

Fiduciary Relationship under Section 8(1) (e) of RTI Act, 2005

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INTRODUCTION

The concept of legal right has been developed parallel to natural law theory. The constitution of a country has been evolved from the natural law as the highest law of land.¹ Fundamental rights are the second name of what have been called as the natural rights and it is basically the extension, combination and permutation of the basic natural rights.² Article 19 (1) (A) which includes the concept of right to freedom of speech and expression also includes right to sought information and disseminate the same.³ Right to information has been treated as a part of freedom of speech and expression in the plenty of cases by the court and even it is extended to right to life⁴, it was finally developed in a separate act named as Right to Information Act, 2005. In a government of responsibility like ours, where all the agents of the public must be responsible for their conduct, there can but few secrets. The people of this country have a right to know every public act, everything, that is done in a public way, by their public functionaries. They are entitled to know the particulars of every public transaction in all its bearing. The right to know, which is derived from the concept of freedom of speech, though not absolute, is a factor which should make one wary, when secrecy is claimed for transactions which can, at any rate, have no repercussion on public security.⁵

To bring openness and transparency in the democratic form of government it is necessary to have a mechanism which provides complete information to the public about the functioning of the public authority easily, so that Right to Information act is passed by the parliament. It is one of the most empowering and progressive act passed after the post-independence era. However it is equally true that all the information sought by the person cannot be provided otherwise it will create chaos between the public authorities including the operations of government, limited use of fiscal and the preservation of sensitive information and therefore it is necessary to harmonize these conflicting interest while preserving the supremacy of democratic ideal.⁶

This paper deals with “Fiduciary Relationship” under Section 8 (1) (e) of the RTI Act which is an exemption i.e. when the sought information should not be provided because of fiduciary relationship and how, in most cases, the information held by a regulator cannot be said to be information held in a fiduciary capacity.

¹ Ph.D. Scholar ,Department of Law and Senior Law officer, Savitribai Phule Pune University, Pune.

² Durga Das Basu, Human Rights in Constitutional Law, 54, (3rd edition, 2008).

³ *PUCCL vs. Union of India*, (2003) 4 SCC 399.

⁴ *Essar Oil Ltd. vs. Halar Utkarsh Samiti*, AIR 2004 SC 1834.

⁵ *Uttar Pradesh vs. Raja Narain*, (1975) 4 SCC 428.

⁶ *S.P. Gupta and Ors. Vs. President of India and Ors.*, AIR 1982 SC 149.

EXEMPTIONS UNDER RIGHT TO INFORMATION ACT

There are situations when the information sought cannot be provided by the public authority because of sensitiveness and secrecy of information which if disclosed would hamper the sovereignty and dignity of the country. Sometimes the information sought is related with third party, which affects the right to privacy which is also a fundamental right. So some exemptions are incorporated in the RTI Act under Section 8 which includes ten exemptions.

Section (8) of the RTI Act enlists some special instances when the authorities are exempted from disclosing information sought for. This includes information that would be prejudicial to national integrity, security or economic interests; would constitute to contempt of court of law; would hamper police investigations; would affect commercial interests like trade secrets; would impede the process of investigation; would affect fiduciary relationships and would harm the person physically.⁷

Section- 8-“Exemption from disclosure of information” defined.-

“(1) Notwithstanding anything contained in this Act, there shall be no obligation to give any citizen,—

- (a) information, disclosure of which would prejudicially affect the sovereignty and integrity of India, the security, strategic, scientific or economic interests of the State, relation with foreign State or lead to incitement of an offence;
- (b) information which has been expressly forbidden to be published by any court of law or tribunal or the disclosure of which may constitute contempt of court;
- (c) information, the disclosure of which would cause a breach of privilege of Parliament or the State Legislature;
- (d) information including commercial confidence, trade secrets or intellectual property, the disclosure of which would harm the competitive position of a third party, unless the competent authority is satisfied that larger public interest warrants the disclosure of such information;
- (e) information available to a person in his fiduciary relationship, unless the competent authority is satisfied that the larger public interest warrants the disclosure of such information;
- (f) information received in confidence from foreign government;

⁷ Vinod Kothari and Aditi Jhunjhunwala, Disclosure of fiduciary information under Sec 8 (1) (e) of the RTI Act: This is the true scope of the exclusion clause, 01 July 2011,(Dec. 07, 2018, 12:04 PM), <https://www.moneylife.in/article/disclosure-of-fiduciary-information-under-sec-8-1-e-of-the-rti-act-this-is-the-true-scope-of-the-exclusion-clause/17761.html>.

