought by the applicant is a third party information and is exempted from disclosure under Section 8(1)(j) of the RTI Act. The appellant is not without remedy to protect himself from malicious prosecution as he can move the appropriate Court and obtain orders for the production of IT Returns before the Court which the Income Tax department is duty bound to do and decide to disclose or otherwise. Accordingly the appeal for disclosure was refused.

10.15. Disclosure of enquiry report (Section 8(1)(h) and 8(1)(j) of the RTI Act).

In the case of Sh. Kishan Lal Bansal vs. GNCT of Delhi (Appeal No. CIC / SG /A /2009 /000813 and CIC / SG / A/ 2009 / 000813 / 3558, dated 04.06.2009) the appellate sought copy of the enquiry report conducted by SDM regarding fixing of responsibility on the officials for misplacing the file relating to sealing. The CPIO provided a copy of the enquiry report which was illegible.

The first appellate authority after considering the Section 8(1)(h) and 8(1) (j) concluded that confidential enquiry report are not to be furnished till such time that a decision is reached by the competent authority and accordingly rejected the request of disclosing the legible attested copy of the preliminary enquiry report.

Judgement: The Commission quoted the decision of Delhi High Court in Bhagat Singh vs. CIC, (WP (C) No. 3114/2007dated 3.12.2007) interpreting that under Section -8 of the RTI Act, exemption from releasing information is granted if it would impede the process of investigation or the prosecution of the offenders. Mere existence of the investigation process can not be a ground for refusal. The authority which holds the information must give germane reasons. Held that no satisfactory reason has been given by the PIO for not disclosing the enquiry report and accordingly allow the appeal for disclosure of enquiry report to the applicant.

10.16 Documents related to appointment which third party objects disclosure (Sections 2(n), 8(1)(j) and 11(1) of the RTI Act.

In the case of Sh. Bishambar Dayal Tyagi vs. Delhi Jal Board DecisionNo.CIC /SG /A /2009/ 000172 /3092,dated05.05.2009),the appellant asked for a number of documents submitted by an employee of Delhi Jal Board at the time of appointment. The PIO replied that the concerned employee (third party) have objected for disclosing these documents being his personal information and accordingly rejected the request for information.

Judgement: The Commission argued that for information to qualify for exemption under Section 8(1)(j) it must be personal information. The word 'personal' is attributable to an individual and not to an institution. Accordingly personal can not be related to institutions. The phrase disclosure of which has no relationship to any public activities or interest means that the information must not have some relationship to any public activity. Various public authorities in performing their functions routinely ask for personal information from citizens and this is clearly

public activity. When a person applies for a job or gives information about himself to a public authority as an employee, or ask for permission or license 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 were 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 like liberty, freedom of expression, right to live are universal and apply uniformly to all countries. However the concept of privacy is related to the society and different societies would look at it in different way. India has not codified this right so far and hence in balancing the right to information of citizens and individual's right to privacy the citizens right to information would be given greater weightage. Therefore, disclosure of information which is routinely collected by public authority and routinely provided by the individuals would not be an invasion on the privacy of the individual. Exception of this rule might be information which is obtained by public authority while using extraordinarily powers such as in the case of a raid. The appeal is accordingly allowed to disclose the information asked for. Objection of the third party is only an input to the PIO to take decision and can not be claimed as absolute for rejecting the request for disclosure.

10.16.1. Pensionery benefits entitlement of a third person and details of nominations thereof (Sections – 8(1)(g) and 8(1)(j) of RTI Act).

In the case of Smt. V. Renuka Devi vs. Southern Railways (Decision No. CIC / SG / A /2009 /000500 / 3131, dated 08.05.2009) the applicant asked for details of settlement regarding pensionery benefits and details of nominations in respect of a third person due for superannuation. The PIO rejected the request under Section 8(1) (g) and 8(1)(j) of the RTI Act.

Judgement: Commission exempted the disclosure of information pertaining to the details of pension and nominations of a third person as its disclosure could lead to some danger to the safety of a person and could also be considered an intrusion of his privacy. The appeal is accordingly dismissed.

10.16.2 No disclosure of third-party confidential information (Section 8(1)(j) of the RTI Act)

In the case of A.P. Singh vs. Punjab National Bank (Appeal No. 12/IC(A)/2006, dated 14.3.2006) the appellant had sought information regarding the bank account of another person with whom the applicant had no professional or business relationship.
This information was refused to the applicant by the public authority.

Judgement: The CIC held that a bank is under duty to maintain the secrecy of accounts of its customers, who are also third party.

The CIC further held in this case that since the applicant had not established any bona fide public interest in having access to the information sought nor did he have any association or business relationship with the company (bank), his appeal can not be accepted in terms of the law as provided in Section 8 (1)(j) of the RTI Act.

10.17 Information no longer available in records cannot be given (Section 8(1)(j) of the RTI Act)

In the case of T.V. Varghese vs. BSNL (Appeal No. 251/ICPB/2006, dt. 2.1.2007), the appellant in the application addressed to the PIO of the public authority, B.S.N.L., asked for certain information relating to the list of candidates who qualified for the positions of Junior Telecom Officers (JTOs), during the year 1992 to 1998, and the marks obtained by each of the successful candidates.
The Appellate Authority informed the appellant that the information asked for all the years can be given to the applicant, except for the year 1992, as it was not available with the concerned public authority, due to departmental rules relating to the expiry of the period of preservation.

Judgement: The CIC held that when the records are not available due to the expiry of the period of preservation according to the departmental rules for destruction of old records, there is no question of providing such information even if the disclosure of such information is not prohibited under Section 8(1)(j) of the RTI Act.

10.18 Disclosure of reception register (Sections 8(1)(g), 8(1)(j), 8(1)(h) and 10 (1) of the RTI Act)

In the case of D.C. Gupta vs. CBI (Appeal No. CIC/WB/A/2007/01202, dt 30.1.2009), the applicant had applied to SP(CBI) for certified copy of the reception register for specific dates indicating details of the public visiting CBI office. CPIO, CBI refused the copy of the reception register on the plea that the register contains personal information, disclosure of which is not related to public activity and therefore exempted under Section 8(1)(j) of the RTI Act.

The first Appellate Authority rejected the request on the ground that the applicant was caught red-handed in a trap case. The information which he is asking is for the period when he was caught. As the case is pending trial, disclosure of information may impede his prosecution and invoke Section 8(1)(h) for exemption. Besides above, the CBI pleaded that the disclosure of the register entries will compromise security of the persons who are visiting their office for the purpose of disclosing the information in confidence.

The applicant pleaded that the copies of the reception register has been given by CBI in many cases and refusal in his case is a act of discrimination.

Judgement: Commission decided that the disclosure of the information sought can not be withheld under exemptions provided in 8(1)(j) or 8(1)(h). Attendance in a public office is a public activity and the reception register is not a private document. The witnesses for the prosecution have already been disclosed to appellant and hence the disclosure of the information in the reception register can not be construed to be a impediment to the prosecution. However, the Commission opined that this could be a case for exemption under Section 8(1)(g). The Commission inspected the reception register and find that there is sufficient ground for concluding that disclosure of entries could compromise identities and as such exemption under 8(1)(g) may be claimed.

Commission advised CBI to re-examine the request of the appellate for disclosure in the light of the fact that contents of the reception register have already been disclosed in other cases, the re-course to the application of severability under Section 10(1) of the RTI Act was also advised.

10.19. Disclosure of PCR Call details (Sections 8(1)(g), 8(1)(j) and Section 11(1) of the RTI Act)

In the case of L.D. Chopra vs. DCP, Delhi Police (Appeal No. CIC / WB /A/ 2009/000297 dated 28.8.2009), the applicant asked for certified copy of PCR Call details. DCP(PCR), Delhi Police rejected the request on the ground that under Section 11 of the RTI Act, the concerned third party who made the call had objected to the disclosure. The appellant pleaded that the information is not relating to any trade or commercial secret protected under Section 11(1) of RTI Act, and public interest in the disclosure out ways any possible harm or injurty to the interest of the third party. The appellate pleaded that the call about which he is asking for the details has lodged a false complaint against him and he need to know the contents to contest the case in the Court.

Judgement: Commission ruled that the CPIO has correctly referred the matter to the third party who made the call, on receipt of objection from the third party CPIO has failed to apply his mind, as to whether the objection satisfy the provisions of Section 8(1) which alone allows the exemption. The possible clauses of the RTI Act that can apply in this case are 8(1)(g) and 8(1)(j) and accordingly advised the appellate authority to re-examine the exemption.

10.20 Disclosure in case of pending departmental enquiry (Section 8(1)(h) of the RTI Act)

In the case of Sarvesh Kaushal vs. F.C.I and others (Appeal Nos. 243 /ICPB /2006 and 244 / ICPB /2006, dated 27.12.2006), the appellant had applied for documents relating to the departmental enquiry launched against him in a corruption case.

Judgement: The CIC, rejecting the appeal, held that the departmental enquiry, which was in progress against him, was a pending investigation under law, and the same attracted the provisions of Section 8(1)(h).

Therefore, there is no question of disclosing any information relating to his prosecution, the CIC noted.

10.20.1. Report of departmental enquiry can be disclosed with conditions (Sections 8(1) and 2(j) of the RTI Act)

In the case of Nahar Singh vs. Deputy Commissioner of Police & PIO, Delhi Police (Appeal No. CIC / AT / C / 2006 / 0452, dt. 28.12.2006), the applicant had asked for a report of the departmental enquiry, which was instituted against him.

The public authority refused to provide him the information requested saying it was barred from disclosure as per the provisions of Section 2 and 8(1) of the Act.

Judgement: The CIC held that the report of departmental enquiry can be shared with the concerned employee, and is not barred for disclosure under any of the exemptions provided in Section 8(1) of the RTI Act. The CIC further ruled that the information held in the nature of a report is clearly "information" in terms of Section 2(j) of the Act.

The Commission further held that the public authority can protect the interests of witnesses or other persons whose names appear in the report by not providing them to the appellant, and ordered the concerned public authority to provide the applicant with the relevant information.

10.21 Public authority to disclose information if public interest out weighs the harm to the protected interests (Section 8 (1)(g) and 8(1)(h) of the RTI Act).

In the case of S.R. Goyal vs. PIO, Services Department, Delhi (Appeal No. CIC / WB /A/ 20060523, dated 26.3.2007), the appellant had sought a copy of the letter received by the public authority regarding his suspension, from the CBI, which was investigating the case.

The public authority replied that the information requested by the applicant was exempted from disclosure by virtue of Section 8(1)(g) and 8(1)(h) of the RTI Act.

Judgement: The Commission, rejecting the appeal of the applicant, held that the exemptions from disclosing information, under Section 8(1)(h) of the RTI Act as well as under the relevant provisions of the Official Secrets Act, would apply. The Commission further said that if the public authority, decides that public interest in the disclosure outweigh the harm to the protected interests, it can disclose the information, which was not the position in this case.

10.22 Contents of a subjudice matter can be disclosed, if no bar from the Court (Sections 8(1)(b) and 8(1)(h) of the RTI Act)

In the case of N.B.S. Manian vs. Department of Post (Appeal No: 267/ICPB/2006, dated 10.1.2007), the appellant a retired employee sought some information from the public authority about the denial of promotion to him while he was in service.

The matter was pending in a judicial body (Central Administrative Tribunal). The public authority refused to provide him the information asked by him on the ground that since the matter is pending in a judicial forum, the information cannot be provided to the applicant.

Judgement: The Commission held that if a matter is sub-judice the same is not prohibited from disclosure as per the law in Section 8(1)(b) which prohibits the disclosure of any information which has been banned from disclosure by a court of law. It is applicable only in cases where there is an express order from the court that information sought should not be disclosed, which was not the position in the present case, therefore such information should be supplied to the appellant.

10.23 Frivolous applications not to be entertained

In the case of S.K. Lal vs. Ministry of Railways (Appeal No. CIC /OK /A / 2006 /00268-272, dt: 29.12.2006) the applicant had filed five applications to the railway authorities asking for " all the records" regarding various services and categories of staff in the Railways.

The public authority, however, did not provide him with the information requested.

Judgement: The Central Information Commission observed that though the RTI Act allows citizen to seek any information other than the 10 categories exempted under Section 8, it does not mean that the public authorities are required to entertain to all sort of frivolous applications.

The CIC held that asking for "all the records" regarding various services and categories of staff in the railways, " only amounts to making a mockery of the Act."

10.24 Information in respect of a period, prior to twenty years (Sections 8(1) and 8(3) of the RTI Act)

In the case of S.R. Pershad vs. Directorate General of Supplies & Disposals (37/ICPB/2006, dt: 26.6.2006), the appellant had sought some information, which is exempted under the Act but which was more than twenty years old.

The public authority did not provide him with the requested information.

Judgement: The CIC ruled that Section 8(3) is part of Section 8 which deals with exemption from disclosure of information.

Section 8(1) specifies classes of information which are exempted from disclosure.

Section 8(3) stipulates that the exemption under section 8(1) (except a,c and i) cannot be applied if the information sought is older than twenty years.

In other words, even if the information sought is exempted in terms of sub-section (1) of Section 8, (other than 8(1)(a), 8(1)(c) and 8(1)(l) but the same relates to a period of twenty years prior to the date of application, then the same shall be provided to an applicant, if available with the concerned public authority.

