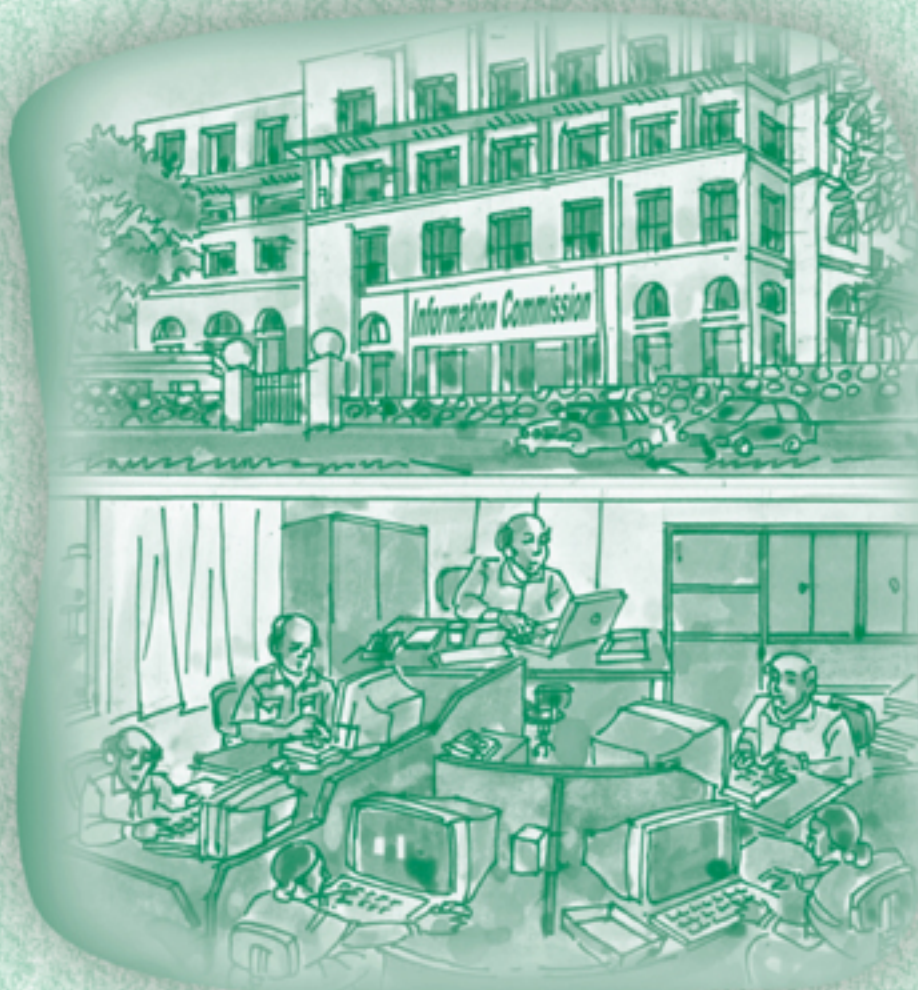


Analysis of Judgments of the Central Information Commission on the Right to Information Act, 2005



**Analysis of Judgments of the
Central Information Commission
on the Right to Information Act, 2005**

October 2007

PRIA

**42, Tughlakabad Institutional Area, New Delhi
Tel. : +91-11-2996 0931/32/33 Fax : +91-11-2995 5183
E-mail : info@pria.org Website : www.pria.org**

CONTENTS

Section	Contents	Pages
	Acknowledgements	I
	Foreword : Shri Wajahat Habibullah, Chief Information Commissioner, Central Information Commission	II
	Right to Know, Dr. Rajesh Tandon, President, Participatory Research in Asia	III-IV
	Introduction	1-2
I	Definitions (Section 2 of RTI Act)	3-8
1	File notings not exempted from disclosure [Secs. 2 (i) and 2 (j)] -I	4
2	File notings not exempted from disclosure [Secs. 2 (i)] -II	4-5
3	Information which relates to expired records cannot be provided [Sec. 2(j)]	5
4	Information sought should be clearly specified [Sec. 2(f)]	5-6
5	Information can be supplied only in the form available [Sec. 2(f)]	6
6	Language for providing information under RTI Act [Sec. 2(f)]	6
7	Substantially funded by the government to be deemed as public authority [Sec. 2(h)]	7
8	Information from a non-public authority can be obtained indirectly [Secs. 2(f) and 2(j) of the RTI Act]	7-8
II	Who can apply for information (Section 3 of RTI Act)?	9-10
1	Only persons in individual capacity can apply for information under RTI Act [Section 3]	9
2	Firm cannot be an applicant under the RTI Act [Sec. 3]	9-10
III	Self- disclosure by public authorities (Section 4 of RTI Act 2005)	11-13
1	Inappropriate information sought can be rejected [Sec. 4(1)(d)]	11
2	Pro-active disclosure information to be provided free [Sec. 4(1)(b) & Sec. 7(6)]	12
3	Record Management to be improved by all public authorities [Sec. 4(1)(a)]	12-13
4	All public authorities to make pro-active disclosures [Sec. 4(1)(b)]	13
IV	Public Information Officers (PIOs) (Section 5 of RTI Act)	14-15
1	PIO can take all help to provide information to an applicant [Secs. 5(4) and 5(5)]	14-15
2	PIOs to provide all reasonable assistance to the RTI applicants [Sec. 5(3)]	15