(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 not relationship to any public activity or interest, or which would cause unwarranted invasion of the privacy of the individual unless the Central Public Information Officer or the State Public Information Officer or the appellate authority, as the case may be, is satisfied that the larger public interest justifies the disclosure of such information:

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

(2) Notwithstanding anything in the Official Secrets Act, 1923 (19 of 1923) nor any of the exemptions permissible in accordance with sub-section (1), a public authority may allow access to information, if public interest in disclosure outweighs the harm to the protected interests.

(3) Subject to the provisions of clauses (a), (c) and (i) of sub-section (1), any information relating to any occurrence, event or matter which has taken place, occurred or happened twenty years before the date on which any request is made under section 6 shall be provided to any person making a request under that section: Provided that where any question arises as to the date from which the said period of twenty years has to be computed, the decision of the Central Government shall be final, subject to the usual appeals provided for in this Act.”⁸

FIDUCIARY RELATIONSHIP

Section 8 (1) (e) of the RTI Act guard personal information of person including public authority when it under the fiduciary relationship. Fiduciary relationship is basically a relation of trust between the fiduciary and beneficiary under which one party relies on the judgement and opinion

⁸ The Right to Information Act, 2005, Section 8: Exemption from disclosure of information.

of another. Fiduciary relationship can be of formal, informal, voluntary and involuntary. So firstly it is necessary to understand 'fiduciary relation' in detail as it is not defined under the Right to Information Act, 2005.

In the case of *Rakesh Kumar Singh and others versus Harish Chander, Assistant Director and others*⁹ Central Information Commission held that-

"The word fiduciary is derived from the Latin fiducia meaning "trust, a person (including a juristic person such as Government, University or bank) who has the power and obligation to act for another under circumstances which require total trust, good faith and honesty. The most common example of such a relationship is the trustee of a trust, but fiduciaries can include business advisers, attorneys, guardians, administrators, directors of a company, public servants in relation to a Government and senior managers of a firm/company etc. The fiduciary relationship can also be one of moral or personal responsibility due to the superior knowledge and training of the fiduciary as compared to the one whose affairs the fiduciary is handling. In short, it is a relationship wherein one person places complete confidence in another in regard to a particular transaction or one's general affairs of business."

*Black Law Dictionary*¹⁰ defines 'fiduciary relationship' as

"A relationship in which one person is under a duty to act for the benefit of the other on matters within the scope of the relationship. Fiduciary relationships – such as trustee-beneficiary, guardian-ward, agent-principal, and attorney-client – require the highest duty of care. Fiduciary relationships usually arise in one of four situations : (1) when one person places trust in the faithful integrity of another, who as a result gains superiority or influence over the first, (2) when one person assumes control and responsibility over another, (3) when one person has a duty to act for or give advice to another on matters falling within the scope of the relationship, or (4) when there is a specific relationship that has traditionally been recognized as involving fiduciary duties, as with a lawyer and a client or a stockbroker and a customer."

The *American Restatements (Trusts and Agency)* define 'fiduciary' as

"One whose intention is to act for the benefit of another as to matters relevant to the relation between them."

The *Corpus Juris Secundum*¹¹ attempts to define fiduciary thus:

"A general definition of the word which is sufficiently comprehensive to embrace all cases cannot well be given. The term is derived from the civil, or Roman, law. It connotes the idea of trust or confidence, contemplates good faith, rather than legal obligation, as the basis of the

⁹ MANU/CI/246/2007.

¹⁰ Black's Law Dictionary (7th Edition, Page 640).

¹¹ The Corpus Juris Secundum (Vol. 36A page 381).

transaction, refers to the integrity, the fidelity, of the party trusted, rather than his credit or ability, and has been held to apply to all persons who occupy a position of peculiar confidence toward others, and to include those informal relations which exist whenever one party trusts and relies on another, as well as technical fiduciary relations.

The word ‘fiduciary,’ as a noun, means one who holds a thing in trust for another, a trustee, a person holding the character of a trustee, or a character analogous to that of a trustee, with respect to the trust and confidence involved in it and the scrupulous good faith and candor which it requires; a person having the duty, created by his undertaking, to act primarily for another’s benefit in matters connected with such undertaking. Also more specifically, in a statute, a guardian, trustee, executor, administrator, receiver, conservator, or any person acting in any fiduciary capacity for any person, trust, or estate. Some examples of what, in particular connections, the term has been held to include and not to include are set out in the note.”

