
*JUDGEMENTS ON PUBLIC
INFORMATION, THIRD PARTY
INFORMATION AND STAGES
OF DEPARTMENTAL ACTIONS
IN RTI*

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**सूचना का
अधिकार
RIGHT TO
INFORMATION**

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PROCEDURE FOR FILING AN RTI

Being classified as a fundamental act, the procedure to file an RTI application has been kept quite simple making it easy for our citizens to file one without much ado. Here are the steps involved in filing an RTI.

1. Identify the department one would seek information from

The subject you have in mind may fall under the State Government, Central Government or a local Municipality. Please keep in mind that if it is a matter that requires discretion, you may not get access to it.

2. Preparing the RTI application

Draft your RTI application on a plain white paper. It can either be written or typed in Hindi, English or any other local language used in your region. If it is handwritten, please make sure the text is clearly visible and does not lead to any confusion.

3. Addressing the RTI application

RTI application must be addressed to the State/Central Public Information Officer. Write the name of the Public authority from which one wishes to obtain information. It is necessarily required to clearly mention that you seek information “under the RTI Act, 2005”.

4. Framing the RTI application

The questions one desires to seek information from must be clearly written out. The question must be detailed as possible. It would be ideal to mention the year or the time period in which the information could be gathered. One is permitted to seek relevant documents or excerpts from documents.

5. Fees

Fee for filling RTI application is fixed at INR 10/-. The payment can be made in cash, bank, draft, money order or court fee. The fees are exempted for individuals falling under the bellow poverty line (BPL) category. A copy of the BPL certificate must be attached to the application to receive concession.

6. Contact Details

As the RTI is an Act which calls for a response, it is necessary to mention the contact details of the appellant including full name, permanent address, phone number and email address of the appellant. Place of signature, date is also very crucial.

7. Reply to the RTI

The law mandates that a response to an RTI must be given in less than 30 days or 48 hours if it concerns an individual's life/liberty. If no reply is received, then there is First Appellate Authority. If the First Appellate Authority fails to provide reply, then a second appeal is filled before the Central/State Information Commission.

PERSONAL INFORMATION

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

It must be personal information.

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

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

When a person applies for a job, or gives information about himself to a Public authority as an employee, or asks for a permission, licence or authorization, all these are public activities.

Therefore we can accept that disclosure of information which is routinely collected by the Public authority and routinely provided by individuals, would not be an invasion on the privacy.

Following Information can't be denied by the Public authority on the ground that it is 'personal information'-

1. Appointments, promotions, upgradations are all public activity, hence the exemption has been wrongly applied.
2. Document regarding the transfer of two of his colleagues, vis-a-vis whom he felt that he had been discriminated against is not exempted.
3. It was pointed out that the details of leave taken by the public servant has to be disclosed, however, the purpose for which the leave was taken need not be given because it is exempted under section 8(1)(j) of the RTI Act.

4. LTC Information of officials not personal to them.
5. Rules governing salary, service matters, study leave records, Posting and transfer information of public servant can't be called 'personal information'.
6. Tour programme of officers not personal information.
7. Personal Information sought by legal heir of the deceased employee is not exempted to him.

IMPORTANT JUDGEMENT

Case Name: Canara Bank Vs CS Shyam and Anr¹

Date of Judgement: August 31, 2017

The requester sought information under section 6 of the RTI act, 2005 regarding transfer and posting of the entire clerical staff from 1/1/02 to 31/7/06 in all the branches of the bank. The information was sought on 15 parameters with regard to various aspects of transfers of clerical staff and staff of the bank with regard to individual employees. The information was in relation to the personal details of individual employee such as the date of joining, designation, details of promotion earned, transfer orders etc, etc.

The CPIO rejected the request on the grounds that the same was protected under section 8(1)(j) and secondly it had no nexus with any public interest or activity. The first appellate authority also rejected the requester's appeal. Aggrieved the requester filed an appeal before the CIC. By order dated 20/2/07 the appeal was allowed and accordingly directions were issued to the bank to furnish the information sought by the requester in his application.