10.25. Consultation between the President and the Supreme Court cannot be disclosed (Sections 8(1)(e) and 11(1) of the RTI Act)

In the case of Mukesh Kumar vs. Additional Registrar of the Supreme Court (Decision No. CIC / AT / A / 2006 / 00113, dated 10.7.2006), the applicant filed an RTI application with the Supreme Court of India.

He wanted information regarding the exchange of communication between the Chief Justice of India and the President of India regarding the appointment of Supreme Court and High Court judges.

The information sought by the applicant was refused by the Supreme Court.

Judgement: The CIC held in the appeal that the process of consultation between the President of India and the Supreme Court of India cannot be disclosed as such a process of consultation is exempted under Section 8(1)(e) and 11(1) of the RTI Act, 2005. Moreover, under Article 124(2) of the Constitution of India, this is barred from disclosure.

10.26. Fiduciary

Rakhi Gupta vs. Joint Director & PIO, National Institute of Open Schooling, Decision NO. CIC / SG / A / 2009 / 001343 / 4053

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, trustee, lawyer or advocate. 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 to the received for using it for his benefit. 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.

Chapter-XI

Complaint, Appeal and Penalties

11.0 Complaint (Sec- 18)

11.1 Subject to the provisions of this Act, it shall be the duty of the Central Information Commission or State Information Commission, as the case may be, to receive and inquire into a complaint from any person (Sec-18):

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

- who has been refused access to any information requested under this Act;
- who has not been given a response to a request for information or access to information within the time limit specified under this Act;
- who has been required to pay an amount of fee which he or she considers unreasonable;
- who believes that he or she has been given incomplete, misleading or false information under this Act; and
- in respect of any other matter relating to requesting or obtaining access to records under this Act

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

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

(a) summoning and enforcing the attendance of persons and compel them to give oral or written evidence on oath and to produce the documents or things
(b) requiring the discovery and inspection of documents;
(c) receiving evidence on affidavit;
(d) requisitioning any public record or copies thereof from any court or office;
(e) issuing summons for examination of witnesses or documents; and
(f) any other matter which may be prescribed.

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

11.2. Appeal (Sec- 19)

11.2.1. Any person who, does not receive a decision within the time specified in sub-section (1) or clause (a) of sub-section (3) of section 7, or is aggrieved by a decision of the Central Public Information Officer or State Public Information Officer, as the case may be, may within thirty days from the expiry of such period or from the receipt of such a decision prefer an appeal to such officer who is senior in rank to the Central Public Information Officer or State Public Information Officer as the case may be, in each public authority: **Sec-19 (1).**

11.2.2. Where an appeal is preferred against an order made by a Central Public Information Officer or a State Public Information Officer, as the case may be, under section 11 to disclose third party information, the appeal by the concerned third party shall be made within thirty days from the date of the order Sec- 19(2).

11.2.3. A second appeal against the decision under sub-section (1) shall lie within ninety days from the date on which the decision should have been made or was actually received, with the Central Information Commission or the State Information Commission Sec-**19(3).**

11.2.4. If the decision of the Central Public Information Officer or State Public Information Officer, as the case may be, against which an appeal is preferred relates to information of a third party, the Central Information Commission or State Information Commission, as the case may be, shall give a reasonable

opportunity of being heard to that third party Sec-**19(4) .**

11.2.5. In any appeal proceedings, the onus to prove that a denial of a request was justified shall be on the Central Public Information Officer or State Public Information Officer, as the case may be, who denied the request Sec-**19(5) :**

11.2.6. An appeal under sub-section (1) or sub-section (2) shall be disposed of within thirty days of the receipt of the appeal or within such extended period not exceeding a total of forty-five days from the date of filing thereof, as the case may be, for reasons to be recorded in writing Sec-**19(6) .**

11.2.7. The decision of the Central Information Commission or State Information Commission, as the case may be, shall be binding Sec-**19(7).**

In its decision, the Central Information Commission or State Information Commission, as the case may be, has the power to Sec-**19(8)**

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

(i) by providing access to information, if so requested, in a particular form;
(ii) by appointing a Central Public Information Officer or State Public Information Officer, as the case may be;
(iii) by publishing certain information or categories of information
(iv) by making necessary changes to its practices in relation to the maintenance, management and destruction of records;
(v) by enhancing the provision of training on the right to information for its officials;
(vi) by providing it with an annual report in compliance with clause (b) of sub-section (1) of section 4;

(B) require the public authority to compensate the complainant for any loss or other detriment suffered;
(c) impose any of the penalties provided under this Act;
(d) reject the application

11.2.8. The Central Information Commission or State Information Commission, as the case may be, shall give notice of its decision, including any right of appeal, to the complainant and the public authority **Sec-19(9).**

11.2.9. The Central Information Commission or State Information Commission, as the case may be, shall decide the appeal in accordance with such procedure as

may be prescribed Sec-19(10).

11.3 Penalties (Sec- 20)

11.3.1. provides power the Chief Information Commission to impose a penalty of Rs.250/- per day till application is received OR information is furnished, so however, the total amount of such penalty shall not exceed Rs.25000/- **Sec.20(1).** Provided that the PIO, as the case may be, shall be given a reasonable opportunity of being heard before any penalty is imposed on him.

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

a) The PIO shall be given a reasonable opportunity of being heard before any penalty is imposed on him:

b) The burden of proving that he acted reasonably and diligently shall be on the Public Information Officer

11.3.3. The Chief Public Information Committee shall recommend for disciplinary action against the State Public Information Officer, as the case may be under the Service Rules applicable to him **As per Sec.20(2).**

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

Chapter-XII

CIC decisions on complaint, appeal and penalties (Sections 18,19 & 20)

12.0. The following CIC decisions interpreting section- 18, 19 & 20 of the Act give valuable clarification on complaint, appeal and penalties under RTI Act.

12.1. Ordinarily follow the appeal procedure instead of complaint

In the case of shri Shri Basant Kumar vs Deputy Commissioner of Police (DCP), West District, Delhi, Complaint No CIC/WB/C/2008/00465 & 499 dated: 28.04.'08 & 22.05.'08

The Commission has received a complaint from Shri Basant Kumar of Aligarh, Uttar Pradesh praying as follows: -

The applicant may be provided with the information/ certified copies on four points as sought through the application dated 21.02.2008 from the Public Information Officer, Additional District Magistrate, West District, Delhi. The erring officer for not providing information may be punished and applicant may be informed accordingly."

That request seeking information together with copies of documents on the action taken on his complaint of 22.11.'07 regarding the alleged murder of his sister, the late Ms. Pinky registered with Uttam Nagar Police Station, Delhi was originally moved through an application of 21.02.2008 before the Sub-Divisional Magistrate, Patel Nagar, Delhi. In his response of 17.03.2008 the PIO & A.D.M. District West, Delhi Shri Sanjeev Mittal transferred the application u/s 6(3) of RTI Act, 2005 to the PIO, Deputy Commissioner of Police, Uttam Nagar, Delhi to whom the matter related. On getting no further response Shri Basant Kumar filed a separate application before PIO, DCP, West Distt on 09.04.2008. On still not receiving a reply, Shri Kumar has moved a complaint before us dated 24.4.'08 with the prayer quoted above alleging that his application to the DCP, Uttam Nagar has not been responded to, registered in **File No CIC/WB/C/2008/00465.** Subsequently, complainant Shri Basant Kumar has filed another complaint No.- **CIC/WB/C/2008/00499** before us enclosing copies of a response dated 17.4.'08 received from the PIO, Deputy Commissioner of Police, West District, New Delhi Shri Sharad Agarawal in response to his request dated 21.02.2008 which had

been transferred by PIO, ADM, District West, Delhi alleging that the information supplied is incomplete and not commensurate with the information sought.

At any rate, if complainant Shri Kumar is of the view that he has received incomplete information from the PIO, Deputy Commissioner of Police, West District, Delhi, the recourse open to him was to have preferred a first appeal, the channel available to him u/s 19(1) and not so far exhausted. Because the 1st appellate authority has not addressed the questions of appellant, which are of direct concern to his public authority and because the complainant has pleaded no ground for making a direct complaint to us u/s 18(1)(e), the Commission has decided to remand this complaint to the First Appellate Authority & Joint Commissioner of Police Rajouri Garden, New Delhi, to dispose of the complaint by treating this as a first appeal of Shri Kumar within ten working days from the date of receipt of this decision, under intimation to Central Information Commission.

12.2. Remanding the appeal back to first appellate authority sec 19 (1).

In the case of Shri Mani Ram Sharma vs Supreme Court of India (SCI), New Delhi Complaint No CIC/WB/A/2008/000310 dated 18.03.'09

The Commission has received an appeal from Shri Mani Ram Sharma, Churu, Rajasthan praying as follows: -

"Your kind honour is humbly requested to take judicial notice of all the laws requested, in terms of section 57 of the Indian Evidence Act."

That question seeking information regarding action taken on the petition sent by appellant on 08.07.2008, 09.07.2008 and 10.07.2008 including a letter dated 27.10.2008 regarding Hon'ble Justice Sh. C M Totla, Judge, Rajasthan High Court, Jodhpur and letter dated 10.09.2008 (PIL Section Dy. No. 9025/2008 dated 25.09.2008) was originally moved through an application of 27.10.2008. In his response of 05.12.2008 the CPIO & Addl. Registrar, Supreme Court of India, provided some information to appellant. Finding the response incomplete, appellant Shri Sharma approached the first appellate authority of the Court u/s 19(1) of the RTI Act.

Judgement: The appellant has filed this appeal before the commission alleging that the appellate authority did not pass any order in respect of the appeal filed.

Because the 1st appellate authority has allegedly not addressed the questions of appellant, which are of direct concern to his public authority, **the Commission has decided to remand this appeal to First Appellate Authority Shri M. P. Bhadran, Registrar, Supreme Court of India, to dispose of the appeal of Shri Mani Ram Sharma within ten working days from the date of receipt of this decision, under intimation to Shri Pankaj Shreyaskar, Jt Registrar, Central Information Commission.**

12.3. Enforcing the order of First Appellate Authority [Section 19]

In the case of Sh. C.B. Rawat Vs. Registrar Cooperative Societies, Delhi (Decision No. CIC/WB/A/2007/00119 Dated 06/02/2007) the requester sought certain information from the Registrar Cooperative Societies. The First Appellate Authority by his order directed the PIO to furnish the information sought as follows:-

"I have heard the arguments put forth by Sh Rawat and Sh. Gaur. I am of the considered opinion that the society should provide the information asked for by Shri Rawat. In case the society is not furnishing the information to Sh Rawat even after one reminder then the concerned Asst Registrar is directed to take appropriate action as per the provisions of the DCS Act and Rules against the managing committee of the society."

However, the PIO did not comply with the order of the First Appellate Authority and the information was not furnished. Thus an important issue relating to enforcing the order the FAA was examined by the Commission and a very effective solution was provided.

Judgment: The applicant has approached this Commission submitting, inter-alia, that in spite of the orders passed by the first Appellate Authority, the PIO has not compiled with the orders and the information requested has not been furnished till date.

From the facts above, it appears that this is a case of malafide denial of Information by the PIO. However since it is the responsibility of the First Appellate Authority to ensure that the orders passed by it are duly compiled with by the PIO, the Commission, therefore, has decided to **remand the case back to the first Appellate Authority to ensure that its orders under section 19(1) are duly compiled with and the requested information furnished in terms of the order**

so passed, with the qualification that now, in accordance with Sec 7(6) of the RTI Act, 2005, no fees will be charged.
If the compliance is not ensured within 15 days from the date of receipt of this order, the FAA should approach this Commission for initiation of proceedings under section 20 of the RTI Act for imposition of penalty and/or recommending appropriate disciplinary action. This will be without prejudice to the right of the First AA to initiate other penal action under the Indian Penal Code against the PIO for willful violation of orders promulgated by a public servant while exercising statutory powers.

12.4. Mandatory nature of the first appeal [Sec 19.1]

In the case of Sh. Uday Nath Vs CPIO, Department of Post.(Appeal No. ICPB/A-6/CIC/2006 Feb. 27, 2006), this important issue was decided by the Commission. The Deptt. of Posts not only declined to furnish the information but also advised the applicant to prefer an appeal directly to the Commission on the ground that the decision has been taken at the highest level in the Deptt. The Commission however, made it clear that irrespective of at what level a decision is taken the procedure prescribed by the statue cannot be given a go by.

Judgment: At the outset, we would like to point out that when RTI Act specifically provides for the first appeal to the appellate authority of the concerned public authority, it was wrong on the part of the CPIO, Department of Post to have advised the appellant to prefer the first appeal itself to the Commission directly on the ground that the decision to deny the information had been taken at the highest level. Irrespective of at what level a decision is taken, the procedure prescribed by the Statute cannot be given a go by. We would have referred the matter back to the concerned appellate authority of the Department of Post to consider the appeal but considering the hardship that is likely to be caused to the appellant, we are disposing of the appeal.

Any rejection of request for information has to be in terms of the provisions of the RTI Act. The main theme of RTI Act is that there should be transparency in decision making and therefore, the appellant is entitle to know the reasons for cancellation of the tender. In her comments furnished to the commission on the appeal, the CPIO has furnished elaborate information from which we find that there are no justifiable grounds to reject the information sought for by the appellant. Therefore, we direct the CPIO, Department of Post to give factual

information relating to the reasons for rejection of the tender within 15 days from the date of this order. As far as the prayer of the appellant for a direction to the Department of Posts to issue supply order is concerned, in terms of RTI Act, this Commission has no powers to issue such directions."