V	Requests for obtaining information (Section 6 of RTI 2005 Act)	16-18
1	No particular application format necessary/No reasoning required for seeking information [Secs. 6(1) & (2)]	16-18
2	RTI application to be transferred to the appropriate public authority [Sec. 6(3)]	18
VI	Disposal of requests for information (Section 7 of RTI Act)	19-23
1	Information to be provided free if there is delay/reimbursement to be provided in cases of delay. [Sec.7 (6); Sec. 19(8)(b) & Sec. 20(1)]	20-21
2	Information concerning life and liberty [Sec. 7(1)]	21
3	Period between asking for further fees and its payment is excluded for calculating the 30-day limit [Secs.7 (1) and 7(3)(a)]	22
4	Information to be provided free to BPL applicants under RTI Act [Proviso to Sec.7 (5)]	23
VII	Exemptions from disclosure of information (Section 8 of RTI Act 2005)	24-36
1	Information on ongoing investigation [Secs. 8(1)(g) & 8(1)(h)]	24-25
2	Answer scripts cannot be disclosed [Sec. 8 of the RTI Act]	25
3	Disclosure of answer scripts [Secs. 8(1)(e) and 8(1)(j)]	26
4	Disclosure of marks secured [Secs. 8(1)(e)]	26-27
5	Information no longer available in records cannot be given [Sec. 8(1)(j)]	27
6	No disclosure in case of pending trial [Sec. 8(1)(h)]	27-28
7	Information on an ongoing investigation can be given in special circumstances [Sec. 8(1)(h) of the RTI Act]	28
8	Vigilance report findings can be disclosed [Sec. 8(1)(h)]	28
9	No disclosure in case of pending departmental enquiry [Sec. 8(1)(h)]	29
10	Public authority to disclose information if public interest outweighs the harm to the protected interests [Sec. 8(1)(h)]	29
11	Contents of a departmental enquiry can be disclosed, if no bar from the Court [Sec. 8(1)(b) and Sec. 8(1)(h)]	30
12	No disclosure of third-party confidential information [Sec. 8(1)(j)]	30-31
13	Frivolous applications not to be entertained [Sec. 8]	31
14	Report of departmental enquiry can be disclosed with conditions [Secs. 8(1) and 2(j)]	32
15	Information in respect of a period, prior to twenty years [Secs. 8(1) and 8(3)]	32-33
16	Consultation between the President and the Supreme Court cannot be disclosed [Secs. 8(1)(e) and 11(1)]	33-34

17	Reasons for rejection of requests for information must be clearly provided [Sec. 8(1)]	34-35
18	Results of field trials of Genetically Modified Crops to be disclosed [Sec. 8(1)(d)]	35-36
VIII	Partial Disclosure of Information (Section 10 of RTI Act 2005)	37-38
1	Information can be severed and supplied [Section 10(1)]	37-38
IX	Third Party Information Disclosure (Section 11 of the RTI Act 2005)	39-40
1	Third Party has no absolute right to refuse information disclosure about it [Sec. 11(1)]	40
X	Powers and functions of the Information Commissions (Sections 18, 19 & 20)	41-44
1	Commission not a forum for execution of a court decree [Sec. 18(1)(e)]	42
2	No additional information can be sought at the appellate level [Sec. 19]	42
3	'Reasonable cause' justified for delay in providing information [Sec. 20]	43
4	Disciplinary action against Appellate Authority [Sec. 20(2) of the RTI Act]	43-44
XI	Miscellaneous Judgments	45-47
1	Address of the applicant need not be personal	45
2	Decisions by single member CIC benches are valid	45
3	No misuse of the provisions of the Act to settle personal scores	46
4	Public authorities to observe due diligence in applying the RTI Act	46
5	Review of a decision delivered by a public authority	46-47

Acknowledgements

The Right to Information Act (RTI), 2005, is truly a path breaking legislation, which can enable achievement of transparent and accountable governance. The Act opens pathways to governmental policies and decisions to ensure that these are consistent with the principles of public interest, probity and justice. It is also an instrument to usher in participative governance and help citizens to influence policy formulation and programme implementation by securing the legally enforceable right to know.

This work, 'Analysis of Judgments of the Central Information Commission on the Right to Information Act, 2005', is an attempt to capture the authentic interpretation of the provisions of the RTI Act by the Central Information Commission through its landmark judgments. The judgments are critically analysed to translate their sum and substance in an easy to understand and readily digestible format.

This work could not have been possible without the dynamic inspiration of our President, Dr. Rajesh Tandon, who took personal interest in this project. I am also grateful to Shri Prashant Bhushan, renowned Supreme Court lawyer for giving valuable feedback on the document. No less important was the encouragement given by Shri Wajahat Habibullah, Chief Information Commissioner, Central Information Commission, who was kind enough to write the foreword to the document.

Thanks are due to my mentors Shri Harsh Jaitli and Dr. K.K. Bandyopadhyay at PRIA for necessary encouragement. It is my pleasure to express my gratitude to my esteemed colleagues, Vikas Jha and Swati Sinha, for providing their valuable suggestions and all possible support whenever required. Thanks are also due to Pradeep Sharma and other staff of PRIA for logistical support. I am grateful to all the Right to Information activists across fourteen States in India where Society for Participatory Research in Asia is working, for enriching this work.

Rafi Ahmed

PRIA, New Delhi

Foreword

India's Right to Information Act, 2005 has been widely applauded and variously described. To me it is among the most progressive legislations enacted by our Parliament since we won our freedom. Within a few succinctly worded pages this Act has entitled every Indian citizen to get most of the information he or she might need as a matter of right from various public authorities in a time bound manner and at reasonable cost. It provides for dissemination of maximum information *suo-motu*. It contains some radical provisions not found in similar laws even of other advanced democracies of long standing across the world. A citizen is not required to establish his or her *locus standi* or give reasons for seeking information.

This Act covers even organizations concerned with national security, and intelligence if the information sought concerns allegations of corruption or violation of human rights. The Act provides for stringent penalty provisions for delay or denial of information, or indeed for knowingly seeking to mislead an applicant. Citizens have been given a two-tier appeal system and freedom to lodge a complaint with the Central/State Information Commission free of cost with regard to non-implementation of the provisions of the Act. And these Commissions have been set up independent of government with the tour of duty of the Information Commissioners protected by law.

We in the Central Information Commission have been adjudicating upon numerous appeals filed by citizens & complaints lodged by them and have delivered over 10,000 decisions so far. A number of our decisions have served as benchmarks for disposal of identical requests by the Central/State Public Information Officers and the first Appellate Authorities. This has helped give grounds to determine as to what type of information can be disclosed and where it can be exempted under the provisions of the Act. These decisions are binding upon all public authorities.

I am delighted that an NGO of the stature of PRIA, which has distinguished itself in the promotion of democratic practice in the country, has compiled this volume intended to enable practitioners of RTI both in government and in civil society to be able to intervene with full knowledge of issues and corresponding provisions of the Right to Information Act 2005. I hope it will serve as a useful tool to those concerned with the implementation of the Act and also guide the information seekers as to what they can obtain through this Act.