¹ Canara Bank Rep. Deputy Gen. Manager v. C.S. Shyam & Anr. : Civil Appeal no.22 of 2009

Supreme court gave its decision based on these factors: -

1. The information sought by the respondent of individual employees working in the bank was personal in nature
2. It was exempted from being disclosed under section 8(1)(j) of the act and lastly, neither respondent no 1 disclosed any public interest involved in seeking such information of the individual employee and nor any finding was recorded by the CIC and the high court as to the involvement of any larger public interest in supplying the information to the respondent.

THIRD PARTY INFORMATION

The passing of the Right to Information Act, 2005 was seen as giving an empowering tool in the hands of the citizens of India, six years post its implementation, loopholes have surfaced with misuse of the many fundamental concepts, which have yet not been defined to allow for a consistent pattern of decisions. Among many problems that emerge with the Act, a major problem is defining the extent to which an individual has access to other people's information.

According to section 2 (n) of the RTI Act, 2005, 'third party' means a person other than the citizen making a request for information and includes a 'public authority'. This implies that the term 'third party' includes anyone other than the appellant or the respondent. In matters where an appellant is seeking information not regarding his or her own activities, or is asking for details of several persons other than him or her, information cannot be provided until the 'third party' consents to disclosure and subsequently until the Central Public Information Office (CPIO), after considering the implications of such disclosure allows it.

Section 11 (1) the Act provides the procedure to access third party information wherein the appellant needs to request for the third party's consent after which the CPIO will produce a written request to the 'third party' and within a stipulated time period obtain their response. However, it is not the information bearer (third party) who holds the key to disclosure. The power, by the RTI Act, 2005, is vested in the public information officer who will then, either see a 'larger public interest', or otherwise allow disclosure based on the merits of the case.

Procedure of disclosing third party information:

On receipt of the submissions of the third party, the PIO shall keep the submissions in view and then decide whether the information sought shall be disclosed or not. If the PIO does not find any merit in the submissions of the third party, he shall disclose the information sought to the applicant. On the other hand, where the PIO decides that the information sought shall not be disclosed then the basis for denial of information must be in accordance with Sections 8 and 9 of the RTI Act only.

The Public Information Officer will have to consider the following:

1. The objections raised by the third party by claiming confidentiality in respect of the information sought for.
2. Whether the information is being sought by the applicant in larger public interest or to wreak vendetta against the third party. In deciding that the profile of person seeking information and his credentials will have to be looked into. If the profile of the person seeking information, in light of other attending circumstances, leads to the construction that under the pretext of serving public interest, such person is aiming to settle personal score against the third party, it cannot be said that public interest warrants disclosure of the information solicited.
3. The Public Information Officer, while dealing with the information relating to or supplied by the third party, has to constantly bear in mind that the Act does not become a tool in hands of a busy body to settle a personal score.”

IMPORTANT JUDGEMENT

Case name: Union Public Service Commission Etc. v. Angesh Kumar &ors.²

Date of Judgment: February 20, 2018

The respondents who were unsuccessful candidates in the Civil Services (Preliminary) Examination, 2010 have approached the High Court for a direction to the Union Public Service Commission (UPSC) to disclose the details of marks (raw and scaled) awarded to them in the Civil Services (Prelims) Examination 2010. The information in the form of cut-off marks for every subject, scaling methodology, model answers and complete result of all candidates were also sought.

UPSC in the case has argued that the High Court has not correctly appreciated the scheme of the Right to Information Act, 2005 (the Act) and the binding decisions of this Court. It was *inter alia* contended that though Sections 3 and 6 of the Act confer right to information (apart from statutory obligation to provide specified information under Section 4), Sections 8, 9 and 11 provide for exemption from giving of information as stipulated therein.

² Union Public Service Commission Etc. v. Angesh Kumar & Ors. Etc. : Civil Appeal No.(S).6159-6162 Of 2013

The Two-Judge Bench of the Supreme Court made the following decision:

1. That weighing the need for transparency and accountability on the one hand and requirement of optimum use of fiscal resources and confidentiality of sensitive information on the other, **information sought with regard to marks in Civil Services Exam cannot be directed to be furnished mechanically.**
2. That furnishing raw marks will cause problems which would not be in public interest. However, if a case is made out where the Court finds that public interest requires furnishing of information, the Court is certainly entitled to so require in a given fact situation.