12.5. Public Authority can appeal the decision of a PIO/AA under the RTI Act.

In the case of Mrs. Gurvinder Kaur Gill Vs DCP EOW (Decision No. CIC/WB/A/2007/00679 dt. 31 July, 2007) the applicant raised a basis issue whether a public authority can appeal the decision of APIO/AA under the RTI Act. The Commission has minutely analyzed this complex matter and given a very practical decision in the matter that a public authority can appeal against the decisions the CPIO/AA.

Judgment: Commission raised a basic issue, which is whether a public authority can appeal the decision of a PIO/Appellate Authority under the RTI Act. We have therefore proceeded to address this issue. Section 19(2) recognizes the right of a **third party** to submit an appeal before the First Appellate Authority. Section 19(2) reads as under:

"19(2) where an appeal is preferred against an order made by a Central Public Information Officer or a State Public Information Officer, as the case may be, under section 11 to disclose third party information, the appeal by the concerned third party shall be made within thirty days from the date of the order."

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

"2(n) "third party" means a person other than the citizen making a request for information and includes a public authority." Section 2(n) is a definition clause and definition clause under the Rules of Interpretation is one that defines a concept and insofar as that particular enactment is concerned, the meaning is applicable to the term wherever it is used in that enactment. Thus, the term "third party" wherever it occurs in the RTI Act shall ipso facto include a Public Authority. Over and above the definition of "third party" is an inclusive one, which makes it's meaning wide and extensive. In this context, Section 11(1) is pertinent. Under Section 11(1), whenever a CPIO intends to disclose an information or record —
(I) which relates to and has been treated as confidential by that `third party'; or
(ii) which has been supplied by a third party and has been treated as confidential by that third party the CPIO shall give a written notice to such third party of the

request and of his intention to disclose the information . Section 19(2) confers a right on a Public Authority of preferring an appeal before the First Appellate Authority against the decision of CPIO. Thus, if the CPIO decides to disclose information that relates to a Public Authority and if the Public Authority has treated the information as confidential, it can submit an appeal before the First Appellate Authority under Section 19(2) of the RTI Act. The issue still remains as to whether a Public Authority can appeal against the decision of its own CPIO. In this context, the opening words of Section 19(1) are important. It says that **any person** can prefer an appeal who —

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

It may be mentioned that the word `person' has not been defined in the Act but it is wide enough to include a Public Authority, which is a juristic entity and as such is a "person" in the eye of law. The right of appeal is a legal right and is available to every aggrieved party to a proceeding and this right cannot be taken away unless law explicitly provides it. Insofar as an appeal before the CIC is concerned, Section 19(3) of the Act refers, which reads as under:

"19(3) A second appeal against the decision under sub-section (1) shall lie within ninety days from the date on which the decision should have been made or was actually received, with the Central Information Commission or the State Information Commission; Provided that the Central Information Commission or the State Information Commission, as the case may be, may admit the appeal after the expiry of the period of ninety days if it is satisfied that the appellant was prevented by sufficient cause from filing the appeal in time." The opening words of the sub-section makes it clear that the 2nd appeal is against the decision passed by the First Appellate Authority and it can be preferred by any of the aggrieved parties.

12.6. Can the CPIO appeal against the First Appellate Authority?[Sec 19]

In the case of Sh. V.R. Eliza, CPIO Vs Central Board of Excise & Customs (Decision no. CIC/AT/A/2008/00291 dt. 05.03.2008) the CPIO filed an appeal in the Commission against the order passed by First Appellate Authority of his own department. The interesting issue as to whether the CPIO can go in appeal against his FAA was considered by the Commission and a decision given that 'Yes' he can.

Judgment: Commission observed that Section 19 of the Act provides for an appeal by a person who is aggrieved with the decision of a CPIO. The first appeal is

to be preferred to an officer senior in rank to the CPIO in the official hierarchy in the same Public Authority. Apparently, this right of appeal can be availed only by a citizen making an application seeking certain information or by another person who is aggrieved with the decision of the CPIO concerning disclosure of information. Such an aggrieved person may be a third party. Section 19(2) makes an explicit mention of an appeal by the concerned third party. Technically speaking, even a Public Authority can also be aggrieved with the decision of the PIO and can appeal against the decision of the CPIO as u/s 2(n) of the RTI Act, "third party" includes "Public Authority".

Section 19(3) of the RTI Act deals with a second appeal. Sub-Section (3) of Section 19 of the RTI Act reads as under:

"Section 19(3):

A second appeal against the decision under sub-section (1) shall lie within ninety days from the date on which the decision should have been made or was actually received, with the Central Information Commission or the State Information Commission: Provided that the Central Information Commission or the State Information Commission, as the case may be, may admit the appeal after the expiry of the period of ninety days if it is satisfied that the appellant was prevented by sufficient cause from filing the appeal in time. "

From the above, it is clear that a 2nd appeal is against the decision under Sub-Section 1 and any person who is aggrieved with this decision can approach the Commission and submit an appeal. This aggrieved person could be a PIO or a 3rd party or even a Public Authority as 3rd party. The Act does not debar a 2nd appeal either by the PIO or by a Public Authority.

12.7. Inquiry into delay [Section 19]

In the case of Sh. A.K. Bose Vs North Central Railway, Allahabad (Decision No. CIC/OK/A/2006/00644 dt. 26 March 2007) the applicant sought reasons for not releasing his gratuity even after one year of his retirement. He wanted to know the rate of interest which could be paid to him for delaying his payment of his gratuity. The public authority responded by saying that the file was with the head quarters and would be shown to him after its receipt. In this case the Commission took a proactive decision to have not only an inquiry done but also prescribed a time frame by which the grievance had to be settled. In fact the Commission recommended to the Chairman, Railway Board to initiate an inquiry and fix responsibility.

Judgment: The Commission heard both the sides. To recapitulate the case: the Appellant is a Railway employee who retired in January 2006. While all his other retirement dues were cleared, his gratuity was withheld because of an inquiry into the case of a fire which took place in one of the Railway Track Depot in 1988. The inquiry which was started could not be completed and now the file has gone to the Railway Board for writing off the amount of loss of stock, so that the Gratuity can be released to the Appellant. The Appellant regretted the fact that the case of loss of stock due to fire was nearly 18 years old and had not been settled. The Respondents clarified that there was a delay in the whole process because at one point of time, the file regarding the case was lost/misplaced and therefore the case had to be reconstructed.

The Commission feels that nothing brings out the apathy, the callousness and the insensitivity of the Government more than this case for here is the Railway's own employee whose gratuity is held up and he is not certain as to when and how much gratuity he will get for an enquiry into a case which had gone on for 18 years.

On enquiries made by the Commission, the Respondents replied that the last movement of the file was from them to Shri H.L. Suthar, Director, Civ. Eng. (P), Railway Board, on 9 March 2007, regarding the proposal of writing off the amount mentioned in the stock sheet.

The Commission gives the Railway Board one month's time (upto 26 April 2007) to settle the issue after which, according to the Commission, it shall have no moral right to deny disclosure of all the papers, documents and files regarding this case to the Appellant.

The Commission also recommends to the Chairman, Railway Board, to initiate an inquiry, after, of course, all the dues to the Appellant are paid (which may be done soon), as to why and because of whom the case has been delayed for 18 years. The case for this inquiry should be looked upon from this angle: the Appellant would be entitled to an interest on the amount due to him from the Government as per Govt. rules. This interest is a loss of public money. Therefore, the Commission would like those persons to be identified and be held responsible for this loss of public money an account of interest liability. A copy of the inquiry report must be sent to the Commission, which hopes that at least this enquiry will not take years.

12.8. Quasi judicial power of First appellate authority [Section 19]

In the case of Sh. R.K. Potdar Vs. The Oriental Insurance Co. Ltd. New Delhi (Appeal No. 276/ICPB/2006 F.No. PBA/06/352 dt. 5.1.2007) the Commission has goes into this very important issue and had decided that the appellate authority has got the quasi judicial power to go into aspects like whether CPIO has given correct reply, whether he has applied all the provisions of the Act etc.

Judgment: The Right to Information Act, 2005, came into existence in October 2005 and may have completed more than one year in implementing this particular legislation. In spite of that, the appellate authority has not understood the requirement of the legislation when an appeal has been preferred by the appellant. The main reason for the appellant to prefer first appeal is that he is not satisfied with the information furnished by the CPIO. The AA has got quasi-judicial power to go into the aspects like whether CPIO has given correct reply, whether he has applied all the provisions of RTI Act and he has to take a judicious decision while disposing of the appeal by passing a speaking order. In this particular case, the AA has failed to exercise his quasi-judicial power.

Commission direct the appellate authority to go through the RTI application, CPIO's reply and the first appeal preferred by the appellant and pass a speaking order within 15 days of receipt of this decision with a copy to this Commission.

12.9. Power of the Commission to award damages for the misbehaviour with applicant? [Section 19 (8) (b)]

In the case of Smt. Dasharsathi Vs. Food & Civil Supplies Deptt. (Complaint No. CIC/WB/C/2006/00145 dt. 16.3.06) damages were awarded to Smt. Dasharathi as the public authority had refused to accept the application from her.

Judgment: Commission looked into the compliant submitted by the applicant stating that when she approached the office of the Asstt. Commissioner (South) in the Food & Civil Supplies Deptt., Delhi, to ask for information regarding her application regarding Kerosene oil she was told that the officer was not present and her application could only be accepted after he returns. After waiting for 2 to 3 hours, she was told that the officer would not return that day. She, therefore, complained that her time was wasted together with Rs. 100/- in travel costs.
Judgement: As we have held in other cases misbehaviour with applicants

approaching public authorities under the R.T.I. is not acceptable and in direction violation of Sec 5 (3). In this case the PIO Shri Nand Lal will invite Smt. Dasharathi to visit his office and identify members of his staff who refused to provide her the information. Under Sec. 19(8)(b) the Public Authority will pay Rs. 100/- as damages suffered to the applicant Smt. Dasharathi. This may be either directly or through recovery from the erring officials, as deemed appropriate by the PIO.

12.9.1 Power of the Commission to award damages.[Section 19 (8) (b)]

In the case of Smt. Kusum Devi & Other Vs. Lands Department, DDA. (Appeal Nos. CIC/WB/A/2006/00042-00059,00081,00087,00087-00100 & 00106-111) dt. 5.09.06) the applicant claimed damages for having made to come for two hearings which had to be adjourned without cause the Commission awarded the damages amounting to Rs. 520/-.

Judgment: Commission issued order after hearing held under Proviso to sec 20(1) of the RTI Act, 2005 on a Show Cause Notice issued to CPIO, this Commission in examining the appellant's claim of damages made u/s 19 (8) (b) found that damages in this case had become due, in the case of two hearings, which had to be adjourned without cause. Appellants were asked to present before us substantiation for the claim within a week.

Accordingly Ms Ritu Mehra, authorized representative has presented a statement on 31/8/'06 seeking damages on account of salary for two days and transport costs for these two days, amounting to a total of Rs 1720/-.

Commission have examined the claim and not convinced that there has been any loss of salary by the authorized representatives of the appellants, nor has any evidence of any such deduction/loss been placed before us. On the other hand, the transport charges are genuine, and even though no receipts are provided in such cases, we may not insist on such evidence being produced. The conveyance charges from Seemapuri to the offices of the Commission amounting to Rs 520/- are payable by the DDA and may be paid to the authorized representatives of the appellants against receipt.

12.9.2. Commission's Power to impose penalty Sec 20 (1):

In the case of Mr. Vinod Kumar vs The Executive Engineer (Bldg.) NGZ & APIO, Office of the Dy. Commissioner Municipal Corporation of Delhi, **Decision No. CIC /SG /A /2008 /00097 /1876 penalty and Appeal No. CIC /SG /A /2008 /00097.**

The Appellant had filed an appeal an application seeking information regarding Construction of house.
The PIO had transferred the application to the Municipal Corporation of Delhi as the information sought is more closely connected with the MCD. But the Appellant has not yet got any reply from the MCD Dept. The First appellate authority ordered that the information must be given in 7 days. The PIO has got some information which he has given to the appellant.

Judgement: Commission allowed the appeal and directed PIO to send the list of unauthorized regularised colonies to the appellant before 5th March 2009. Further the Commission issued a show cause notice to the deemed PIOs who were responsible for the delay in providing the information. They were directed to give their written submissions showing cause why penalty should not be imposed on them as mandated under Section 20 (1) before 10 March, 2009.

However, the Commission received a letter from the Appellant dated 15/07/2009 wherein he alleged that he had not received the information. Hence the Commission sent a letter dated 29/07/2009 to the deemed PIOs directing them to supply the information to the Appellant before 17/08/2009 and asking them to show cause why penalty should not be imposed on them under Section 20(1) of the RI Act.
The order was not complied with and the Commission had to issue another reminder on 29/07/2009 after which the information has been provided to the Appellant on 10/08/2009. There is no reasonable cause being offered and the deemed PIO Mr. Kamal Meena, AE, is saying that he was not finding it possible to give the information since the information was with the Building (HQ) and the Town Planning office. He has been asked to show any written evidence that he had tried to get this information from Building (HQ) or Town Planning office. He says he has no such evidence. In view this, the Commission finds this a fit case for levy of penalty on Mr. Kamal Meena under Section 20(1) of the RTI Act. Since the delay has been over hundred days, maximum penalty of Rs. 25,000/- is being levied on him.
Decision: As per the provisions of Section 20 (1), the Commission finds this a fit

case for levying penalty on Mr. Kamal Meena deemed PIO. Since the delay in providing the correct information has been over 100 days, the Commission is passing an order penalizing Mr. Kamal Meena, deemed PIO for Rs. 25000/ which is the maximum penalty under the Act. The Commissioner, Municipal Corporation of Delhi is directed to recover the amount of Rs.25000/- from the salary of Mr. Kamal Meena deemed PIO.