Wajahat Habibullah

Chief Information Commissioner
Central Information Commission, New Delhi

September 2007

Right to Know

Democratic governance assumes that citizens have certain rights to elect their representatives and to influence the policies and programmes that their governments make. Right to provide, or withhold, consent is a part of the underlying foundation of democracy. In recent years, many democracies are finding that the citizens—the building blocks of democracy, the demos—are feeling alienated from the structures and processes of formal democracy. That is precisely why voting percentages in democratic elections have been declining (specially among the youth); people's trust in elected political representatives has reached an all time low; authoritarian and sectarian forces are gaining momentum over democratic, secular forces worldwide.

Democratic governance systems attempted to codify certain rights and obligations of the citizens in the Constitutions of countries. Freedoms of association, expression and actions have been variously codified in such Constitutions. Yet, many democracies, old and new, also carried the premise of 'eminent domain'—which implies that the governments can act in 'sovereign public interest' to limit such freedoms and rights. This premise of state sovereignty, as opposed to citizen sovereignty, has been the underlying rationale for various laws related to land acquisition, taxation and access to 'official' decision-making.

Many colonial governments had introduced legislations to protect 'official secrecy'; most governments continued such restrictions even after independence from colonial rule. The Official Secrets Acts in various countries not only legitimized secrecy in transacting official government business; it also made sharing of 'official' information a criminal offence. Such a protective shield then insulated public representatives and government officials from any critical scrutiny by the public itself.

Citizens were not only deprived of information relevant to their own lives and livelihood, but also denied the possibility of acting as citizens—to participate in the making of democratic governance itself. Right to Know, therefore, is the basic right of citizens, without which other rights and citizenship responsibilities cannot be adequately discharged.

It is this realization that founded the basis of early articulations of Participatory Research in the 1970s. Democratisation of knowledge, its access and control by ordinary folks were key foundations of Participatory Research. When PRIA (Soc..) began to function on the ground 25 years ago, it championed the cause of participatory development; in so doing, it argued for liberating the minds of people through democratizing knowledge. Later, PRIA's focus on citizen participation in democratizing governance—from local to global—entailed promoting access to and control over knowledge as a key resource in ensuring the transparency and accountability of elected representatives and government officials.

Therefore, exercising the Right to Know is the essential first step in strengthening citizen leadership and in democratizing governance. It is this recognition in our perspective that akes PRIA's credo—Knowledge is Power. Empowerment of the marginalized and excluded citizens requires knowing and learning.

The Right to Information Act enacted in India in 2005 further enables citizens' empowerment on the one hand, and transparency and accountability of governance institutions, on the other. Therefore, PRIA has

begun to actively utilize the various provisions of this Act to promote the above two objectives simultaneously. Through widespread citizens' mobilization, research and advocacy, PRIA's interventions in 14 states of the country are ensuring that the Right to know thus enabled legally is realized in reality by hitherto excluded and marginalized citizens of the country.

This document, and many others already produced, contribute towards PRIA's long-term mission of empowering citizens and democratizing governance in the country, and beyond.

Dr. Rajesh Tandon

President, PRIA

September 2007

Introduction

Objectives:

The objectives of the analysis of the decisions of the Central Information Commission (CIC) on the Right to Information Act, 2005, were to study the decisions that the CIC delivered on the appeals and complaints which came before it as second appeals or complaints under the relevant provisions of the Right to Information Act, 2005.

The aim of the analysis was to practically study all the cases that were decided by the Commission from its inception, and then analyse the most important cases or landmark orders, which, authoritatively interpreted the important provisions of the Act. Through this intervention it was expected to develop a body of information on the latest decisions relating to the right to information as a ready reckoner or a reference guide on the interpretation of the provisions, for use by PRIA staff, and a variety of stakeholders at the local governance level, including civil society organisations, students, citizen leaders, and elected women representatives.

It was also expected that with this knowledge in hand, the users of this analysis would be in a better position to understand the various provisions of the Act, and use it as and when they exercise the Act by applying for information on it, or when filing appeals or complaints.

Methodology:

The judgments/decisions delivered in various appeals and complaints filed before the Commission by the appellants or complainants in different quarters since the Commission started adjudicating, i.e., from January 2006 till March 2007, were studied, and then the most outstanding of these decisions or landmark orders, which have settled the law on the provisions/sections of the RTI Act, 2005, were analysed to bring about their *ratio*, i.e., the summary and substance of the decision.

The landmark cases were analysed and documented by giving the head note on the main principle laid down in the relevant case, the sections of the Act involved in the interpretation, the names of the parties involved in the case, the date of adjudication, brief facts about the appeal/complaint, and the interpretation of it by the CIC. The analysis had to be presented without the use of legal jargon and technical interpretation. The analysis had to be put forth in a simple and lucid format, which is easily comprehensible, by an audience, which cannot understand technical legal provisions, or the language used by the Commission in its interpretations/orders.

These cases have been compiled on practically all the important provisions of the Act and have yielded critical information on the scope and meaning of these provisions. This compilation has been developed as a ready reckoner on the interpretation of the Act. In order to make the document reader-friendly, an attempt has been made to categorise the cases into sections as per the Right to Information Act, 2005.

Rationale for Jurisprudential Analysis:

The Jurisprudential analysis of decisions of the CIC on the Right to Information Act, 2005, is a unique initiative which has made available the interpretation and meaning of the different provisions of the Right to Information Act as interpreted by the CIC in its landmark orders in a simple, easy-to-

understand and easy-to-apply manner which can be used by CSOs, citizen leaders, elected representatives, government functionaries and others for the understanding of the Act through authoritative orders/orders.

This exercise has filled a strong need to have the interpretation of the law relating to right to information as a sort of ready reference through which even a layman can understand the position of the CIC on different sections and issues relating to this critical right, such as who can apply for information, the correct manner to apply for information, the nature of information which is exempt under the Act, the ways in which information requested can be given to applicants under the Act, under which circumstances can third-party information be given, the time limits for providing information including the maximum time limits as per the Act for filing appeals, disposal of such appeals, etc.