Words and Phrases, Permanent Edition¹² defines ‘fiducial relation’ thus:

“There is a technical distinction between a ‘fiducial relation’ which is more correctly applicable to legal relationships between parties, such as guardian and ward, administrator and heirs, and other similar relationships, and ‘confidential relation’ which includes the legal relationships, and also every other relationship wherein confidence is rightly reposed and is exercised. Generally, the term ‘fiduciary’ applies to any person who occupies a position of peculiar confidence towards another. It refers to integrity and fidelity. It contemplates fair dealing and good faith, rather than legal obligation, as the basis of the transaction. The term includes those informal relations which exist whenever one party trusts and relies upon another, as well as technical fiduciary relations.”

In ***Bristol and West Building Society vs. Mothew***¹³ the term fiduciary was defined thus:

“A fiduciary is someone who has undertaken to act for and on behalf of another in a particular matter in circumstances which give rise to a relationship of trust and confidence. The distinguishing obligation of a fiduciary is the obligation of loyalty..... A fiduciary must act in good faith; he must not make a profit out of his trust; he must not place himself in a position where his duty and his interest may conflict; he may not act for his own benefit or the benefit of a third person without the informed consent of his principal.”

In ***Wolf vs. Superior Court***¹⁴ the California Court of Appeals defined fiduciary relationship as under:

¹² Words and Phrases, Permanent Edition (Vol. 16A, Page 41).

¹³ EWCA Civ 533,, Ch 1.

¹⁴ 2003 (107) California Appeals, 4th 25.

“Any relationship existing between the parties to the transaction where one of the parties is duty bound to act with utmost good faith for the benefit of the other party. Such a relationship ordinarily arises where confidence is reposed by one person in the integrity of another, and in such a relation the party in whom the confidence is reposed, if he voluntarily accepts or assumes to accept the confidence, can take no advantage from his acts relating to the interests of the other party without the latter’s knowledge and consent.”

According to the *Advanced Law Lexicon Dictionary*¹⁵, fiduciary relationship means:

“A relationship in which one person is under a duty to act for the benefit of the other on the matters within the scope of the relationship Fiduciary relationship usually arise in one of the four situations (1) when one person places trust in the faithful integrity of another, who is a result gains superiority or influence over the first, (2) when one person assumes control and responsibility over another, (3) when one person has a duty to act or give advice to another on matters falling within the scope of the relationship, or (4) when there is specific relationship that has traditionally be recognized as involving fiduciary duties, as with a lawyer and a client, or a stockbroker and a customer.”

Section -16 -“Undue influence”¹⁶ of Indian Contract Act, 1872 defined.—

“(1) A contract is said to be induced by “undue influence” where the relations subsisting between the parties are such that one of the parties is in a position to dominate the will of the other and uses that position to obtain an unfair advantage over the other.

(2) In particular and without prejudice to the generality of the foregoing principle, a person is deemed to be in a position to dominate the will of another—

(a) where he holds a real or apparent authority over the other, or where he stands in a fiduciary relation to the other; or

(b) where he makes a contract with a person whose mental capacity is temporarily or permanently affected by reason of age, illness, or mental or bodily distress.

(3) where a person who is in a position to dominate the will of another, enters into a contract with him, and the transaction appears, on the face of it or on the evidence adduced, to be unconscionable, the burden of proving that such contract was not induced by undue influence shall lie upon the person in a position to dominate the will of the other.”

Section- 88-“Advantage gained by fiduciary”¹⁷ of Indian Trusts Act, 1882 defined.-

¹⁵ P Ramanatha Aiyar’s, Lexis Nexis, 2017, Fifth edition (23 December 2016).

¹⁶ Indian Contract Act, 1872, Section 16: Undue Influence.

¹⁷ Indian Trusts Act, 1882, Section 88: Advantage Gained by Fiduciary.

“Where a trustee, executor, partner, agent, director of a company, legal adviser, or other person bound in a fiduciary character to protect the interests of another person, by availing himself of his character, gains for himself any pecuniary advantage, or where any person so bound enters into any dealings under circumstances in which his own interests are, or may be, adverse to those of such other person and thereby gains for himself a pecuniary advantage, he must hold for the benefit of such other person the advantage so gained.”