12.9.3. Commission's Power to impose penalty on Deemed PIO Sec 20 (1):

In the case of Mr Gurbax Singh, Vs Mr. Sanjeev Bansal , PIO, SLIET Longowal, District- Sangrur, Punjab. **Decision No. CIC /OK /A /2008 /00595 /SG /0525 Penalty Appeal No. CI C/OK /A /2008 /00595.** The appellant has sought the following information.

1) Inspection of SLIET agency – work, documents and records, etc. from the date of its initiation till date.
2) Availability of the full constitution, laws, and by laws of the members of the SLIET gas agency.
3) Cash books, cash receipts and deposits along with the bank details and reasons for not providing the receipts to the consumers.

1) Full noting portion of advertisements for the recruitment of caretakers at various cases.

2) Full assessment of the ACP fixation and deny for review. Provide the rule regarding such fixation.

3) Rule and full noting portion/orders regarding the grant of remuneration for additional duties, noting portion and copy of advertisement/appointment of Ex-Director Dr. R.C.Chauhan, etc.

The PIO replied that SLIET is a self-financing body. It does not come under the purview of the RTI Act. However, we are seeking clarification from Bharat Petroleum Corp. Ltd., regarding the applicability of RTI Act to SLIET Gas Agency. On receipt of the clarification it will be informed. The appellant found the replies of the PIO as incomplete, malafide, false and concealing, so filed an appeal. FAA in its decision upheld the reply given by the Institute. As the appellant was not able to get the relevant information, he has filed the second appeal.

The appellant states that SLIET Gas Agency is a part of SLIET. It is managed by the

Director of SLIET and the agreement of BPCL is with Director of SLIET. In view of this, the SLIET Gas Agency is not a different body at all and is a part of SLIET.
Judgement: CIC allowed the appeal and directed the PIO of SLIET to provide the information to the appellant before 30 December, 2008.

Mr. Sanjeev Bansal says that the order of the Information Commission dated 15/12/2008 to give the information before 30/12/2008 was given to Dr. PC Upadhayay, Chairman SLIET Gas Agency who was the holder of the information. The information was not provided since Dr. PC Upadhyay did not give the information. The PIO has brought a letter from the Chairman SLIET Gas Agency dated 09/09/2009 claiming that at various times he gave bits of information to the Appellant and finally gave the complete information to him on 07/08/2009, it appears from the statement of Mr. Sanjeev Bansal that Dr. PC Upadhayay is responsible for not providing the information as per the order of the Commission without any reasonable cause.

The Commission issued a show cause notice to Dr. PC Upadhayay to show cause why penalty under Section 20(1) should not be levied against him for delaying the information over seven months.

The deemed PIO Dr. P.C. Upadhyay states that he took over as Chairman of the SLIET on 24/12/2008. Hence, he was not able to give the information by 30/12/2008 as per the order of the Commission. He was asked why it took nearly seven months since he has given the complete information on 07/08/2009 to the Appellant. He has given written submission but has not given any rational explanation to explain the delay. He states that he had to obtain some of the information from BPCL, banks and different departments of the Institute. It is not conceivable that even if such an exercise had to be conducted that it would take seven months to obtain this. He shows that he asked for bank statements from the Manager, Central Bank of India on 10/03/2009 and he downloaded information from BPCL's website on 17/07/2009. Thus it appears that there is no reasonable cause for this huge delay. The Commission sees this to be a fit case to levy penalty under Section 20(1) of the RTI Act. Since the delay has been of over 100 days the maximum penalty of Rs. 25,000/- is being imposed on deemed PIO Dr. PC Upadhyay, Asst. Prof. Electronics and Communication Engineering and Chairman SLIET Gas Agency.

Decision: As per the provisions of Section 20 (1), the Commission finds this a fit case for levying penalty on deemed PIO Dr. PC Upadhyay, Asst. Prof. Electronics and Communication Engineering and Chairman SLIET Gas

Agency. Since the delay in providing the information has been over 100 days, the Commission is passing an order penalizing deemed PIO Dr. PC Upadhyay for the maximum amount of Rs. 25,000/-.

The Director of SLIET deemed University is directed to recover the amount of Rs.25000/- from the salary of Dr. PC Upadhyay, and remit the same by a demand draft or a Banker's Cheque in the name of the Pay & Accounts Officer, CAT, payable at New Delhi.

12.9.4. Commission's Power to impose penalty for noncompliance of *suo-moto disclosure on their website Sec 20(1).*

In the case of Shri Rajeev Lala, vs Dr. Poonam Verma Decision No. CIC/SG/C/ 2009 / 001566/ 5669 Penalty-6/Corrigendum , Complaint No. CIC/SG/C/ 2009/ 001566

The Commission received a complaint dated 12 November 2009 from Mr. Rajeev Lala in which he stated that he had visited the website of Shaheed Sukhdev College of Business and he alleged that the College had not displayed the information as required by Section 4 of the RTI Act. All Public Authorities were required to comply with the Section 4 disclosures by 12 October, 2005 as stated at Section 4(1)(b) of the RTI Act. The Commission had sent a demi-official letter on 28 May 2009 to remind the Principal of the College regarding this obligation. A seminar was held on 7 June 2009 at Delhi University to explain the relevance and importance of Section 4 disclosure to the Principals and PIOs of colleges of the Delhi University. At the Seminar, the Vice Chancellor and the Information Commissioner had urged all colleges to ensure that the Section 4 requirements were complied by 15 August 2009. The Commission again sent reminder letters in this regard to the College on 12 August 2009. In this letter it was stated that if Section 4 of the RTI Act remained un-implemented, the Commission would be constrained to use the powers under the RTI Act and initiate proceedings against erring institutions.

The Commission perused the website of the College and found that the College had not met its obligations with regard to suo-moto disclosures under Section 4 till date. In view of its repeated violation of the law and refusal to pro-actively disclose the details as per Section 4 of the RTI Act, the Commission decided to institute an enquiry under Section 18 (2) of the Act. The Commission decided to hold show cause hearing in this matter on 24 November 2009 at 3.30 pm. The Respondent, as the head of the public authority was directed to appear before the Commission on 24 November 2009 along with his/her written submissions to the Commission

on show cause why penalty under Section 20 (1) should not be imposed on him/her for refusing to meet his/her legal obligations under the RTI Act. He/She was informed that he/she would be given an opportunity of giving his/her reasons orally before the Commission.

Emerging Facts:

The Principal of the college has sent a letter admitting that the Section-4 compliance has not been done so far and promising that it will be done by 31/12/2009. The RTI Law expected Section - 4 compliance by 12 October 2005. Inspite of repeated reminders the Principal has failed to comply with the law.

In spite of repeated reminders the college does not appear to be willing to meet the Section-4 requirements of the RTI Act. Hence the Commission imposes a penalty of Rs.5000/- on the Principal of the College, Dr. Poonam Verma. The Principal is also directed to comply with the requirements of Section-4 completely before 30 December 2009 and sent a compliance report of this.

Judgement: As per the provisions of Section 20 (1) of the RTI Act 2005, the Commission finds this as a fit case for levying penalty on the Dr. Poonam Verma, Principal. Since there has been a delay in complying with the order of the Commission, the Commission is passing an order to levy a penalty of Rs 5000/-.

The Chairman, Governing Body is directed to recover the amount of Rs.5000/- from the salary of Principal and remit the same by a demand draft or a Banker's Cheque in the name of the Pay & Accounts Officer, CAT, payable at New Delhi and send the same to Shri Pankaj K.P. Shreyaskar, Joint Registrar and Deputy Secretary of the Central Information Commission, 2nd Floor, August Kranti Bhawan, New Delhi – 110066. The amount shall be deducted from the salary of Dr. Poonam Verma, Principal and deposited before 10th December 2009.

Chapter-XIII

Non application of the RTI ACT to certain Organisations. (Sec 24).

13.1. Exempted Organisations:

Section 24 (1) of the Act stipulates that nothing contained in this Act shall apply to the intelligence and security organisations specified in the Second Schedule, being organisations established by the Central Government or any information furnished by such organisations to that Government sec 2:

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

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

13.2. THE SECOND SCHEDULE AS AMENDED

13.2.1. The Second Schedule of the Right to Information (RTI) Act was first amended vide Notification General Statutory Rules(G.S.R.)347 dated 28 September 2005 issued by Ministry of Personnel, Public Grievances and Pensions (Department of Personnel and Training), published in the Gazette of India on 8 October 2005.

13.2.2 First amendment to the Second Schedule of the RTI Act substituted Sashastra Seema Bal (corresponding serial number in the Second Schedule -15) for Special Services Bureau (Sashastra Seema Bal was earlier called Special Services Bureau when it was formed in 1963 after the Sino-Indian war) and added the following four organizations (with corresponding serial numbers in the Second Schedule :

19. Special Protection Group.
20. Defence Research and Development Organisation.
21. Border Road Development Board.
22. Financial Intelligence Unit, India.

13.2.3. Second amendment to the Second Schedule of the RTI Act

The Second Schedule of the RTI Act was further amended vide No.G.S.R.235(E) dated 27 March 2008 issued by the Ministry Of Personnel, Public Grievances And Pensions (Department Of Personnel and Training) ,published in the Gazette of India on 28 March 2008.

Second amendment omitted following three organizations (with corresponding serial numbers in the Second Schedule prior to the second amendment):

16. Special Branch (CID), Andaman and Nicobar.
17. The Crime Branch-C.I.D.- CB, Dadra and Nagar Haveli.
18. Special Branch, Lakshadweep Police.

And added following two organizations (with corresponding serial numbers in the Second Schedule after the second amendment):

16. Directorate General of Income-tax (Investigation)
17. National Technical Research Organisation

13.2.4. Third amendment to the Second Schedule of the RTI Act

The Second Schedule of the RTI Act was further amended vide No.G.S.R.726(E) dated 8 October 2008 issued by the Ministry Of Personnel, Public Grievances And Pensions (Department Of Personnel and Training), published in the Gazette of India on 8 October 2008.

Third amendment to the Second Schedule added following organization (with corresponding serial numbers in the Second Schedule after the third amendment):

22. National Security Council Secretariat.

The Second Schedule of the Right to Information Act, as amended is as follows:

13.2.5. THE SECOND SCHEDULE after the three amendment is as under:

Intelligence and security organisation established by the Central Government:

1. Intelligence Bureau.
2. Research and Analysis Wing of the Cabinet Secretariat.
3. Directorate of Revenue Intelligence.

4. Central Economic Intelligence Bureau.
5. Directorate of Enforcement.
6. Narcotics Control Bureau.
7. Aviation Research Centre.
8. Special Frontier Force.
9. Border Security Force.
10. Central Reserve Police Force.
11. Indo-Tibetan Border Police.
12. Central Industrial Security Force.
13. National Security Guards.
14. Assam Rifles.
15. Sashastra Seema Bal.
16. Directorate General of Income-tax (Investigation).
17. National Technical Research Organisation.
18. Financial Intelligence Unit, India.
19. Special Protection Group.
20. Defence Research and Development Organisation.
21. Border Road Development Board.
22. National Security Council Secretariat

Chapter-XIV

CIC decisions on Exempted Organisations

14.0. The following CIC decisions interpreting section- 24 of the Act give valuable clarification on the exempted organisations under RTI Act **(Sec 24(1):**

14.1. Section 24 of the RTI Act is an autonomous and self-contained provision.

In the case of Shri Ravinder Singh Mann vs Directorate of Revenue Intelligence F.No.CIC/AT/A/2008/01443 Dated, the 17th March, 2009.

Appellant's RTI-application dated 08.03.2008 comprised 24 items of queries. These were all related to his arrest in the year 2004 by DRI and his subsequent trial. Appellant believes that unless these information is disclosed to him, his trial before the Court will suffer, which will impact his human rights.

Respondents had taken the plea that DRI was not obliged to answer these queries as the organization (DRI) was exempt under Section 24 read with Second Schedule of the RTI Act. It is also the plea that appellant was arrested as per the provisions of law and has been properly arraigned before the Trial Court to answer for his crimes. There cannot be human rights violation in the matter where the procedures established by law have been rigorously followed.

Appellant made an impassioned plea before the Commission that he was a victim of DRI's machinations and has been wrongly arraigned. He urged that the exemption under Section 24 should not be applied mechanically but in each case it should be examined whether the information sought to be disclosed had a bearing on the case establishing a person's innocence. A mechanical application of Section 24 would amount to denying to a citizen his right of speech and expression guaranteed by the Constitution, when the public authority encroaching on the right happens to be an organization exempted under the relevant Section of the RTI Act, e.g. the DRI in this case.

Judgement: The commission stated that Section 24 of the RTI Act is an autonomous and self-contained provision, which not only spells out the public authorities exempted from the purview of the RTI Act, it also spells out the circumstances in which such exemption can be revoked. Unless the

circumstances of human rights violation or corruption are present, the public authority enjoying the exemption should not be subjected to any other scrutiny. In other words, except when a plea of human rights violation and corruption is specifically taken in a given case, Commission should not go behind the exemption enjoyed under Section 24 of the RTI Act by a public authority to explore whether there were other circumstances invalidating the claim of exemption by such public authority. The exceptions i.e. human rights violation and allegations of corruption cannot be allowed to be taken in a routine or light manner. Commission should carefully examine whether the invoking of these exemptions by a petitioner has some substance.