This knowledge will help the user to know beforehand the position of the Right to Information Act, 2005, with regard to the nature of information he wants to access from any public authority or government department, the correct mode of applying for information under the Act, the kinds of information which can be denied, who are the public authorities for the purposes of the Act, the position of information relating to third parties, and the redressal mechanism in cases of denial of information.

The analysis has been divided into 11 sections, and each section contains some important judgments of the Central Information Commission. The categorisation of the judgments of the Central Information Commission has been made on the basis of the most commonly used sections of the Right to Information Act, 2005. This categorisation makes the understanding of the Act easy and simple. The analysis can be used as an instant guide by a wide variety of audiences, including public information officers (PIOs), who can use it for dealing with requests for information and guiding the citizens on the procedures for accessing the information. I believe that this guide, if understood and used properly by PIOs, would reduce the burden of the Central or State Information Commission, as the appeals to the commissions would drop sharply. I hope that the analysis of the judgments of the Central Information Commission is useful for information commissions, public authorities, public information officers and citizens at large.

I - Definitions (Section 2 of RTI Act)

Section 2 of the RTI Act gives the legal definitions of the important terms used in the RTI Act, 2005. In this provision, the following definitions have been provided which are of tremendous importance for understanding the Act. It is important for the citizens to understand the meaning of public authority, information, right to information and third-party before they start going through the other sections of the Act.

Public Authority means any authority or body or institution of self-government established or constituted by or under the Constitution;

- By any other law made by the Parliament or State Legislature;
- By a notification issued or an order made by the appropriate government;
- Includes any body owned, controlled or substantially financed by the government;
- Includes any non-government organisation substantially financed directly or indirectly by the appropriate government.

Under the RTI Act, the citizen has been given the *Right to Information*, which means the right to obtain information from all public authorities. The *right to information* has been defined quite elaborately; it includes the right to: -

- Inspect works, documents and records.
- Take notes, extracts or certified copies of documents/records/samples.
- Obtain information in printed or electronic form, e.g., printouts, diskettes, floppies, tapes, etc.

However, two conditions must be satisfied for obtaining any information under the Act by a citizen., Firstly, the information should be held by the public authority or should be under the control of a public authority, and secondly, the information must not be exempt from disclosure as per the RTI Act.

Any citizen can exercise this right by making a request in writing under the Act.

It is important here to know the meaning of *information*. *Information* means any material, which is held by the public authority in the form of records, documents, memos, e-mails, opinions, advices, press releases, circulars, orders, logbooks, contracts, reports, papers, samples, models, or data in electronic form. Records are one of the important components of information, and includes: -

- any document, manuscript or file;
- any microfilm or photostat copy of a document;
- any copy of images contained in a microfilm;
- any other material produced by a computer or any other device.

Another important definition, which is important to know at the outset, is *Third Party*. When a person makes a request to gather information for someone else which is held by a public authority, then the application is said to involve a *third party*.

We hope that with the understanding of the meanings of the above-mentioned important definitions, which are referred to several times in the Act, the readers would be able to grasp the technical details of the Act quickly.

1. File notings not exempt from disclosure [Secs. 2(i) and 2(j) of the RTI Act]

Case: In the case of *Satyapal vs. CPIO, TCIL* (Appeal No.ICPB/A-1/CIC/2006, dated 31/1/2006), the main issue for consideration was whether the file notings are exempt from disclosure under the Right to Information Act, 2005.

Judgment: The Commission examining the case held that in terms of the definition given under Section 2(i) of the Act, a record includes a file, and in terms of Section 2(j), the right to information includes access to a record.

Therefore an applicant under RTI has the right to access a file, and file notings are an integral part of any file which cannot be exempt from disclosure.

Provisions involved:

Section 2(i) - "Record" includes -

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

Section 2 (j) - "Right to Information" means the right to information accessible under this Act, which is held by or under the control of any public authority and includes the right to -

- (i) inspection of work, documents, records;
- (ii) taking notes, extracts or certified copies of documents or records;
- (iii) taking certified samples of material;
- (iv) obtaining information in the form of diskettes, floppies, tapes, videocassettes or in any other electronic mode or through printouts where such information is stored in a computer or in any other device.

2. File notings not exempt from disclosure [Secs. 2(i) and 2(j) of the RTI Act]

Case: In another recent case, *Pyare Lal Verma vs. Ministry of Railways* (Appeal No.CIC/OK/A/2006/00154, dated 29/1/2007), the appellant had sought some information from the public authority, which related to file notings of the department.

The information was refused to the appellant, and it was stated by the CPIO of the public authority that file notings cannot be disclosed to the appellant as the Department of Personnel and Training of the Government of India had in its website, declared that file notings are covered under the exemptions. The Appellate Authority also rejected his application for information on the same grounds.

Judgment: The CIC held that file notings were not exempt from disclosure. The CIC cited its earlier decision in the case of *Satyapal vs. TCIO* (Appeal No.ICPB/A-1/CIC/2006), in which the Commission had expressly ruled that file notings were information in terms of **Sections 2(i) and 2(j)** of the RTI Act, and have to be disclosed.

The Commission also issued a notice to the Department of Personnel, for propagating wrongful information on the status of the file notings, and ordered the department to remove such misleading information from its website.

Provisions involved: *Section 2(i) & Section 2(j) have been quoted in the previous case.*

3. Information which relates to expired records cannot be provided [Sec. 2(j) of the RTI Act]

Case: In the case of *Gurbachan Singh vs. Lt. General, Army Headquarters* (CIC/AT/2006/20, dated 23/3/2006), the applicant had sought certain information regarding the copy of an order pertaining to the appointment and chargesheeting of an army personnel, and the information sought was supposed to be more than 20 years old.

Judgment: The Army, the public authority involved in this case, refused to provide the appellant with the required information and said that they could not provide such old information as according to their departmental rules for preservation of records, the maximum period for preservation of records was only 10 years.

The CIC noted in the appeal before it held that, in this case, records of the court martial trial were destroyed after a retention period of 10 years under the Army Rules.

It held that there was no obligation on the part of any public authority to provide non-existent information in terms of **Section 2(j)** of the RTI Act if that information is no longer available due to the fact that the records were not available, i.e., they have been destroyed after a maximum period of preservation, as per the departmental rules for destruction of old records.