Section-20- “Fiduciary relation of guardian to ward” ¹⁸of Guardians and Wards Act, 1890 defined.-

“(1) A guardian stands in a fiduciary relation to his ward, and, save as provided by the will or other instrument, if any, by which he was appointed, or by this Act, he must not make any profit out of his office.

(2) The fiduciary relation of a guardian to his ward extends to and affects purchases by the guardian of the property of the ward, and by the ward of the property of the guardian, immediately or soon after the ward has ceased to be a minor and generally all transactions between them while the influence of the guardian still lasts or is recent.”

In a nutshell fiduciary is a person who occupies a position of trust, has a responsibility of not leaking the information related to beneficiary, therefore requiring him to act for the latter’s benefit within the scope of that relationship. It is important that the information provided by the beneficiary to the fiduciary is on the basis of trust created. The information provided to fiduciary should be for the benefit of the beneficiary not for the benefit of fiduciary; this is an important characteristic for the relationship to qualify as a fiduciary relationship so all the relationship of trust cannot be treated as fiduciary relationship”

WHEN EXEMPTION CLAIMED UNDER SECTION 8(1)(e) :JUSTIFIED

1. Information relating to other candidates competing in selection was necessary in larger public interest.

In the case of *Union Public Service Commission vs. Gourhari Kamila*¹⁹ Supreme Court held that –

“The CIC committed a serious illegality by directing the Commission to disclose the information sought by the respondent and the High Court committed error by approving his order. The present case is not covered by the exception carved out in section 8(1)(e) of the RTI Act. Neither

¹⁸ Guardians and Wards Act, 1890, Section 20: Fiduciary Relation of Guardian to Ward.

¹⁹ CIVIL APPEAL NO. 6362 OF 2013.

CIC nor HC came to conclusion that disclosure of information relating to other candidates who had competed with them in selection was necessary in larger public interest. The writ petition filed by the commission was dismissed by recording a cryptic order.”

2. Instructions and solutions to questions communicated by examining body to examiners and moderators.

In the case of *Institute of Chartered Accountant of India vs. H. Satya & Ors.*²⁰ Supreme Court held that-

“Anything given and taken in confidence expecting confidentiality to be maintained will be information available to a person in fiduciary relationship. As a consequence, it has to be held that the instructions and solutions to questions communicated by the examining body to the examiners, head-examiners and moderators, are information available to such persons in their fiduciary relationship and therefore exempted from disclosure under Section 8(1) (d) of RTI Act. Though exempted, if the competent authority under the Act is satisfied that larger public interest wants disclosure of such information, such information will have to be disclosed. It is needless to say that the competent authority will have to record reason for holding the exempted information should be disclosed in larger public interest. The Chief Information Commissioner rightly held that the information sought were exempted under Section 8(1)(e) of the RTI Act and that there was no larger public interest requiring denial of the statutory exemption regarding such information. The HC fell into an error in holding that the information sought was not exempted.”

3. Information related to list of finally short listed candidates for interview with criteria of shortlisting.

In the case of *UPSC vs. Sushil Kumar*²¹ the Delhi High Court held that-

“No finding has been recorded by Commission that it was in larger public interest to disclose information with respect to qualification and experience of other shortlisted candidates. In absence of recording such a finding Commission could not have directed disclosure of aforesaid information to Respondent. Order passed by CIC set aside.”

4. Information politically sensitive in nature or public interest warrants preservation of confidentiality.

In the case of *Milap Choraria, New Delhi vs. President’s Secretariat*²² Commission holds that-

²⁰ LNIND 2011 SC 857.

²¹ LNIND 2013 DEL 5621.

²² CIC/WB/A/2006/01003.

“Copies of all communications addressed to the President following the fourteenth general elections containing various suggestions on the formation of the government including the letter forwarded by Smt. Sonia Gandhi to the President of India sought, and the PIO refused to disclose the information seeking exemption under Section 8(1)(e) , commission held that the correspondence between the President of India and the Leader of political party concerning formation of Government is information exchanged in confidence and is politically sensitive in nature. An information which is sensitive in nature and if the public interest warrant preservation of confidentiality, it cannot be ordered to be disclosed. Therefore, deemed to be covered within the ambit of Section 8(1)(e).”