In this light, Commission expressed its constraints for revoking the exemption enjoyed under Section 24 by DRI. The appellant has been arrested and brought to trial by the DRI after they had followed all statutory requirements. In the face of it, a plea of violation of human rights does not seem plausible. It is not, therefore, possible to allow this appeal as it is.

However, I'm also aware that the petitioner, who was arrested in the year 2004, is still in judicial custody after 5 years and his trial is far from over. I would, therefore, urge the Appellate Authority to go over the appellant's RTI-application once again and to see whether there are items in the requested information which DRI can part with without in any way compromising its exempt status or its case against the appellant before the law court. AA is advised to finalize this within 4 weeks of the receipt of this order. This exercise will be independent of this appeal and not open to further challenge under RTI Act. Appeal disposed of with these directions.

14.2. Exemption waived incase of Human Rights Violation .

In the case of Dr. Asha Singh vs Central Reserve Police Force (CRPF) Appeal No.CIC/WB/A/2007/01243 dated 10.12.2007.

The applicant Dr. Asha Singh applied to the CPIO, CRPF seeking information on 14 points, stemming from the following basis:

“The information relates to my repeated transfer & harassment in male battalion without any another female in unit, without proper privacy for female, against my request and all the guidelines laid down by the CRPF, MHA and also ignoring my grievances faced in the male battalion by the hands of male officer.”

To this she received a response on 27.9.07 from ADIGP and CPIO refusing the information as below:

"As per Section 24 (i) of Right to Information Act, 2005, Central Police Forces as listed in the Second Schedule of the Act, have been given qualified exemption from the Act in so far as the allegations of other than those connected with Human Right Violations and Corruption are concerned. From the facts of the case mentioned in your application cited above, there appears to be no violation of Human Rights as well as facts of the case do not attract ingredients to constitute the allegations of corruption. Hence, the information sought vide your application is not covered under Right to Information Act, 2005."

Dr. Asha Singh then moved her first appeal before Shri S.R. Ojha, DIG (Admn) and First Appellate Authority, who, however, in his order of 2.11.07 upheld the reply of CPIO. Hence the second appeal before the Commission on grounds of alleged Human Rights Violation:

"(a) Human Rights violation by repeated posting in a non family male battalion as a only lady office without any medical infrastructure laid down by the MCI, MHA's, CRPF guidelines and harassment by the male officers as mentioned in the representation dated 26.7.2007.

(b) Stoppage of salary during medical illness without assigning any reason for last 3 months.

(c) Human violation by non provision of privacy to females .

(d) Discrimination by not posting as per my specialization while other specialized medical officer is posted as per their specialization.

(e) Violation of my rights of my children (Daughters) education and denial to stay with me by posting at a non family station.

Judgement: The following two issues were examined by the Commission

Issue No. 1: Whether gender discrimination would amount to Human Rights Violation.
Issue No. 2 : Whether in case it does so amount, the information sought by appellant Dr. Asha Singh in the present case amounts to information on

allegations of Human Rights Violation?. There was a consensus in the hearing that gender discrimination would amount to Human Rights Violation. However, Shri S. R. Ojha DIGP submitted that in this case the issue is only one of transfer against which Dr. Asha Singh has represented and is, therefore, a purely administrative matter, with no ramification of gender discrimination and consequently violation of human rights. Upon this he was asked by Information Commissioner Prof. M. M. Ansari whether there was any structure for obtaining redress by Dr. Asha Singh on the basis of her complaint of discrimination. Shri Dinesh Kumar, ADIGP and CPIO submitted that in fact she hade met DG Shri D.N. Singh under Grievance Redressal; an enquiry had been conducted by Shri Alok Raj Sharma and report submitted in this regard in 2008.

Information Commissioner Dr. O.P. Kejariwal invited the attention of respondents to the application in which there are allegations of gender discrimination. He, therefore, asked how the information sought could, therefore, be denied. To this respondents argued that the contention that she was a victim of gender discrimination was being presented as an excuse for a matter which is purely administrative.

DECISION NOTICE

Having heard the arguments and examine the records, we find as follows:

Issue No. 1
On December 10, 1948 the General Assembly of the United Nations adopted and proclaimed the Universal Declaration of Human Rights. Under.

Article 2 of the Universal Declaration of Human Rights men & women are to be treated as equal. This Article reads: “Everyone is entitled to all the rights and freedoms set forth in this Declaration, without distinction of any kind, such as race, colour, sex,1 language, religion, political or other opinion, national or social origin, property, birth or other status”. Article 23 moreover declares as follows:

Article 23

(1) Everyone has the right to work, to free choice of employment, to just and favourable conditions of work2 and to protection against unemployment.
(2) Everyone, without any discrimination, has the right to equal pay for equal work.
(3) Everyone who works has the right to just and favourable remuneration

ensuring for himself and his family an existence worthy of human dignity, and supplemented, if necessary, by other means of social protection.

This issue, therefore, falls squarely within the definition of Human Rights. This is at any rate undisputed by all parties.

Issue No. 2

It is also clear from the request for information of 18.9.07 that the information sought is on the basis of allegation of Human Rights Violations. The wording of proviso of sec. 24(1) is clear:

"Provided that the information pertaining to the **allegations of corruption and human rights violations shall not be excluded** under this sub-section: Provided further that in the case of information sought for is in respect of **allegations of violation of human rights,** the information shall only be provided after the approval of the Central Information Commission, and notwithstanding anything contained in section 7; such information shall be provided within forty-five days from the date of the receipt of request."

As per this law information pertaining to "allegations" of human rights violation will warrant the providing of information after the approval of Central Information Commission. In this case the following question numbers out of 14 placed before CPIO by appellant Dr. Asha Singh in her original application are clearly allegations of gender discrimination resulting in unjust and unfavourable conditions of work, and, therefore, alleging human rights violation:

"1. Details/ comments on my representation dated 24.7.2007 submitted in DG, CRPF's office & also e-mailed on 27.7.2007 regarding the daring facts brought to my notice by the ADG/CRPF relating to my repeated transfers and suffering to set an example to other members of the force who approach the Hon'ble Court for redressal of their grievances for fundamental rights & even denying me for proper placement at near place to Delhi so that I cannot continue my family life peacefully and take care of my daughter who need both parental support. In my case I was denied basic fundamental rights due to unknown reasons. All the court cases had been in my favour even penalty was imposed on department for non compliance of order of Hon'ble Court.

2. The time taken in the disposal of representation by the CRPF and also getting permission letter for seeking permission to meet the Director General for redressal of grievances which are of urgent nature.

3. Detail of action taken on the Commandant of 26 battalion who misbehaved with me by asking me to go out from his office at Jammu as well as Bokaro, when I had asked for a separate/ suitable accommodation being only lady officer in the battalion. As I was forced to reside with male officer in the same house while there was other house lying vacant and other male officer much junior was allotted of higher grade by the state. The same was mentioned in my representation dated 24.7.2007 addressed to DG/ CRPF.

4. Details of action taken on the male officers who were interfering and challenging my professional knowledge by the way of asking/ referring the patients/ jawans & sick register to take treatment from doctors of civil hospitals on the grounds that I was not touching/ asking them & to take off their cloths while giving them treatment as per instruction of Commandant.

5. Reasons for my repeated postings in a male battalion without my request with no other female personnel posted & without proper infrastructure as emphasized in the letter no. L. II.7/ 2005-Admn-II (Wel) dated 3rd May 2005 and also compelling to visit companies located at distance of 100-200 kms with no health infrastructure and to travel and stay with male jawans without any toilet facilities for ladies during journey & also to attend late night parties in officer mess where drinks are served.

6. Reasons for my again transfer from Bokaro to Jammu against my request in a male battalion and non family station with no other female personnel posted within a period of 3-4 months without transfer benefits and also not specifying the exact location as the unit is located at Rajouri & Jammu.

7. Vacancy position/ the locations and services being provided in the various 50, 100 & 200 bedded hospitals as pr the MHA notification no. 27012/33/2003-PF.III dated 10th October 2005 and also DG/CRPF order no. O-IV-20/2004-ORG dated 9.5.2006.

8. Urgency/ details of posting only female doctor without any other female para medical or general duty personnel without any infrastructure in the male battalion, away from their family in a non family station and without provision of security/ privacy in compliance with the DG/CRPF order no. L.II.7//2005-Admn-II (Wel) dated 3rd March 2005." In light of the above, **answers to the above 8 questions will be provided by Shri Dinesh Kumar, ADIG / CPIO to appellant Dr. Asha Singh within 15 working days of the date of issue of this Decision Notice, as per records held.**

We find, however, that because this issue of opening or otherwise of an organization excluded u/s 24(1) to the operation of Right to Information Act is new and the definition of what will fall under Human Rights Violation still debated, we find no reason for holding CPIO in violation on the time limit mandated u/s 7(1). We also find that the DG Shri S.I.S. Ahmed of CRPF in his circular Order No. 01/2007 dated 4.4.07 has clearly assigned duties in servicing the RTI Act to different levels of Officers in the CRPF. This is to be commended.

The appeal is allowed, but for the reason given above there will be no penalty and no costs.

14.2.1. Exemption waived incase of Human Rights Violation .

In the case of Shri Yashpal Rana vs Central Industrial Security Force (CISF) Appeal No. CIC/WB/A/2009/000051 dated 12.2.2009.

Appellant asked various information relating to alleged scandal which was discussed in the media and a lady official of the CISF was put to harassment. Hence, there were grounds for alleging sexual abuse and also undue pressure on a junior to provide false evidence, which is a corrupt act. Respondents Shri Rakesh Raja AIG submitted that Shri Rana is a third party and in any case not entitled to the information sought. There was also no case of corruption that was established, the matter of the case of 23.11.99 having been enquired into under due process of law and action taken accordingly. He also submitted that this itself was not a case of sexual harassment but the original application of 23.11.89 had been a complaint of sexual harassment, which complaint had been found to be unfounded as was the complaint of undue pressure brought to bear by a senior officer on a junior. Besides, there were no allegations of corruption or human rights violation by appellant Shri Yashpal Rana in his application to CPIO or indeed in his 1st appeal.
Upon this, appellant Shri Rana submitted that he was a citizen of India and this matter concern a public enquiry, which gave him the right to obtain the information that he has sought.

DECISION NOTICE

Having heard the parties, we have once more examined the record. We do find that indeed there has been no allegation of corruption or human rights violation in the initial application. The CPIO was then fully justified in refusing the information, but not for the reason that he offered, which was because the CISF 'is

an Armed Force of the Union'. But CISF is outside the purview of the Act, because it is listed at Sr. No. 12 of the Second Schedule of the RTI Act. Nevertheless, the issue of corruption and human rights violation has been raised at the level of first appeal in a manner repeated in the second appeal, as confirmed by us on perusing the copy of the first appeal in the file of respondents.

Besides, even through the RTI application of 11.7.08 did not itself make allegations of sexual harassment, which constitutes human rights violation, such an allegation was made in the original complaint of 23.11.99 against Dr. Anil Vajpayee. Section 24(1) of RTI Act, 2005 reads as follows:

Sec. 24(1)

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

Provided that the information *pertaining***1** to the allegations of corruption and human rights violations shall not be excluded under this sub-section:
Provided further that in the case of information sought for is in respect of allegations of violation of human rights, the information shall only be provided after the approval of the Central Information Commission, and notwithstanding anything contained in section 7, such information shall be provided within forty-five days from the date of the receipt of request. "

As underlined by us in quotation above, any information **"pertaining** to the allegations" of human rights violation brings the information sought within the ambit of the RTI Act. **In this case, quite clearly, the information sought, though not in itself alleging corruption or human rights violation, was information sought regarding action taken on a complaint of sexual harassment and the corrupt practice of undue pressure on a junior. It therefore did indeed pertain to both corruption and human rights violation.**
This brings us to the issue of whether appellant Shri Rana is to be treated as a third party. Respondent Shri Raja AIG has conceded that this case was a matter of media conjecture in 1999 but that he failed to appreciate the requirement of appellant in seeking this information in 2008 when it is no longer a matter of public concern, which he therefore implied was suspicious. Sec. 11(1) reads as follows:

Sec. 11(1)

Where a Central Public Information Officer or a State Public Information Officer, as the case may be, intends to disclose any information or record, or part thereof on a request made under this Act, which relates to or has been supplied by a third party and has been treated as confidential by that third party, the Central Public Information Officer or State Public Information Officer, as the case may be, shall, within five days from the receipt of the request, give a written notice to such third party of the request and of the fact that the Central Public Information Officer or State Public Information Officer, as the case may be, intends to disclose the information or record, or part thereof, and invite the third party to make a submission in writing or orally, regarding whether the information should be disclosed, and such submission of the third party shall be kept in view while taking a decision about disclosure of information:

Provided that except in the case of trade or commercial secrets protected by law, disclosure may be allowed if the public interest in disclosure outweighs in importance any possible harm or injury to the interests of such third party. "

In other words, the information sought must be held in confidence for a third party, who, moreover, can only plead exemption from disclosure of such information u/s 8(1). Moreover, it is only 8(1)(j) which could come into play in the present case. However, this is a matter in which an enquiry has been held and, therefore, this information cannot be held to have no relationship to any public activity or interest, which could enable the third party regarding whom the information is sought to plead invasion of privacy in case the information is disclosed. Besides there are hardly any grounds for the suspicion implied by AIG Shri Raja, since it is clear that the appellant is a correspondent following up on a news story of 1999. Surely it will be in the public interest to set at rest any conjecture on the unsavoury subject. Because, as already discussed above, the original application of Shri Yashpal Rana, Correspondent, did not clarify that it pertain to allegations of corruption or human rights violation, we cannot now hold that the information Should be provided to him point wise. However, we are of the view that this matter having been one of public interest, since the issue has long since been resolved, the information provided to this Commission in response to our appeal notice can now be provided to appellant Shri Rana and is, therefore, reproduced, as below:

"Lady Constable, Suresh Malick had made a complaint dated 23.11.1999 against Dr. Anil Vajpayee, ACMO, Refinery Hospital, levelling allegations of sexual

harassment. The enquiry was conducted by Joint Enquiry Committee and it was concluded that lady had lodged a false complaint against the Doctor. Subsequently, an enquiry was conducted by CISF and it was observed that prima facie a disciplinary case existed against Shri R. K. Yadav and L/C Suresh Malik. Accordingly, she was transferred from IOC Panipat to 2nd Res. Bn. CISF New Delhi and disciplinary proceedings under major penalty were initiated against her and she was awarded a penalty of Reduction of Pay to the lowest stage for a period of three years without cumulative effect vide order dated 22.2.2002. Simultaneously, major penalty proceedings under Rule 14 of CCS(CCA) Rules, 1965 were also drawn up against Shri R. K. Yadav, Dy. Commandant for the charges of falsely implicating Doctor Anil Vajpayee in a case of alleged sexual harassment, in connivance with his subordinate L/Ct. Suresh Malick. As per procedure the Disciplinary Authority has to seek the advice of UPSC before passing final orders. The UPSC advised to drop the proceedings against the charged official for want of evidence or any witness. Accordingly, proceedings against Shri R. K. Yadav were dropped vide final order dated 22.9.2005." With this disclosure, the appeal is thus allowed in part.