Provisions involved: *Section 2(j) has been quoted in Case No.1.*

4. Information sought should be clearly specified [Sec. 2(f) of the RTI Act]

Case: In the case of *S.K. Ranga vs. Container Corporation of India Ltd.* (Appeal No.CIC/OK/A/2006/00260, dated 2/1/2007), the applicant had asked for inspection of all Dak registers of the Corporation from 1/1/2003 onwards, pertaining to various departments, i.e., HRD, Vigilance, MD's office, as well as the General Dak Register.

Judgment: The CIC noted that the information asked by the appellant from the public authority was vague.

The Commission held that the applicant under the RTI Act should clearly specify the information sought in terms of **Section 2(f)** of the RTI Act.

The appellant was directed to specify the information he seeks to inspect from the records.

Provisions involved:

Section 2(f) - "Information" means any material in any form, including records, documents, memos, e-mails, opinions, advices, press releases, circulars, orders, logbooks, contracts, reports, papers, samples, models, data material held in any electronic form, and information relating to any private body which can be accessed by a public authority under any other law for the time being in force.

5. Information can be supplied only in the form available [Sec. 2(f) of the RTI Act]

Case: In the case of *Sarabjit Roy vs. Delhi Development Authority* (10/01/2005-CIC, dated 25/2/2006), the applicant had sought certain information in a particular form, from the PIO of a public authority.

Judgment: The Commission held that if the information is not available in the particular form requested, it does not have to be created in the form sought by the applicant, and information under **Section 2(f)** includes information in any form available with a public authority and accessible.

In the present case, the Commission held that the applicant may be allowed, if he desires, to inspect the original records at the office.

Information specifically asked may be provided in the form of printouts and certified photocopies of original documents and records.

Provisions involved: **Section 2(f)** is already quoted in the previous case.

6. Language for providing information under RTI Act [Sec. 2(f) of the RTI Act]

Case: In the case of *Jai Kumar Jain vs. Delhi Development Authority* (Appeal No.CIC/WB/A/2006/00117, dated 7/3/2006), the appellant had applied for some information from the public authority, Delhi Development Authority (DDA), in respect of certain shops leased by the Authority.

The appellant had sought this information in the Hindi language.

Judgment: The CIC interpreting **Section 2(f)** of the RTI Act, directed the DDA to provide the requested information by translating it, in Hindi, within 25 days of the issue of its decision.

Provisions involved: **Section 2(f)** is already quoted in Case No. 4.

7. **Agency substantially funded by the government to be deemed as public authority [Sec. 2(h) of the RTI Act]**

Case: In the case of *Navneet Kaur vs. Electronics & Computer Software Export Promotion Council* (Appeal No.ICPB/A-8/CIC/2006, dated 22/3/2006), the applicant had filed an application under the RTI Act with an organisation. The organisation contended that it is not a public authority and was outside the purview of the RTI Act.

Judgment: The CIC held that since the Department of Information Technology (DIT) of the Central Government substantially funded the organisation in question, and also it was under the administrative control of this department, therefore in terms of **Section 2(h)** of the Act, it was a public authority, which is covered by the Right to Information Act.

Provisions involved:

Section 2(h) - "Public Authority" 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 the State Legislature;*
by notification issued or order made by the appropriate government, 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.*

8. **Information from a non-public authority can be obtained indirectly [Secs. 2(f) and 2(j) of the RTI Act]**

Case: In the case of *Jarnail Singh vs. Registrar, Cooperative Societies Delhi* (Complaint No.CIC/WB/C/2006/00302, dated 9/4/2007), the applicant had sought some information from the Registrar, Cooperative Societies (RCS) regarding the alleged irregularities in the allotment of a house to him by a cooperative group housing society.

However, the information pertaining to these issues was available with the management of the cooperative society, which could not be treated as a public authority in terms of the definition of public authority under the RTI Act.

Judgment: The Commission held that a cooperative society is not a public authority, but because the information sought by the applicant/appellant is available to the Registrar under the Delhi Cooperative Societies Act, such information can be provided to the applicant, under **Sections 2(f) and 2(g)** of the RTI Act.

It was also ordered by the Commission that the applicant will be provided the required information from the office records of the cooperative society under the supervision of a competent officer of the RCS.

Provisions involved:

Section 2(f) - *"Information" means any material in any form, including records, documents, memos, e-mails, opinions, advices, press releases, circulars, orders, logbooks, contracts, reports, papers, samples, models, data material held in any electronic form, and information relating to any private body which can be accessed by a public authority under any other law for the time being in force.*

Section 2(g) - *"Prescribed" means prescribed by rules made under this Act by the appropriate government or the competent authority, as the case may be.*

II - Who can apply for information (Section 3)

Section 3 of the Right to Information Act gives the right to all Indian citizens to access information from the public authorities. A citizen under the Act means only natural and not juristic persons like firms, companies or other corporate bodies. In addition, a citizen need not give reasons for asking for a particular information from any public authority and the public information officer (PIO), or the public authority cannot question the applicant under the RTI Act as to why he/she needs the particular information. Even if more than one person seeks the same kind of information it should be made available to all the requesters by the PIOs.

The citizen has also been given the right to ask for information, which has been already, disclosed as per the self-disclosure requirements of the Act (Section 4). It has to be provided to a citizen who applies for such information from a public authority.

Section 3 of the Right to Information Act and some of the judgments of the Central Information Commission, thus, clearly define who can apply for information from the PIOs.

1. Only persons in individual capacity can apply for information under RTI Act [Sec. 3 of the RTI Act]

Case: In the case of *Inder Grover vs. Ministry of Railways* (CIC/OK/A/2006/00121, dated 27/06/2006), the applicant had applied for some information to the PIO of the Railways Ministry in the capacity as the Managing Director of a company.

Judgment: The CIC interpreted **Section 3** of the RTI Act to hold that persons applying for information under the Act should apply as natural and individual persons (citizens).

Corporate bodies and juristic persons cannot apply for information under the Act.

It was accordingly ruled that if a person applies for information to a public authority as a representative of a corporate body, then he/she is not entitled to information under the Act.