5. Information regarding D.N.A. test of son who is in custody of his mother.

In the case *Arjesh Kumar Madhok vs. Centre of Fingerprinting and Diagnostics, Hyderabad*²³Commission held that-

“Appellant sought to know from the Centre for D.N.A. Fingerprinting and Diagnostics, Hyderabad the result of D.N.A. test, if any that had been done in respect of his 5 year old son who was living in his wife custody. The CPIO declined the information under Section 8(1)(j) of. The appellant authority held that the results of the test cannot be provided as the tests were not conducted at the request of the appellant. The commission held that the relationship between doctor and patient or a lawyer and client falls squarely within the definition of fiduciary relations. In this case even if Section 8(1)(j) is not applied, Section 8(1)(e) will. The disclosure of diagnostic information to a private citizen can only be supplied by the party concerned directly and not by the confident. The decision of CPIO upheld.”

WHEN EXEMPTION CLAIMED UNDER SECTION 8(1)(e):UNJUSTIFIED

1. Examining bodies with reference to evaluated answer books.

In the case of *Central Board of Secondary Education & Anr. vs. Aditya Bandopadhyay & Ors.*²⁴Supreme Court held that-

“Every examinee will have the right to access his evaluated answer books by either inspecting them or take certified copies thereof, unless the evaluated answer books are found to be exempted under Section 8(1)(e) of RTI Act. Once the examiner has evaluated the answer books, he ceases to have any interest in the evaluation done by him. It cannot be said that the examining body holds the evaluated answer books in a fiduciary relationship either with reference to the

²³ CIC/WB/A/2007/00008.

²⁴ LNIND 2011 SC 747.

examinee who participates in the examination and whose answer-books are evaluated by the examining body. Not being information available to an examining body in its fiduciary relationship, the exemption under Section 8(1)(e) of RTI Act is not available to the examining bodies with reference to evaluated answer-books. As no other exemption under Section 8 is available in respect of evaluated answer books, the examining bodies will have to permit inspection sought by the examinees. Order of the High Court directing the examining bodies to permit examinees to have inspection of their answer books is affirmed.”

2. Information sought under RTI, Act can be denied by the Reserve Bank of India and other Banks to the public at large on the ground of economic interest, commercial confidence, and fiduciary relationship with other Bank.

In the case of *Reserve Bank of India vs. Jayantilal N. Mistry*²⁵ Supreme Court held that- “RBI is supposed to uphold public interest and not the interest of individual banks. RBI is clearly not in any fiduciary relationship with any bank. RBI has no legal duty to maximize the benefit of any public sector or private sector bank, and thus there is no relationship of ‘trust’ between them. RBI has a statutory duty to uphold the interest of the public at large, the depositors, the country’s economy and the banking sector. Thus, RBI ought to act with transparency and not hide information that might embarrass individual banks. The exemption contained in Section 8(1)(e) applies to exceptional cases and only with regard to certain pieces of information, for which disclosure is unwarranted or undesirable. If information is available with a regulatory agency not in fiduciary relationship, there is no reason to withhold the disclosure of the same. However, where information is required by mandate of law to be provided to an authority, it cannot be said that such information is being provided in a fiduciary relationship.”

3. Governor or PIO in his office can claim immunity from disclosure of any information under RTI Act?

In the case of *PIO, Joint secretary to the Governor Raj Bhavan, Donapaula, Goa vs. Shri Manohar Parrikar & Anr. With Special Secretary to the Government of Goa vs. State Chief Information Commissioner & Ors.*²⁶ High Court held that-

“Governor is not a sovereign and sovereignty does not vest in him – Governor and PIO in his office cannot claim immunity from disclosure of any information under RTI Act- Relationship between President and Governor of a state is not fiduciary- President cannot be said to hold fiduciary relationship qua Governor of a State- Consequently, information sought for under

²⁵ CIVIL NO. 91 OF 2015.

²⁶ LNIND 2011 BOM 1749.

Section 356(1) ²⁷ of Constitution of India not exempted from disclosure under Section 8(1)(e) of the RTI Act.”

4. Asset information of judges held by CJI

In the case of *Secretary General, Supreme Court of India vs. Subhash Chandra Agarwal* ²⁸ Delhi High Court held that-

“The CJI cannot be a fiduciary vis-à-vis Judges of Supreme Court. The Judges of the Supreme Court hold independent office, and there is no hierarchy, in their judicial functions, which places them at a different place than the CJI. The declarations are not furnished to the CJI in private relationships or as trust but in discharge of the constitutional obligation to maintain higher standards and probity of judicial life and are in the larger public interest. In these circumstances, it cannot be held that the assets information shared with the CJI, by the Judges of Supreme Court, are held by him in the capacity of fiduciary, which if directed to be revealed, would result in breach of such duty.”