14.3. Corruption and Human Rights Violation should be 'verifiable allegations'.

In the case of Shri Kalu Ram Jain vs Directorate of Enforcement F.No.CIC/AT/A/2007/01260 Dated, the 16th July, 2008

1.This is a second-appeal filed by Shri Kalu Ram Jain (appellant) against the order dated 06.09.2007 of the Appellate Authority, Directorate of Enforcement (DE).

2. The main-point for consideration before the Commission is whether the exemption from disclosure obligation enjoyed by the DE under Section 24 read with Second Schedule of the RTI Act be revoked on grounds that in prosecuting Dr.J.K.Jain his human rights were violated by the DE.

3. The main points urged by the appellant, Shri K.R.Jain are that the Directorate of Enforcement had launched prosecution against Dr.J.K.Jain on trumped-up charges and had systematically persecuted him by forcing him to repeatedly appear before the DE officials for questioning. The enquiry against Dr.J.K. Jain was started by DE in 1995, but was dropped as nothing incriminating was found. However, the enquiry was restarted in 1997-1998 when Dr.Jain was summoned by the DE on 06.01.1998 and was allegedly detained for a full day. Nothing happened in the enquiry till the year 2000 when again, for unknown reasons, it

was restarted.

4. According to the appellant, Dr.J.K.Jain wrote several letters dated 06.01.1998, 07.01.1998, 13.01.1998, 27.11.1998, 28.11.1998, 08.01.1999, 30.03.1999, 01.04.1999 and 23.01.2001 but not a single letter was replied to by DE. Yet, it instituted a criminal case against Dr.Jain in 2001 under FERA — an Act which was repealed in 2002.

5. The appellant's submission is that the above sequence of events shows that the Directorate of Enforcement all along knew that there was no case against Dr.J.K.Jain, but was pursuing it in order to victimize him and to intimidate him. The usual tactics of the investigating agencies to summon the witnesses and the accused persons for frequent appearances before investigating officers; not to close the case even when nothing objectionable found against the person concerned; to reopen matters in fits and starts and so on were all tried against him.

Decision: It is an admitted fact that Directorate of Enforcement is exempted from the purview of the RTI Act under Section 24 read with Second Schedule of the RTI Act. The matter for decision is whether on the grounds urged by the appellant, a conclusion about human rights violation or corruption or both could be drawn against the Directorate of Enforcement officials, which would warrant revoking that exemption.

The expression used in Section 24 about grounds that would permit exemption under this Section to be revoked is “allegations of corruption and human rights violation”. The appellant's case is that a mere fact that an 'allegation' was made would be enough to satisfy the requirement of the exception in the Section 24. It is necessary to examine this aspect in some detail.

Allegation of corruption and human rights violation in the context of this Section should be construed to mean 'verifiable allegations', that is to say, not mere charge of corruption or human rights violation, but supporting material that such charge in terms of its evidentiary value had strength. Whether the allegations have evidentiary support is to be determined by the circumstances of those allegations and evidence produced by a party. It is, therefore, the Commission's view that allegation of corruption and human rights violation should be construed not merely in terms of whether somebody has chosen to make those allegations, but in terms of prima-facie evidence that such allegations would lead to a reasonable conclusion that

there was a possibility of these allegations being true. For that, not only the allegations but also the surrounding evidence needed to be examined.

In the present case, the appellant wishes the Commission to draw an affirmative conclusion about prima-facie evidence of Dr.Jain's human rights violation on the basis of the launching of an enquiry against Dr.Jain by the Directorate of Enforcement, frequency of summoning Dr.Jain for appearance, and eventual petition to the Court to withdraw the prosecution against Dr.Jain as nothing incriminating was found against him.

Commission is not persuaded that the reasons as submitted by the appellant could lead to a prima-facie conclusion about prosecution having been launched against Dr.Jain due to malice or any ulterior intentions with a view to intimidate or to cow him down. That Dr.Jain was not specifically targeted is evident from the fact that there were several other similarly placed persons who, in the year 1996, were subjected to enquiry and investigation by DE on the basis of the complaints the Directorate had received.

It is true that the enquiry ran a rather long course but as pointed out by the respondents, it was largely due to the fact that the enquiry had international ramifications and, that Dr.J.K.Jain needed several summons before he made his appearances before the Directorate of Enforcement officials. Respondents have strongly refuted any allusion of wrong-doing based upon the nature and the manner of conducting the enquiry against Dr.Jain.

Commission also finds merit in the respondents' submission that the Directorate of Enforcement as an investigating agency holds enquiries in most matters brought to its notice about wrong-doing by a certain category of persons. To allude that starting such an enquiry alone could amount to a person's human right violation, is far-fetched and unconvincing. Even if it is assumed, for the sake of argument, that the enquiry against Dr.Jain by Directorate of Enforcement officials was a lacklustre, slack and an inefficient piece of work, that alone could not prove any ulterior motive on the part of those officials; much less could it be cited as evidence of violation of Dr.Jain's human rights.

Chapter- XV

15.0 Miscellaneous Section

15.1. Sec-21: No suit, prosecution or other legal proceeding shall lie against any person for anything which is in good faith done or intended to be done under this Act or any rule made there under.

15.2. Sec-22: The provisions of this Act shall have effect notwithstanding anything inconsistent therewith contained in the Official Secrets Act, 1923, and any other law for the time being in force or in any instrument having effect by virtue of any law other than this Act.

15.3. Sec-23: No court shall entertain any suit, application or other proceeding in respect of any order made under this Act and no such order shall be called in question otherwise than by way of an appeal under this Act.

15.4. Sec-25(1): The Central Information Commission or State Information Commission, as the case may be, shall, as soon as practicable after the end of each year, prepare a report on the implementation of the provisions of this Act during that year and forward a copy thereof to the appropriate Government.

15.4.1. Sec-25(2): Each Ministry or Department shall, in relation to the public authorities within their jurisdiction, collect and provide such information to the Central Information Commission or State Information Commission, as the case may be, as is required to prepare the report under this section and comply with the requirements concerning the furnishing of that information and keeping of records for the purposes of this section.

15.4.2. Sec-25(3): Each report shall state in respect of the year to which the report relates,—

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

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

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

(d) particulars of any disciplinary action taken against any officer in respect of

the administration of this Act;

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

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

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

15.4.3. Sec-25 (4): The Central Government or the State Government, as the case may be, may, as soon as practicable after the end of each year, cause a copy of the report of the Central Information Commission or the State Information Commission, as the case may be, referred to in sub-section (1) to be laid before each House of Parliament or, as the case may be, before each House of the State Legislature, where there are two Houses, and where there is one House of the State Legislature before that House.

15.4.4. Sec-25 (5): If it appears to the Central Information Commission or State Information Commission, as the case may be, that the practice of a public authority in relation to the exercise of its functions under this Act does not conform with the provisions or spirit of this Act, it may give to the authority a recommendation specifying the steps which ought in its opinion to be taken for promoting such conformity.

Chapter- XVI

CIC decisions on Miscellaneous Subjects

16.0. The following CIC decisions interpreting miscellaneous section of the Act give valuable clarification on the exempted organisations under RTI Act .

16.1. No suit, prosecution or other legal proceeding shall lie against any person.

16.1.1. In the case of Shri D.N.Sahu vs Land & Development Office Ministry of Urban Development, CIC/WB/A/2006/00336 Dated: 9/5/2006

The appellant submitted an application under the Right to Information Act seeking certain information from Land & Development Officer, CPIO, Nirman Bhawan. His application was rejected by the CPIO on the ground that the information has been requested not by an individual citizen but on behalf of Resident Welfare Association, Pushp Vihar. His appeal petition before the first Appellate Authority was also rejected on the same grounds.

Decision:

The commission stated that an Association or a Company is not and cannot be treated as a citizen even though it may have been registered or incorporated in the country. A natural born person can only be a citizen of India under the provisions of Part-II of the Constitution. Section 3 of the Right to Information Act, 2005 gives the right to information to all citizens. Thus, it is quite clear that a person who is not a citizen cannot claim this right. The issue is decided accordingly.

Insofar as the second issue is concerned, from the records, it appears that the appellant has submitted the application under the Right to Information Act, 2005 in his individual capacity, signing no doubt as President of his association, but not for a separate entity.

From the records, it also appears that requested information has been furnished to the applicant by the CPIO. The Appellate Authority also in its order has stated that the applicant can still seek the information in his individual capacity as a citizen.

Although the Act guarantees right to information only to a citizen, in the instant case, the appellant is seeking information on behalf of other members of the

Association, or simply a group of citizens, not a body corporate. The basic objective of the Act is to give information, rather than to withhold or deny a right recognized by other CPIOs in the ambit of the same Ministry of Urban Development. The CPIO is, therefore, directed to provide the requested information. Since delay has taken place, albeit, without any fault from the side of CPIO/AA, the information may be given free of charge.

Since the delay has evidently occurred through an interpretation of the law now held invalid, the CPIO can be construed to have acted in god faith. Under the circumstances, question of imposing penalty does not arise as per Sec 21.

16.1.2. RTI Act shall have overriding effect on the Official Secrets Act, 1923, and any other law for the time being in force or in any instrument having effect by virtue of any law other than this Act (Sec-22).

In the case of Shri.R K. Pandey vs Appeal No. CIC/WB/A/2008/00777 dated 24-4-2008 & WBA /2009 /00150 dated 20-2-2009

The appellant has moved two appeals before the commission against the CPIO, Supreme Court of India.

The appellant sought the Certified photocopy of the document containing the above said caveat duly executed, by Mr. A. K. Gupta, Secretary, Kendriya Vihar Residential Welfare Association on 21.4.2005, through his above mentioned advocate."

"SLP No. 12305 of 2005 titled State of U. P. & Ors vs Kendriay Vihar Resident Welfare Association & Ors. Is pending before this Hon'ble Court. Certified copies of pleadings, documents or record of the case can be obtained under Order XII Supreme Court Rules, 1966 on payment of prescribed fee and charges. The CPIO, Supreme Court of India cannot accede to your request to provide copies of the Court record under the Right to Information Act, 2005.

You may, if so advised, move application to the Registrar (copying), Supreme Court of India for obtaining certified copies of any judicial record under Order XII Supreme Court Rules, 1966." FAA also denied the information under RTI Act.

DECISION NOTICE

Commission stated that we find that the first Appellate Authority , in citing our decision in our appeal No. CIC/WB/A/2006/00940, has erred in stating that "It

seems that with respect to the matters relating to pending matters, Supreme Court Rules is the special enactment, which excludes the general statute, which is the Right to Information Act." We have, however, indeed found that Order No.XII of the Supreme Court Rules 1965 is not inconsistent with the RTI Act. Section 22 of the RTI Act is overriding only in that it requires that the provisions of the RTI Act "shall have the effect notwithstanding anything inconsistent therewith contained in any other law1 for the time being in force", including the Official Secret Act, 1923.

Therefore, any law or Rule not inconsistent with the RTI Act is a law or rule which must stand notwithstanding coming into force the RTI Act. Appellant Shri R.K. Pandey expressed the apprehension that if this is the case every department will have its own rules and laws and the majesty of the RTI Act will be totally eroded. This, of course, is not so because it is not every public authority which has a right to frame rules. Under Sections 27 and 28 of the RTI Act this authority is only given either to the appropriate Government or to the 'competent authority'. The competent authority is clearly defined in Section 2 (e) of the RTI Act. Under the circumstances, therefore, we cannot find merit in this appeal.