Provisions involved:

Section 3 - *Subject to the provisions of this Act, all citizens shall have the right to information.*

2. Firm cannot be an applicant under the RTI Act [Sec. 3 of the RTI Act, 2005]

Case: In the case of *D.C. Dhareva & Co. vs. Institute of Chartered Accountants of India* (Decision No.560/IC/2007, dated 22/2/2007), a corporate body (company), had applied for information from a public authority and sought certain

documents relating to a another firm which had submitted this information to the public authority as per the legal requirements of furnishing such information.

Judgment: It was held by the Commission in this case that since the appellant organisation is a corporate body and not an individual it is not eligible to seek information under **Section 3** of the RTI Act.

It was also decided by the Commission that the information asked could not be supplied as it was a third-party confidential information exempted under Section 8(1)(d) of the RTI Act .

Provisions involved:

Section 3 - Subject to the provisions of this Act, all citizens shall have the right to information.

III - Self-disclosure by public authorities (Section 4 of RTI Act, 2005)

The RTI Act not only requires governments to provide information upon request, it also imposes a duty on public authorities to actively disclose, disseminate and publish information, as widely as possible. The RTI 2005 also requires all public authorities covered under the law to publish *suo motu* or proactively a wide range of information on their own, even if no one has specifically requested it. Section 4 of the Right to Information Act, 2005, requires all the public authorities to routinely publish 17 categories of information. This provision clearly specifies that all public authorities must make constant efforts to provide as much information *suo motu* to the public, at regular intervals, through various means including the Internet, so that the public have minimum need to use this Act to obtain information. In addition, self-disclosure by the public authorities should be disseminated with considerations about the local language, cost-effectiveness and the most effective means of communication, so that it reaches large sections of citizens. This ensures that citizens always have access to authentic, useful and relevant information.

This is a key provision because it recognises that some information is so useful and important to the community at large, that it should be given out regularly, without anyone specifically requesting it. Self-disclosure enables promotion of transparency and accountability in governance, and also reduces the demand for information by the citizens from public authorities, as most of the important information is available in the public domain.

1. Inappropriate information sought can be rejected [Sec. 4(1)(d) of the RTI Act]

Judgment: In the case of *Madan Lal Mirg v. Dinesh Singh* (F.No.CIC/AT/2006/00105, dated 30/6/06), the applicant had asked for certain

information from the records of the public authority and obtained all the information so asked.

The applicant again filed an RTI application with this public authority and asked a number of questions and opinions so that he could use them to build a case which he could file in a court of law.

CIC dismissed the appeal on the grounds that the information sought by the appellant does not qualify for disclosure as per **Section 4(1)(d)** of the RTI Act, and it is not the intention of this provision to provide an applicant with opinions or suggestions, which can be used to build case in a court of law, for an applicant.

The Commission held that the information sought should be clearly information within the scope of **Section 4(1)(d)** of the RTI Act, 2005.

Provisions involved:

Section 4(1)(d) - Every public authority shall provide reasons for its administrative or quasi-judicial decisions to affected persons.

2. **Pro-active disclosure information to be provided free [Sec. 4(1)(b) & Sec. 7(6) of the RTI Act]**

Case: In the case of *Seema Bhattacharya vs. Deputy Commissioner, Shahdara, MCD* (Appeal No.CIC/WB/A/2006/00377, dated 20/11/2006), the applicant had applied to the public authority for sanctioned posts of engineers and other related information.

This information was in any case required to be compulsorily declared under Section 4 of RTI Act, 2005, as pro-active disclosure information.

Judgment: It was held by the Commission that the nature of information sought by the appellant was such that it was required to be furnished as *suo moto* information by a public authority, under pro-active disclosure requirements of **Section 4(1)(b)** of the Act.

The Commission ordered that such information should be provided free of any costs as mandated under **Section 7(6)** of the Act.

Provisions involved:

Section 4(1)(b) - *Every public authority shall publish within one hundred and twenty days from the enactment of the Act 17 items.*

Section 7(6) - *Notwithstanding anything contained in sub-section (5), the person making a request for the information shall be provided the information free of charge where a public authority fails to comply with the time limits specified in section 7(1). Section 7(1):- 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.*

3. **Record Management to be improved by all public authorities [Sec. 4(1)(a) of the RTI Act]**

Case: In the case of *Paramveer Singh vs. Panjab University* (CIC/OK/A/2006/00016, dated 15/6/06), the applicant had applied for information regarding the merit list for selection of candidates to a particular post in the university.

However, no proper information was supplied to him due to the negligence of the university's PIO in identifying and collecting the proper information. As a result, the applicant was given misleading information.

Judgment: The Commission held that every public authority, particularly after the implementation of the Right to Information Act, must take all measures in pursuance of **Section 4(1)(a)**, to implement efficient record management systems in their offices so that the requests for information can be dealt with promptly and accurately.

In the above case, the Commission further held, that the university should streamline its university record management system in such a manner that information can be provided to the citizens without any delay.

Provisions involved:

Section 4(1)(a) - 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.

4. All public authorities to make pro-active disclosures [Sec. 4(1)(b) of the RTI Act]

Judgment: In the Appeal No. 24/IC (A)/2006, dated 16 April 2006, before the Central Information Commission, it was held by the Commission that:

“Every public authority is required to make pro-active disclosures of all the information required to be given as per the provisions of **Section 4(1)(b)**, unless the same is exempt under the provisions of Section 8(1).

In fact, an information system should be created so that citizens would have easy access to information without making any formal request for it”.

This judgment re-emphasised the mandatory nature of disclosure of information on 17 points by every public authority according to the RTI Act.

Provisions involved:

Section 4(1)(b) - Every public authority shall publish within one hundred and twenty days from the enactment of the Act, 17 items.

IV - Public Information Officers (PIOs) (Section 5 of RTI Act)

All public authorities were required within 100 days of the enactment of the Right To Information Act to designate as many officers as public information officers (PIOs) in all its administrative units or offices under it as it is required, to provide information to persons requesting for information under this Act. It is the responsibility of the PIOs to deal with requests from the persons seeking information and render all possible assistance and cooperation to the applicants seeking information under the Act. It means that the PIOs must provide all kinds of help to citizens including helping the illiterate or blind in writing applications for obtaining information. The PIOs are the nodal officers of a public authority that receives all the applications for obtaining the information and provides it to the applicant.