5. Photocopy of OMR answer sheets, when there is a condition in brochure that no photocopy of OMR answers sheets will be provided.

In the case of *Indian Institute of Technology, Delhi vs. Navin Talwar* ²⁹ Delhi High Court held that-

“In the first place given the fact that the admittedly the evaluation of the ORS is carried out through a computerized process and not manually, the question of their being a fiduciary relationships between the IIT and the evaluation does not arise. It is obvious that the evaluation of the ORS/ORM sheets is through a computerized process and no prejudice can be caused to the IIT by providing a candidate, photocopy of the concerned ORS. This is not the information being sought photocopy of the ORS will not compromise the identity of the evaluator, since the evaluation is done through a computerized process. In other words, a candidate does not lose his

²⁷ Constitution of India, Section 356(1): Provisions in case of failure of constitutional machinery in State

(1) If the President, on receipt of report from the Governor of the State or otherwise, is satisfied that a situation has arisen in which the government of the State cannot be carried on in accordance with the provisions of this Constitution, the President may by Proclamation

(a) assume to himself all or any of the functions of the Government of the State and all or any of the powers vested in or exercisable by the Governor or any body or authority in the State other than the Legislature of the State;

(b) declare that the powers of the Legislature of the State shall be exercisable by or under the authority of Parliament;

(c) make such incidental and consequential provisions as appear to the president to be necessary or desirable for giving effect to the objects of the Proclamation, including provisions for suspending in whole or in part the operation of any provisions of this constitution relating to any body or authority in the State Provided that nothing in this clause shall authorise the President to assume to himself any of the powers vested in or exercisable by a High Court, or to suspend in whole or in part the operation of any provision of this Constitution relating to High Courts.

²⁸ LPA No. 501/2009, decided on 12-01-2010.

²⁹ LNIND 2011 DEL 3033.

or her right under the RTI Act only because he or she has agreed to sit for exam. The condition in the brochure that no photocopy of ORS/ORM sheet will be provided is subject to RTI Act, it cannot override the RTI Act. The evaluation of the ORS is carried through a computerized process and not manually, the question of there being a fiduciary relationship between the IIT and the evaluators does not arise.”

ANALYSIS

The RTI Act is one the rarest legislation which gives the power to citizens of a country in contrary to other legislations which generally curtail the power of citizens. However the aim of RTI ACT might have been for the benefit of citizens but its actual operation is totally opposite because of the burden of the bureaucracy. Generally PIO (Public Information Officer) try to avoid providing information in the name of one of the exemptions mentioned in Section 8 of RTI Act. The information seeker has a right to file an appeal after 30 days of filing the RTI but due to lack of availability of time and resources hundreds of people didn't file appeal. Section 8 of RTI Act provides some special instances under which PIO can deny the sought information to the information seeker. This includes information that would be prejudicial to national integrity, security or economic interests; would constitute to contempt of court of law; would hamper police investigations; would affect commercial interests like trade secrets; would impede the process of investigation; would affect 'fiduciary' relationships and would harm the person physically.

One of the favorite exemptions of PIO is that the information is with the public authority under the relation of fiduciary relationship under Section 8 (1) (e) of the RTI Act. The plea of fiduciary relationship disappoints many information seekers. Fiduciary relation is not *pari passu* with confidentiality and privacy, it is a relation of trust under which one party (beneficiary) provide information to other party (fiduciary) and other party has to secure the information. As such there is no agreement between the two while providing the information that the information needs to keep safe, but due to the trust shown by fiduciary, information need to be kept immune from the scrutiny of the public authority. It is to be kept in mind that the RTI Act is premised on disclosure being the norm, and refusal being the exception.