16.1.3. RTI Act shall have overriding effect on the Official Secrets Act, 1923.

In the case of Shri D.K. Chopra vs Directorate of Education, GNCT of Delhi Decision No. 1231 /IC(A)/2007 F. No. CIC /MA /A /2007 /00104 dated the 12th September, 2007

The appellant had asked for certain information, which were furnished, except the minutes of the Managing Committee (MC) of Purna Prajna Public School, Vasant Kumj, New Delhi.

The Commission examined the appeal and made the following observations in its decision No. 714/IC(A)/2007 dated 18th May 2007:-

•The PIO is directed to obtain, u/s 2(f) of the Act, the minutes of the Managing Committee meetings from March 2002 to March 2007 from the school and provide a copy to the appellant.

Subsequently, the appellant informed the Commission that the PIO has not complied with the above decision. The PIO, in turn, stated that he had no legal authority to obtain the information from the school.

Decision:

The Commission stated that the main issue that emanate from the foregoing is that the Government of Delhi has no control on the functioning of un-aided schools and that it cannot access the minutes of MCs under any law, which is un-acceptable to the Commission.

A major objective of the RTI Act is to ensure transparency and accountability in functioning of the institutions, particularly the service providers that have considerable interface with a larger section of people. The documents, in question, contain such information that foretell about the health and vitality of the schools, which are responsible for preparing our children to lead the nation. Moreover, the information asked for is an outcome of deliberations of the major stakeholders – school authorities, teachers, representatives of PTA and the Government of Delhi. The minutes of MCs are thus already in public domain, as these are circulated among the members. How can it be treated as confidential or secret? **Unfortunately, the Principal of the school and the PIO have connived to withhold the minutes of the MCs for reasons that contravene with the larger purpose of creating an information regime for good governance.**

As the activities of the functionaries of the education sector have intense and pervasive influence on every human activity, the decisions taken by the Managing Committees have considerable implications for promoting quality education and the well-being of the entire society. Such documents, therefore, cannot be claimed as secret information by any school which performs a governmental function. The Principal of the school and the PIO have thus failed to appreciate the intent and purpose of the Act which seeks to promote people's involvement in decision making processes and implementation of programs.

All the aided or unaided schools are performing governmental functions to promote high quality of relevant education. An official of the GNCT of Delhi is nominated by the Directorate of Education as a member of the Management Committee of all the schools. **The nominated member of the Directorate of Education is therefore the custodian of the minutes of the MCs under section 5(4) of the RTI Act.** And, there is no reason why such minutes, reflecting the aspects of governance of the school, should not be put in public domain. The Government has the control on the functioning of the schools and, therefore, it has access to the information asked for. And, so has a citizen.

Not only the land allotted to private educational institutes are provided at

subsidized rates, but also the fees paid by the students/parents enjoy income-tax concession. There is thus some element of indirect Government funding in the activities of even private and un-aided schools. In view of this, the respondent, which is represented through its officials on the Managing Committee, is surely the custodian of the information asked for by the appellant. **The decisions of the MCs have significant bearing on the life and career of the students as well as their parents / guardians and, therefore, there is no reason why the minutes of the Managing Committee should not be disclosed to the affected persons i.e. the citizens.**

The PIO's contention that the minutes of the MCs are not included in Annexure-II of Delhi Education Act and, therefore, he cannot acquire them is not acceptable, as Section 22 of **the RTI Act, 2005 has an overriding effect on all such provisions that come in the way of promotion of transparency** in functioning of the schools, the activities of which are governmental in nature. **The PIO is directed again to furnish the information at the earliest under intimation to the Commission.**

The then PIO Dr. R. A. Yadav and the present PIO Mrs. S. Kaur, DDE are also held in violation of section 7(1) of the Act. They are therefore directed to show cause as to **why a penalty of Rs. 25,000/- should not be imposed on them us 20(1) of the Act, for their deliberate attempt to deny the information** asked for by the appellant. Inspite the direction given by the Commission, they have made no worthwhile effort to acquire the document from the school or the nominated member of the respondent. They should submit their written submission and also appear for a personal hearing before the Commission on **12th October, 2007 at 2.00 PM(at 2nd floor, August Kranti Bhawan, Bhikaji Cama Place).**

In view of lackadaisical attitude of the concerned PIO and the Principal of the school towards the implementation of the RTI Act, the Commission's order of dated 18.5.2007 has not been complied with, which is unfortunate **The Director (Edu.), Directorate of Education, GNCT of Delhi is therefore directed to initiate appropriate action against the school, including cancellation/withdrawl of it's recognition,** as the school has chosen to function in a manner which is not duly transparent and is, thus, inconsistent with the ethos and purpose of the RTI Act. An action taken report should be submitted to the Commission at the earliest.
Moreover, because of non-compliance of decision of the Commission of 18th May, 2007, atleast two additional hearing were unnecessarily conducted at the

instance of the respondent. And, the appellant had to attend the hearing, which resulted in incurring of avoidable expenditure on travel, loss of resources and time. **The Director (Education), on behalf of the Directorate of Education, GNCT of Delhi should explain as to why a suitable compensation, u/s 19(8) (b) of the Act, should not be awarded to the appellant for the detriment suffered by him.** On behalf of the Directorate of Education, the Director of Education should explain on the date and time, as mentioned above, and may also appear for personal hearing in the matter.

The Commission is constrained to observe that a large number of officials of the Directorate of Education, in general, and the PIOs/Appellate Authorities, in particular, have failed to appreciate the spirit of the Act for promotion of openness in their functioning. The Director (Edu.), Dte. Of Education is therefore directed to organize education & training program for its officials, as mandated u/s 26 of the Act, in order to equip them for effective implementation of the provisions of the Act.

16.1.4: Sec- 25(2)

In the case of Shri AN Prasad vs Vice Chancellor University of Delhi Decision No. CIC/SG/C/2010/ 000334/7162 **Complaint No. CIC /SG /C/2010 / 000334**

The Commission has received a letter dated 15 March 2010 from Mr. AN Prasad in which he has stated that the Rules of Internal Assessment which are applicable in the University of Delhi are not easily available to students. The Commission has registered the same as Complaint No. CIC/SG/C/2010/000334.

Decision:

The Commission stated that the Ordinance of Internal Assessment and the rules therein would fall under the following categories of information defined under Section 4(1)(b) of the Right to Information Act –

(i) the procedure followed in the decision making process, including channels of supervision and accountability'-
(ii) the norms set by it for the discharge of its functions;
(iii) the rules, regulations, instructions, manuals and records, held by it or under its control or used by its employees for discharging its functions;

Therefore, the Ordinance of Internal Assessment and the rules therein should be readily available in the public domain and particularly to students of the University of Delhi. Since each person does not have access to Internet, this

Ordinance and Rules should not only be available on the website of the University but also at various places in the University/college campuses. The Commission under the powers given to it under section 25 (5) of the RTI Act recommends the following:

The contents of Ordinance VIII-E of the University of Delhi must be inscribed/painted etc. on a sign board which shall not be less than 4ft x 10ft in dimension, to be installed at the following locations having maximum visibility, under Section (4) of the RTI act 2005, as it affects a large number of students of the University of Delhi:

(a) All post graduate departments/centers which are covered under the said Ordinance -installed preferably near the office of the Dean/Principal or at the entrance of their respective libraries.

(B) All central libraries of the University, which serve courses/departments which are covered under the said ordinance.

(c) Office of the Dean (Examinations), preferably near the window counters dealing with students.

(d) All undergraduate colleges, preferably near the Principal's office or entrance of their respective libraries.

The sign boards will remain in place and maintained by the head of the public authority/ head of institution/department, so long as the said ordinance is in force. The sign board should also display the following information:

i) Suggestions and feedback maybe sent to Dean (Examinations) at dean_exam@du.ac.in"
ii) Contact details of the college Monitoring Committee for internal assessment.

a) Hard copies of Ordinance VIII-E of the University of Delhi and excerpts of Ordinance VII.2.(9)(a)(i) of the University of Delhi and consolidated orders/information booklets/notifications/any other documents with respect to the said ordinance will be placed in the libraries of all undergraduate colleges and post graduate departments/centers, including all central libraries of the university.

b) Sign board measuring not less than 1.5ft x 1 ft, should be displayed at a prominent location, preferably at the entrance of the libraries, notifying the

availability of these documents and their exact location.

c) The board will also mention the exact link/URL to the page on the website of the University/college where the said information is available.

This will be maintained by the head of the public authority/ head of institution/department or the officers so directed by them in writing, so long as the said ordinance is in force.

Furthermore, to ensure better implementation of the Right to Information Act you are directed to ensure the following:

a) A sign board shall be installed, mentioning the Name(s), designation(s), contact details including the office address/room number, availability hours and telephone numbers of the Central Public Information Officer(s), Central Assistant Public Information Officer(s) and First Appellate Authority, as the case may be, who have been notified under the RTI Act 2005. (In case of a change of PIO or Appellate Authority, the sign board will be updated within ten days of the said change.)

b) Information regarding the requisite fees to be paid under various provisions of the RTI Act 2005, modes of payment and the office where such fee will be accepted.

c) Information about the Section 4 Information Handbook/manuals; its location and time when it can be accessed should be also mentioned on the board. The exact link/URL to the page on the website of the college/ department where the information handbook can be viewed will also be mentioned. No acronym/abbreviation should be used.

d) This sign board shall be made both in English and Hindi and shall be installed at a location having maximum public view.

This will be maintained by the head of the public authority/ head of institution/department as the case may be, or the officers so directed by them in writing, so long as the RTI act is in force. This will be applicable to the following:

i) All post graduate departments/centers. (Installed preferably near the office of the Dean/Principal or at the entrance of their respective libraries.)

ii) All central libraries of the University.

iii) Office of the Dean (examinations), preferably near the window counters dealing with students.

iv) All undergraduate colleges, preferably near the Principal's office or entrance of their respective libraries or a place having maximum public view.

v) All other non- administrative and administrative units and offices of the University of Delhi which are not mentioned above.

The afore-mentioned information should be made available as directed above before **16 April 2010.** You are requested to take appropriate steps to ensure that the required information i.e. the consolidated list of all the orders/ information booklets/ notifications/any other documents issued with respect to the said Ordinance is sent by the custodian of the records (such as the Dean (Examinations)) to all colleges/departments/libraries etc. as mentioned above within a reasonable time to ensure compliance of this direction. I look forward to receiving a Report from you on the action taken on this direction by 23 April 2010.

16.1.5: Sec-27

In the case of Shri Mahesh Yadav vs Central Information Commission (CIC) Appeal No. CIC/WB/A/2008/01205 dated 10-7-2008 .

The applicant Shri Mahesh Yadav of Panipat, Haryana applied to the CPIO, CIC seeking the following information:

"1. Is Right to Information Act, 2005 applicable in the whole country? If not, please name the States in which it is not applicable?

2. Where this Act is applicable, can these State charge higher or less fee, than as prescribed in the above Act?

3. Haryana Government charge Rs. 50/- as fee for seeking information under the Right to Information Act, 2005 and Rs. 10/- per page for supply of copies, whereas Right to Information Act, 2005 prescribed Rs. 10/- & Rs. 2/- respectively and those below poverty line are exempt from this fee. Please intimate whether State Governments can charge higher rates at their will and whether it is permissible under the rules. If not, then please inform the

Basis on which the Haryana Govt. has fixed higher fee. Whether Haryana Government wants to snatch away the right to information from the citizens?

4. Please inform whether charging of such a high fee by the Haryana Government is correct under the relevant rules of this Commission?
5. Please inform whether Central Information Commission can force the State Governments to implement similar rules. If not, please intimate the reasons therefore in details."

To this Shri Mahesh Yadav received a point wise reply from CPIO Shri Tarun Kumar, Jt. Secretary, CIC dated 22-5-08 as follows:

DECISION NOTICE

The Commission observed that the information sought by appellant Shri Mahesh Yadav pertains to Government of Haryana. It has been clearly explained to him by Appellate Authority Shri Mohammed Haleem Khan, Secretary, CIC that adjudication on information held by the Department under the Government of Haryana is outside the jurisdiction of this Commission. The attention of appellant is invited to the definition of "appropriate government" u/s 2 (a) of the RTI Act, under sub Section (ii) of which states, *"the appropriate Government means in relation to a public authority which is established, constituted and controlled or substantially financed by the funds provided directly or indirectly by the State Government, is the State Government1".*

Appellant Shri Mahesh Yadav is, therefore, advised to apply to the PIO of the Public Authority from whom he seeks the information sought and on failure to receive the same, follow the procedure laid down in Section 19 of the Act. On the question of fees, however, the attention of appellant Shri Mahesh Yadav is invited to Section 27 (1) of the RTI Act which empowers the appropriate Government, in his case as described above the Government of Haryana to make rules to carry out the provisions of this Act which includes, under sub Section (2) of Section 27, the following:

(a) the cost of the medium or print cost price of the materials to be disseminated under sub-section (4) of section 4);
(b) the fee payable under sub-section (1) of section 6;
(c) the fee payable under sub-sections (1) and (5) of section 7;
(d) the salaries and allowances payable to and the terms and conditions of service of the officers and other employees under sub-section (6) of section 13 and sub-section (6) of section 16;

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

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

On the basis of the above information appellant Shri Yadav is free to approach the appropriate public authority for obtaining the information he seeks. The present appeal is however, without substance and is hereby dismissed.