For providing the information to the applicant, the PIOs can take the assistance of other officers of the public authority. If any officer, whose assistance has been sought by the PIO for the proper discharge of his or her duties, refuses to cooperate; then this officer shall be treated as a PIO, and disciplinary action can be taken against him, or he can be penalised by the State Information Commission.

Another important officer namely the Assistant Public Information Officer can be appointed in every public authority. It shall be the responsibility of the assistant public information officer to receive the applications for information or appeals under the RTI Act and forward them to the public information officer/appellate authorities/CIC/SIC, as the case may be.

1. **PIO can take all help to provide information to an applicant [Secs. 5(4) and 5(5) of the RTI Act]**

Case: In the case of *Cdr. B.S. Rekhi vs. PIO and Director DDA*

(CIC/WB/A/2006/00180, dated 5/7/2006), there was some confusion in the mind of the public authority regarding the exact nature of the information sought by the applicant.

Judgment: It was held by the Commission that if there is a general confusion regarding the exact nature of information that has been requested by the applicant from a public authority under the Act, and which is available with the public authority, it can be easily resolved by a personal sitting between the PIO and the applicant.

The Commission also held that in future, no information asked for is delayed, and the PIO could seek the help of any other officer in terms of **Sections 5(4) and 5(5)** of the Act, within the organisation to obtain information, wherever necessary.

Provisions involved:

Section 5(4) - *The Central Public Information Officer or State Public Information Officer, as the case may be, may seek the assistance of any other officer as he or she considers it necessary for the proper discharge of his or her duties.*

Section 5(5) - *Any officer, whose assistance has been sought under sub-section (4), shall render all assistance to the Central Public Information Officer or State Public Information Officer, as the case may be, seeking his or her assistance, and for the purposes of any contravention of the*

provisions of this Act, such other officer shall be treated as a Central Public Information Officer or State Public Information Officer, as the case may be.

2. PIOs to provide all reasonable assistance to the RTI applicants [Sec. 5(3) of the RTI Act]

Case: In the case of *Dasharathi vs. Food & Civil Supplies Department, Delhi* (Complaint No.CIC/WB/C/2006/00145, dated 10/8/2006), the complainant had applied for certain information from the Food & Civil Supplies Department of the Delhi Government, but the staff of the department misbehaved with her and did not provide her with the required information.

Judgment: The Commission in its order held that misbehavior with the applicants approaching public authorities under the RTI is not acceptable, and is violative of **Section 5(3)** of the Act. Further, the Commission held that the public authority would pay compensation stipulated under the Act, to the applicant.

Provisions involved:

Section 5(3) - Every Central Public Information Officer or State Public Information Officer, as the case may be, shall deal with requests from persons seeking information and render reasonable assistance to the persons seeking such information.

V - Requests for obtaining information (Section 6 of RTI 2005, Act)

A citizen shall submit the application for obtaining the information to a PIO or assistant PIO of the public authority. The application should be submitted to the PIO of the public authority under whose jurisdiction the subject matter of the application falls. When an application is submitted to a public authority for information, which is held by another public authority, then the public authority to which the application has been made is under duty to transfer the application to the public authority, which has the information.

If a citizen asks for certain information, which is with three or four public authorities, then the PIO of the first public authority shall provide the information of the part, which lies in his subject jurisdiction, then transfer the other parts to the PIOs of the relevant public authorities. While transferring the application's parts, he should be careful in identifying the public authorities on the basis of the application's subject matter.

If the application is to be transferred to another public authority, the public authority to which the application is made shall transfer the application to the other public authority within five days of the receipt of the application. As soon as the PIO of a public authority transfers the application to another public authority, then he should immediately inform the applicant about such a transfer.

The application procedure for seeking the information is very simple and citizen-friendly (Section 6 of the RTI Act). The application can be written in English or Hindi or the state's official language. Oral requests shall be reduced in writing with the assistance of the PIO, if the applicant is not literate. The applicant must clearly specify the information, which he is seeking. Last but not the least, the application should be accompanied by the necessary application fees as prescribed under the respective state rules. In a large number of states, it can be paid in the form of cash/demand draft/postal order/treasury challan /non-judicial stamp, etc.

The application can be made on a plain paper, and there is no prescribed form or format for writing an it. The applicant is not required to give any reasons for requesting the information; he is only required to give his contact details/addresses, so that the information sought can be sent to him by the PIO.

The procedure for obtaining the information has been made very simple in the Act in order to enable the poor and marginalised sections of society to make the most use of it.

1. **No particular application format necessary/no reasoning required for seeking information [Secs. 6(1) & (2) of the RTI Act]**

Case: In the case of *Madhu Bhaduri vs. Director, DDA* (Complaint No. CIC/C/1/2006, dated 16/1/06), the applicant wanted some information from the Delhi Development Authority (a public authority).

She was, however, asked by the authority to apply for the information asked in a particular proforma, prescribed by the authority.

She was also asked to provide the reasons for applying for the information from the public authority.

Judgment: The Commission, interpreting **Section 6(1)** of the RTI Act, held that any direction to prescribe a particular format for seeking information cannot be mandatory and override the requirement of a simple application, as laid down in this section. The Commission ordered the public authority to provide her with the information asked.

It was also held that asking the reasons for filing the applications is a clear violation of the principle embodied in **Section 6(2)** of the Act.

It was, however, observed by the Commission, that retention of a clause in the rules of the public authority for asking reasons may be permitted if such a clause is necessary to ensure privacy under Section 8(j), as also the interest of a third party under **Section 11(1)** of the Act.

Provisions involved:

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, to-

(a) the Central Public Information Officer or State Public Information Officer, as the case may be, of the concerned public authority;

(b) the Central Assistant Public Information Officer or State Assistant Public Information Officer, as the case may be, specifying the particulars of the information sought by him or her:

Provided that where such a request cannot be made in writing, the Central Public Information Officer or State Public Information Officer, as the case may be, shall render all reasonable assistance to the person making the request orally to reduce the same in writing.

Section 6(2) - An applicant making a 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.