A contractual or a statutory relationship can cover a very broad field but fiduciary relationship may be confined to a limited area or act, e.g. Directors of a company have several statutory

obligations to perform. A relationship may have several facets, it may be partly fiduciary and partly non fiduciary. It is not necessary that all statutory, contractual or other obligations must relate to and satisfy the criteria of fiduciary obligations. Fiduciary relationships may be confined to a particular act or action and need not manifest itself in entirety in the interaction or relationship between the two parties.³⁰

The relationship of public servant with government can be classified as fiduciary relationship in respect of a particular transaction or when the law requires him to act with utmost good faith for the benefit of the government and confidence is reposed in in the integrity of the public servant, who should act in a manner that he shall not profit or take advantage from the said act. Notwithstanding, there ought to be a reasonable and explicit finding by arranging the data in such manner. Ordinary, daily schedule or rather numerous demonstrations, exchanges and obligations of a local official can't be classified as trustee with the end goal of Section 8(1)(e) of the Right to Information Act.

The question behind Section 8(1) (e) is to ensure the data since it is outfitted in certainty and trust rested. It fills open need and guarantees that the certainty, trust and the secrecy connected isn't sold out. This is the general population intrigue, which the exception under Section 8(1) (e) is intended to secure. It ought not to be extended past what is wanted to be secured. Keeping in view the question and reason behind Section 8(1) (e) of the Right to Information Act, where it is conceivable to ensure the character and privacy of the guardian, data can be outfitted to the data searcher. This must be analyzed on the off chance that to case premise, independently.

The competent authority is authorize to validate whether information should be disclosed in the view of larger public interest information protected under Section 8(1)(e) should be disclosed. The decision of PIO shall be final whether the information should be provided or not after satisfying himself that the information should be disclosed in the name of public interest. A choice of the PIO on the inquiry whether data was outfitted/accessible to an open in fiduciary relationship or not, can be made subject matter of Appeal before the Appellate Authorities including the CIC/SIC.³¹

³⁰ Observations made by Justice Sanjeev Khana in Union of India v. Ministry of Personnel Case, decided on 30 November, 2009.

³¹ PROTECTION OF PERSONAL AND OFFICIAL INFORMATION UNDER RIGHT TO INFORMATION ACT, Chapter V, (10, Dec, 2018, 03:33 PM), http://shodhganga.inflibnet.ac.in/bitstream/10603/32397/11/11_chapter%205.pdf.

Thus, where information can be furnished without compromising or affecting the confidentiality and identity of the fiduciary, information should be supplied and the bar under Section 8(1)(e) of the Act cannot be invoked. In some cases principle of severability under section 10 of the RTI Act can be applied and thereafter information can be furnished. In cases where it is not possible to protect the identity and confidentiality of the fiduciary, the privileged information is protected under Section 8(1)(e) of the Right to Information Act, 2005. In other cases, there is no jeopardy and the fiduciary relationship is not affected or can be protected by applying doctrine of severability.

CONCLUSION

In the year 2005, RTI was enacted, keeping in view the past pronouncements by Hon'ble Apex Court and various High Courts any information can be asked subject to the provisions of RTI Act, 2005. Section 8, 9 and 24 of the RTI ACT deals with some exemptions where information sought can be denied. The most common exemption pleaded by PIO is fiduciary relationship under Section 8(1)(e) of the RTI Act i.e. the information cannot be given to the information seeker.

The word “fiduciary is derived from the Latin fiducia meaning “trust, a person (including a juristic person such as Government, University or bank) who has the power and obligation to act for another under circumstances which require total trust, good faith and honesty. The fiduciary relationship can also be one of moral or personal responsibility due to the superior knowledge and training of the fiduciary as compared to the one whose affairs the fiduciary is handling. In short, it is a relationship wherein one person places complete confidence in another in regard to a particular transaction or one’s general affairs of business.³²

Many PIO’s is using fiduciary relationship exemption in wrong manner, they simply quote in their reply that the information cannot be provided on account of fiduciary relationship, so the information seeker has to file an appeal to seek information and the information he requires reaches him late because of the fault of PIO or can say indolence or ignorance. There may be cases when the information seeker files RTI and the PIO denies him on the ground of fiduciary relation and when the information which he seeks reaches him through appeals, there will be no use that information because of delay.

³² Rakesh Kumar Singh and others vs. Harish Chander, Assistant Director and others case, MANU/CI/246/2007.

So firstly the definition of Fiduciary Relationship should be clearly defined in the RTI ACT so there will be no confusion regarding what is fiduciary relationship because many layman does not understand while filing there RTI that what is the concept of fiduciary relationship . Secondly form time to time PIO's has to give training regarding under which situation fiduciary relation can be claimed and under which situation public interest outweigh so that the information should be disclosed in respect to RTI Act, hence there will be no delay and information is received by the information seeker timely.