IMPORTANT JUDGEMENT

Case Name: Puneet Kumar vs State Information Commission, Haryana and Ors.³

Date of Judgement: February 6, 2017

The petitioner had filed an application before the State Public Information Officer-cum-District Education Officer, Hisar seeking information pertaining to different public schools in Haryana regarding their affiliation; area and size of the schools in square meter; attested copies of NOC of fire safety certificate for last three years.

The appeal filed by the petitioner has been dismissed on the ground that the information sought for by the petitioner, is related to the private schools which are neither Government aided institutions nor in receipt of any grant from the Government and are not covered under RTI Act.

³ Puneet Kumar v. State Information Commission, Haryana through its registrar and others. : Letters Patent Appeal No.456 of 2017

The petitioner submitted that the said observation regarding private schools being not covered under RTI Act is contrary to the statutory provisions as the private schools are under the supervision of District Education Officer which is a statutory authority as such information sought for by the petitioner should have been provided under the provisions of RTI Act.

The Hon'ble High Court of Punjab and Haryana held that it is apparently a personal information regarding the third party which is being sought for by the petitioner. There is no infirmity in the order passed by the State Information Commissioner.

TIME PERIOD FOR SUPPLY OF INFORMATION

| Serial Number | Nature of Request | Time Limit |
|---------------|---|--------------------|
| 1 | If the request has been made to the PIO, the reply is to be given within | 30 days of receipt |
| 2 | If the application has to been made to an APIO, the response is to be provided within | 35 days of receipt |
| 3 | If the PIO transfers the request to another public authority, the time allowed to reply is 30 days but computed from the day after the PIO of the transferee authority receives it | 30 days |
| 4 | Information concerning corruption and Human Rights Violation by scheduled security agencies is to be provided within 45 days, but prior approval of the Central Information Commission. | 45 days |
| 5 | If the life or liberty of any individual is involved, the PIO is expected to reply within | 48 days |
| 6 | Transfer of application to other public authority under Section 6(3) of the Act | 5 days |

JUDGEMENT ON DISCLOSURE OF ENQUIRY REPORT

Case name: Mr. B. Bhaskar v. Income Tax Department⁴

Date of Judgment: August 1, 2014

The appellant filed an application under the Right to Information (RTI) Act with the Income Tax (IT) department seeking information about the complaints made against him and copy of the enquiry report. The Public Information Officer (PIO) declined the information under section 8(1)(j) of the RTI Act. The First Appellate Authority (FAA) upheld the decision of the PIO and denied the information under section 8(1)(g) of the RTI Act stating that if the names of the complainant are disclosed to the appellant, their personal safety may be jeopardized.

The CIC ruled that disclosure of names of the complainants would expose them to danger to their lives and physical safety. It will also be inhibited in filing complaints in future thereby depriving the Income Tax Department of a potent source of information which may adversely affect the revenues of the State. The Commission rejected the appeal holding that information has been correctly denied under section 8(1)(j) of the RTI Act.

⁴ CIC/RM/A/2012/000375/LS

JUDGEMENT ON DEPARTMENTAL ENQUIRY

Case name : Gp. Capt D.C. Mehta v. Airport Authority of India⁵

Date of Judgement: August 6, 2014

Appellant sought inspection of file no. AAI/VIG/NER/rectt./PV-21 in relation to departmental enquiry proceedings against his client Shri S. C. Sharma ED (PMQA). PIO denied the inspection by invoking exemption under section 8 (1) (h) of the RTI Act. The First Appellate Authority vide order dated 31/10/2013 upheld the decision of PIO. The respondent stated that the concerned file contained complaint, enquiry reports, advices by the CVO and CVC.

Respondent stated that appellant did not mention the specific information or document w.r.t. charge sheet but merely asked for the inspection of the file

Respondent further stated that VIR/Vigilance file contains third party information like CVC advice, complainant's name and addresses, MOC reference, CBI reference and other officer's statement. On query by the Commission whether all documents, statements used for framing the charge sheet & used during the proceedings have been provided to appellant or not, it was seen that the file had already been provided to the charged officials.