Appendix-1

(TO BE PUBLISHED IN PART-II, SECTION 3, SUB-SECTION (i) OF THE GAZETTE OF INDIA, EXTRA-ORDINARY DATED THE 27 TH OCTOBER,2005)

Government of India
Ministry of Personnel, Public Grievances and Pensions
(Department of Personnel and Training)

New Delhi, dated the 27th October, 2005

Notification

G.S.R……..(E)._ In exercise of the powers conferred by clauses (b) and (c) of sub-section (2) of section 27 of the Right to Information Act, 2005 (22 of 2005), the Central Government hereby makes the following rules to amend the Right to Information (Regulation of Fee and Cost) Rules, 2005, namely :-

1. Short title and commencement – (1) These rules may be called the Right to Information (Regulation of Fee and Cost) (Amendment) Rules, 2005.

(2) They shall come into force on the date of their publication in the Official Gazette.

2. In the Right to Information (Regulation of Fee and Cost) Rules, 2005, in rule 4, for clause (d), the following clause shall be substituted, namely.-

"(d) for inspection of records, no fee for the first hour; and a fee of rupees five for each subsequent hour (or fraction thereof)."

[F.No. 34012/8(s)/2005-Estt. (B)]

(T.Jacob)
Joint Secretary to the Government of India

Note.- The Principal rules were published in the Gazette of India vide Ministry of Personnel, Public Grievances and Pensions (Department of Personnel and Training) notification No. 34012/8(s)/2005-Estt. (B) dated 16th September, 2005 [G.S.R. No. 336 dated 1st October, 2005, Part II, section 3, sub-section (i)]

(T.Jacob)
Joint Secretary to the Government of India

To

The Manager,
Government of India Press,
Mayapuri, New Delhi.

रजिस्ट्री सं० डी० एल०-33004/99 REGD. NO. D. L.-33004/99

भारत का राजपत्र
The Gazette of India

असाधारण
EXTRAORDINARY
भाग II—खण्ड 3—उप-खण्ड (i)
PART II—Section 3—Sub-section (i)
प्राधिकार से प्रकाशित
PUBLISHED BY AUTHORITY

सं. 210] नई दिल्ली, बृहस्पतिवार, मई 18, 2006/वैशाख 28, 1928
No. 210] NEW DELHI, THURSDAY, MAY 18, 2006/VAISAKHA 28, 1928

कार्मिक, लोक ि ाकायत और पें ान मंत्रालय
(कार्मिक और प्रि ाक्षण विभाग)
अधिसूचना
नई दिल्ली, 17 मई, 2006

सा.का.नि. 294 (अ)—केन्द्री सरकार, सूचना का अधिकार अधिनियम, 2005 (2005 का 22) की धारा 27 की उप–धारा (2) के खंड (ख) और खंड (ग) द्वारा प्रदत्त भाक्तियों का प्रयोग करते हुए, सूचना का अधिकार (फीस और लागत का विनियमन) नियम, 2005 का और सं ाोधन करने के लिए निम्नलिखित नियम बनाती हैं, अर्थात :–

1.संक्षिप्त नाम और प्रारंभ–(1) इन नियमों का संक्षिप्त नाम सचना का अधिकार (फीस और लागत का विनियमन) सं ाोधन नियम, 2006 है।

(2) ये राजपत्र में प्रका ान की तारीख की प्रवृत्त होंगे।

(क) नियम 3 में, ''बैंकर चैक'' भाब्दों के प चात्, ''या भारतीय पोस्टल आर्डर'' भाब्द अंतः स्थापित किए
जाएंगे,
(ख) नियम 4 में, ''बैंकर चैक'' भाब्दों के प चात् ''या भारतीय पोस्टल आर्डर'' भाब्द अंतः स्थापित किए
जाएंगे,
(ग) नियम 5 में, ''बैंकर चैक'' भाब्दों के प चात्, '' या भारतीय पोस्टल आर्डर '' भाब्द अंतः सीापित थ्कए जाएंगे,

ख्का.सं. 3401/ठ(एस.)/2005–स्था.(बी.),
सी.बी. पालीवाल, संयुक्त सचिव

टिप्पणीः– मूल नियम, भारत के राजपत्र, असाधारण, भाग प्, खंड–3, उपखंड–(प), तारीख 1 अक्टूबर

THE GAZETTE OF INDIA EXTRAORDINARY
MINISTRY OF PERSONNEL PUBLIC GRIEVANCE AND PENSIONS
(Department of Personnel & Training
NOTIFICATION
New Delhi, the 17thMay, 2006

G.S.R. 294 (E)- In exercise of the powers conferred by clauses (b) and (c) of Sub-section (2) of Section 27 of the Right to Information Act, 2005 (22 of 2005), the Central Government hereby makes the following rules further to amend the Right to Information (Regulation of Fee and Cost) Rules, 2005, namely:-

1. Short Title and Commencement- (1) These rules may be called the Right to Information (Regulation of Fee and Cost) Amendment Rules, 2006.

(2)They shall come into force on the date of their publication in the Official Gazette.

2. In the Right to Information (Regulation of Fee and Cost) Rules, 2005-
(a) In rule 3, after the words “bankers cheque”, the words” or Indian Postal Order” shall be inserted.

(b) In rule 4, after the words “bankers cheque”, the words”or Indian Postal Order” shall be inserted,

(c) In rule 5, after the words “bankers cheque”, the words “or Indian Postal Order” shall be inserted.

[F.No. 34012/8(S0/2005-Estt. (B)]
C.B. PALIWAL , Jt. Secy.

Note- The principal rules were published in the Gazette of India, Extraordiary, Part II Section 3, Sub-section (i), dated the 1st October , 2005 vide number G.S.R. 336 dated 27th October, 2005.

(भारत के राजपत्र, भाग 2 खंड 3, उपखंड (1) में प्रका ानार्थ)

भारत–सरकार
कार्मिक, लोक–शिकायत और पें ान मंत्रालय
(कार्मिक और प्र ाक्षण– विभाग)

नई दिल्ली, दिनांक 16 सितम्बर, 2005

अधिसूचना

सा.का.नि.....केन्द्रीय सरकार, सचना का अधिकार अधिनियम, 2005 (2005 का 22) की धारा 27 की उपधारा (2) के खंड (ख) और खंड (ग) द्वारा प्रदत्त भाक्तियों का प्रयोग करतेहु निम्नलिखित नियम बनाती हैं :–

1. संक्षिप्त नाम और प्रारम्भ– (1) इन नियमों का संक्षिप्त नाम सचना का अधिकार (फीस और लागत का विनियमन) नियम, 2005 है।

2. ये राजपत्र में प्रका ान की तारीख को प्रवृत्त होंगे।

2. परिभाशाएं–इन नियमों में, जब तक कि संदर्भ से अन्यथा अपेक्षित न हो –

(क) ' अधिनियम' से, सचना का अधिकार अधिनियम, 2005 अभिप्रेत है,

(ख) 'धारा' से उक्त अधिनियम की धारा अभिप्रेत हैं ,

(ग) अन्य सभी भाब्दों और पदों के जो इसमें प्रयुक्त है और परिभाशित , नहीं है, वही अर्थ होंगे जो उस अधिनियम में है।

3. धारा 6 की उप धारा (1) के अधीन सचना अभिप्राप्त करने के लिए कोई अनुरोध, दस रूपए की आवेदन फीस के साथ होगा, जो समुचित रसीद के विरूद्ध नकद के रूप में या मांग देय ड्राफ्ट या बैंकर चेक के रूप में होगी जो लोक प्राधिकारी के किसी लेखा अधिकारी को संदेय होगा, प्रभारित की जाएगी–

(क) तैयार किए गए या प्रतिलिपि किए गए प्रत्येक (ए–4 या ए–3 आकार) कागज के लिए दो रूपए,

(ख) बड़े आकार के कागज में किसी प्रतिलिपि का वास्तविक प्रभार या लागत कीमत,

(ग) नमूनों या माडलों के लिए वास्तविक लागत या कीमत, और

(घ) अभिलेखों के निरीक्षण के लिए, पहले घंटे के लिए कोई फीस नहीं, ओर उसके प चात् पन्द्रह मिनट (या उसके भाग) के लिए पांच रूपए की फीस।

5. धारा 7 की उपधारा (5) के अधीन किसी सचना को उपलब्ध कराने के लिए फीस, निम्नलिखित दर पर, जो समुचित रसीद के विरूद्ध नकद के रू॰ में या मांग देय ड्राफ्ट या बैंकर चैक के रूप में होगी जो लोक प्राधिकारी के किसी लेखा अधिकारी को संदेय होगा, प्रभारित की जाएगी :–

(क) डिस्केट या फ्लॉपी में सूचना उपलब्ध कराने के लिए, प्रति डिस्केट या फ्लॉपी, पचास रूप्ए, और

(ख) मुद्रित प्ररूप में दी गई सूचना के लिए, ऐसे प्रका ान के लिए नियत कीमत पर या ऐसे प्रका ान से उरणों की फोटो प्रति के प्रति पृश्ठ के लिए दो रूपए।

(हरि कुमार)
निदे ाक
(फा.सं.–340128 (एस.)2005–स्थापना (ख)

सेवा में,
प्रबन्धक,
भारत सरकार मुद्रणालय,
रिंग रोड मायापुरी,
नई दिल्ली।

(TO BE PUBLISHED IN PART-II. SECTION 3, SUB-SECTION (i) OF THE] GAZETTE OF INDIA)

Government of India
Ministry of Personnel, Public Grievances and Pensions
(Department of Personnel and Training)

New Delhi, Dated the 16th September, 2005

Notification

G.S.R. ……., In exercise of the powers conferred by clauses (b) and (c) of sub-section (2) of section 27 of the Right to Information Act, 2005 (22 of 2005), the Central Government hereby makes the following rules, namely :-

1. Short title and commencement - (1) These rules may be called the Right to Information (Regulation of Fee and Cost) Rules, 2005.

2. They shall come into force on the date of their publication in the official Gazette.

2. Definitions-In the rules, unless the context otherwise requires:-

(a) 'Act' means the Right to Information Act, 2005;

(b) 'Section' means section of the Act;

(c) All other words and expression used herein but not defined and defined in the Act shall have the meanings assigned to them in the Act.

3. A request for obtaining information under sub-section (1) of section 6 shall be accompanied by an application fee of rupees ten by ay of cash against proper receipt or by demand draft or bankers cheque payable to the Accounts Officer of the public authority.

4. For providing the information under sub-section (1) of section 7, the fee shall be charged by ay of cash against proper receipt or by demand draft or bankers cheque payable to the Accounts Officer of the public authority at the following rates :-

(a) Rupees two for each page (in A-4 or A-3 size paper) created or copied ;

(b) Actual charge or cost price of a copy in larger size paper;
(c) Actual cost or price for samples or models; and

(d) For inspection of records, no fee for the first hour; and a fee of rupees five for each fifteen minutes (or fraction thereof) thereafter.

5. For providing the information under sub-section (5) of section7, the fee shall be charged by way of cash against proper receipt or by demand draft or bankers cheque payable to the Accounts Officer of the pubic authority at the following Rates:-

(a) For information provided in diskette or floppy rupees fifty per diskette or floppy; and

(B) For information provided in printed form at the price fixed for such publication or rupees two per page of photocopy for extracts from the publication.

(Hari Kumar)
Director

[F.No. 34012/8 (s)/2005-Estt. (B)]

To
The Manager,
Government of India Press,
Mayapuri, New Delhi.

Appendix-2

WEBSITE RESOURCES

List of Select Web Resources on Right to Information

- www.righttoinformation.gov.in
- www.rti.gov.in
- www.cic.gov.in
- www.r2inet.org
- www.righttoinformation.info
- www.freedominfo.org
- www.indiatogether.org
- www.humanrightsinitiave.org
- www.parivartan.com
- www.prajanet.org
- www.righttoinformation.org
- www.geocities.com/mahadhikar
- http://groups.yahoo.com/group/mahadhikar
- http://indiarti.blogspot.com
- http://groups.yahoo.com/group/kria
- http://www.delhigovt.nic.in/right.asp
- http://www.nagrikchetna.org/
- http://www.mahadhikar.org/
- www.nyayabhoomi.org
- www.agnimumbai.org
- http://www.adrindia.org
- http://www.respondanet.com/
- www.article19.org
- http://www.info.gov.hk/access/code.htm
- http://www.globalknowledge.org
- www.opendemocracy.org.za
- www.freedomhouse.org
- www.foiadvocates.net
- www.ifitransparency.org
- www.transparency.org

List of Website links to State Information Commissions

- Andhra Pradesh-www.apic.gov.in
- Assam-www.sicassam.in
- Bihar-www.bsic.co.in
- Chattisgarh-www.cg.nic.in/sic
- Goa-www.egov.goa.nic.in/rtipublic/sic.asp
- Gujarat-www.gic.guj.nic.in
- Harayana-www.cicharyana.gov.in
- Himachal Pradesh-www. 210.212.20.92/jsic
- Karnataka-www.kic.gov.in
- Kerala-www.keralasic.gov.in
- Madhya Pradesh-www.mpsic.in
- Maharashtra-www.sic.maharashtra.gov.in
- Meghalaya-www.rti-meg@nic.in
- Mizoram-www.msic.mizoram.gov.in
- Nagaland-www.nlsic.gov.in
- Orissa-www.orissasoochanacommission.nic.in
- Punjab-www.inforcommpunjab.gov.in
- Sikkim-www.cicsikkim.gov.in
- Tamil Nadu-www.rtitripura.nic.in
- Uttar Pradesh- www.upsic.up.nic.in
- Uttarakhand-www.gov.ua.nic.in/nic
- West Bengal-www.wbic.gov.in