⁵ CIC/YA/A/2014/000043-YA

The commission observes that as per the file noting copy of the IO's report along with CVO's second advice is already provided to the charged officials. After hearing the respondent and perusal of record, the Commission is of the view that all the documents which are necessary to the appellant for canvassing his client's case and the portion which relates to the appellant's client had already been provided to his client. The commission upholds the view of PIO to deny the inspection of the file by invoking exemption under Sec. 8(1)(h) of the RTI Act.

DISCIPLINARY PROCEEDINGS

Public officials who deliberately delay or obstruct an application for information, or who deliberately provide incorrect or misleading information can be punished under the RTI laws. The Central Act allows for the imposition of penalties. Most notably, where a PIO has, without any reasonable cause:

- refused to receive an application;
- not furnished information within time limits;
- malafidely denied the request;
- knowingly given incorrect, incomplete or misleading information;
- destroyed information subject to a request
- obstructed the process,

The Information Commission can impose a penalty of Rs 250 per day. The total penalty cannot exceed Rs 25,000. The CPIO shall, however be given reasonable opportunity of being heard before any penalty is imposed upon him.

JUDGEMENT ON DISCIPLINARY PROCEEDING

Case name : Shri Raju Singh v. All India Institute of Medical Sciences⁶

Date of Judgement: April 24, 2015

The appellant sought information on 8 points with respect to disciplinary proceedings initiated against him. PIO vide letter dated 27.02.2014 informed the appellant that information sought is confidential, hence could not be provided at that time. Having not received any response from the FAA, Appellant filed present appeal before the Commission. The appellant, an employee of the respondent, stated that a disciplinary action has been initiated against him and charge sheet issued to him. But, he has not been provided the necessary documents on the basis of which he should be able to prove his innocence. He, therefore, pleaded that the information asked for should be furnished to him.

In the instant case, the reply given by the CPIO is outright denial of information on ground of confidentiality. In case any information is to be denied, the grounds for doing so should be clearly stated.

⁶ CIC/YA/A/2014/001034

The PIO, who is denying information under the RTI Act, must show satisfactory reasons as to why information cannot be disclosed and clearly state exemption provided under the RTI Act.

The CPIO is, therefore, directed to furnish a point-wise response and provide information on the basis of available records, within 15 days of receipt of this order, under intimation to the Commission. Show cause notice is issued to the Shri K.P. Singh, A.O./CPIO, All India Institute of Medical Sciences as to why penalty should not be imposed on him u/s 20 RTI Act, 2005

DEPARTMENTAL NEGLIGENCE JUDGEMENTS

Case Name: Shahzad Singh v. Department of Posts⁷

Date of Judgement: January 17, 2018

Appellant filed RTI application dated 03.05.2016 seeking attested copies of replies received by Director, covering letters related to posts for Sr. Hindi Translators. The CPIO replied that the file related to Sr. Hindi translators was missing and the same was upheld by the FAA.

In the case, the CIC noted that the Respondent Department's claim that concerned files were are not traceable proves the fact they had it in their possession, which binds them to provide the information by searching the same. The Commission also observed that frequent reference to 'missing files' as an excuse to deny the information is a major threat to transparency, accountability and also major reason for violation of Right to Information Act, 2005. Millions of RTI applications might have been rejected by PIOs on this ground during the last 11 years of RTI regime.

With "missing files excuse" being around, it will be futile to talk about implementation of Right to Information Act, 2005. The claim of 'missing files' indicates possibility of deliberate destruction of records to hide the corruption, fraud or immoral practices of public servants, which is a crime under Indian Penal Code.

⁷ Shahzad Singh v. PIO, Department of Posts : CIC/POSTS/A/2016/299355

DENIAL OF INFORMATION JUDGEMENT

Case name : Adesh Kumar v. Union of India⁸

Date of Judgement : December 16, 2014

In the case, the Petitioner was aggrieved by denial of information under the RTI Act by the concerned Public Information Officer in the case. FIR had been lodged against the Petitioner during his tenure of service and subsequently, a charge sheet, against the petitioner was submitted. On receipt of charge sheet, the Petitioner applied for information under the RTI Act pertaining to sanction of prosecution against him.

However, the requested information was rejected by the CPIO claiming that there was no obligation to provide the same by virtue of Section 8(1)(h) of the RTI Act. The Delhi High Court while dismissing the Petitioner's plea in the case stated that impugned provision prohibits furnishing of information which would **impede the process of investigation or apprehension or prosecution of offenders.**

However, the Court held that merely, citing that the information is exempted under Section 8(1)(h) of the RTI Act would not absolve the public authority from discharging its onus as required to claim such exemption. Further, the Delhi High Court in the case has held that whether the information sought by the petitioner is relevant or necessary, is not relevant or germane in the context of the Act, a citizen has a right to information.

⁸ ADESH KUMAR v. UNION OF INDIA & ORS. : W.P.(C) 3543/2014

IMPOSITION OF PENALTY ON CPIO JUDGEMENT

Case name : Ram Jivan Dixit v. Syndicate Bank⁹

Date of Judgement : July 9, 2018

RTI Foundation of India

The appellant filed an application under the Right to Information Act, 2005 (RTI Act) before the Central Public Information Officer (CPIO), Syndicate Bank, Camp Branch, Pune seeking a certified copy of cheque No. 29000877114 which he had issued to the bank for RTGS on 13.12.2013. 2. The appellant filed a second appeal before the Commission on the grounds that the CPIO provided information after 38 days against the statutory time of 30 days provided under the RTI Act, 2005. The appellant alleged that the CPIO ante-dated the reply and the same was dispatched on 08.02.2017.

The appellant requested the Commission to impose a penalty of Rs. 2,000/- on the CPIO and the FAA jointly and severally under Section 20 of the RTI Act for furnishing the information after 38 days.

The Commission, after hearing the submissions of the respondent and perusing the records, observes that the information sought was furnished to the appellant vide letter dated 02.02.2017 after 38 days, against the statutory period of 30 days as prescribed under the RTI Act. However, the delay was on account of the time involved in ascertaining the bonafide of the RTI applicant as the bank is under obligation to maintain secrecy about its customers. Hence, it cannot be said that information was malafidely delayed by the respondent. Thus, in the absence of any malafide intention, it would not be appropriate to initiate any action for imposition of penalty on the CPIO.

⁹ Ram Jivan Dixit v. Syndicate Bank in CIC/SYNDB/A/2017/122435, dated 09.07.2018

PENALTY AND COMPENSATION PROVISION

As per Section 20(1) of the RTI Act, the CIC or the SIC, has the powers to impose a penalty on the PIO, while deciding on a complaint or a second appeal.

Penalty can be imposed, if the PIO has:

1. Refused to receive an application
2. Not furnished the requested information within 30 days of receiving the application
3. Malafidely denied the request for information
4. Knowingly given incorrect, incomplete or misleading information
5. Destroyed information which was the subject of the request
6. Obstructed in any manner, in furnishing the information

The amount of penalty shall be Rs. 250.00 per day, till the information is furnished or the application is received, subject to a maximum of Rs. 25,000.00.

The penalty has to be paid by the PIO from his salary and not by the Public Authority. The CIC or the SIC will give the PIO a reasonable opportunity to be heard before the penalty is imposed. However the burden of proving that he acted reasonably shall be on the PIO.

Under Section 19(8)(b) of the RTI Act, the CIC or the SIC, can require the Public Authority to compensate the complainant/appellant for any loss or detriment suffered. The complainant/appellant should be able to justify the claim for compensation as well as the amount of compensation sought.

CONCLUSION

“Informed citizen is better equipped to keep necessary vigil on the instruments of governance and make the government more accountable to the governed”.

Right to information which is one of the powerful tool in the hands of public provided by the government. The RTI Act, 2005 under its wide ambit includes almost all the govt. Offices and officials subject to certain exceptions. RTI act provides method to acquire information from public authorities regarding the functioning of the govt. The importance of RTI lies in its welfare aspect. It empowers citizen against govt. thus making govt. and its officials more accountable towards general public.

The basic object of the Right to Information Act is to empower the citizens, promote transparency and accountability in the working of the Government and make our democracy work for the people in real sense.

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