Section 8(1)(j) - Notwithstanding anything contained in this Act, there shall be no obligation to give any citizen, —

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.

Section 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 a 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 the disclosure of information:

Provided that except in the case of trade or commercial secrets protected by law, a 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.

2. RTI application to be transferred to the appropriate public authority [Sec. 6(3) of the RTI Act]

Case: In the case of *Shyam Singh Thakur vs. Deptt. Of Science & Technology* (Appeal No.CIC/WB/A/2006/00365, dated 22/1/2007), the appellant had sought certain information on a number of issues from the Department of Science and Technology.

The PIO and the Appellate Authority (AA) of the Science and Technology Department (DST), in response to the application, stated that the information sought by the applicant did not pertain to the activities of their department, and advised him to approach the concerned public authority.

Judgment: The Central Information Commission (CIC), in the appeal, held that the PIO and the AA in the DST were justified in informing the applicant that the information asked did not relate to their department.

The CIC further ruled that the DST was duty bound to transfer the application to the appropriate public authority within five days of the receipt of the application, as per the provisions of **Section 6(3)** of the RTI Act.

Provisions involved:

Section 6 (3) - *Where an application is made to a public authority requesting for an Information —*

- (i) which is held by another public authority; or*
- (ii) the subject matter of which is more closely connected with the functions of another public authority.*

The public authority, to which such an 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 a 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.

VI - Disposal of requests for information (Section 7 of RTI Act)

The RTI Act clearly sets the time limit for the disposal of requests by the PIOs so that the citizens do not have to run around the public authorities for information endlessly. It is important for the applicants to know the time limits for different categories of information, the method by which the time limit is calculated by a PIO, and the requirement of payment of additional fees, so that the applicant can easily get the information he/she requires.

Under Section 7 of the Act, information must be provided to the citizens within 30 days of receipt of the application by the PIOs. But if the information relates to life and liberty of a person, then the PIOs must provide the information within 48 hours. Citizens also have the option of submitting the application for information to an assistant PIO, who shall transfer the application within five days of its receipt to the PIOs.. If the PIO decides to provide the information then he shall send intimation to the applicant clearly specifying the details of further fees (xerox, cost of sample/printed material/inspection fees, etc), which is to be paid for obtaining the information. He should also inform the applicant about the date and time, when the information can be collected by the applicant after the payment of fees.

It is important for the citizens to know how the time limit for disposal of the request for information is calculated by the PIOs. The counting of 30 days starts from the date when the PIO receives the application; counting stops when the PIO intimates the applicant about the payment of further fees (xerox, etc.), and counting resumes when the citizen has paid the required fees for obtaining the information. So, the time limit between intimation of the information for the payment of further fees by the PIO, and the payment of such fees by the applicant shall not be included in the prescribed time limit of 30 days. If the PIO does not provide the information asked within the time limits above, the information asked would be treated as being refused. If the PIO does not provide the information within the time limits fixed under this section, the information will be supplied to the applicant free of charge (NO further fees?). It is important to know that no application fees or further fees are to be charged from the RTI applicants who belong to the BPL category of citizens.

The PIO has the right to deny some information to the applicant, which are covered in the Section 8(1) of the Right to Information Act. If the information is refused to an RTI applicant, the PIO is duty bound to inform the applicant about such a refusal, and the reasons for not providing such information. At the same time, the PIO must inform the applicant about the time limit within which the applicant can file an appeal against THE refusal by a PIO to the appellate authority (AA) of the public authority; he must also provide the name and address of the AA to the applicant.

Section 7 of the RTI Act, thus clearly specifies the provisions in respect of processing or disposal of a request to provide information and the time limits for providing the information by the public authorities.

1. **Information to be provided free if there is delay/reimbursement to be provided in cases of delay. [Sec.7 (6); Sec. 19(8)(b) & Sec. 20(1) of the RTI Act]**

Case: In the case of *Gita Dewan Verma vs. Urban Development Department, Delhi* (Appeal No.CIC/WB/C/2006/00182, dated 29/6/2006), the applicant had applied for certain information regarding slum clearance from the Urban Development Department of the Delhi Government.

She was not provided any information within the maximum time limit, as the public authority could not ascertain the information which was asked by the applicant.

Judgment: The CIC held that since there was a delay in replying to the information sought, the appellant should be provided information without costs as per the stipulation under **Section 7(6)**, as there was delay in providing the information.

In the above case, the appellant was held entitled to reimbursement under **Section 19(8)(b)** of the Act.

The CIC in this case also issued a show cause notice to the State Public Information Officer (SPIO) as to why the penalties prescribed under **Section 20(1)** of the Act be not imposed on him.

Provisions involved:

Section 7(6) - *Notwithstanding anything contained in sub-section (5), the person making a request for the information shall be provided the information free of charge where a public authority fails to comply with the time limits specified in section 7(1).*

Section 7(1) - *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 the payment of such fee as may be prescribed or reject the request for any of the reasons specified in Sections 8 and 9.*

Section 19(8)(b) - *In its decision, the Central Information Commission or State Information Commission, as the case may be, has the power to require the public authority to compensate the complainant for any loss or other detriment suffered.*

Section 20(1) - *Where the Central Information Commission or the State Information Commission, as the case may be, at the time of deciding any complaint or appeal is of the opinion that the Central Public Information Officer or the State Public Information Officer, as the case may be, 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 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 impose a penalty of two hundred and fifty rupees each day till the application is received or the information is furnished, so however, the total amount of such a penalty shall not exceed twenty-five thousand rupees:*

Provided that the Central Public Information Officer or the State Public Information Officer, as the case may be, shall be given a reasonable opportunity of being heard before any penalty is imposed on him:

Provided further that the burden of proving that he acted reasonably and diligently shall be on the Central Public Information Officer or the State Public Information Officer, as the case may be.

2. Information concerning life and liberty [Sec. 7(1) of the RTI Act]

Case: In the case of *Shekhar Singh and others vs. Prime Minister's Office* (Decision No.CIC/WB/C/2006/00066, dated 19/4/2006), the appellants had applied for information about the recommendations of the Group of Ministers for the rehabilitation of the project affected persons of the Narmada Project, 1 according to the provisions of **Section 7(1)** of the Right to Information Act.

Section 7(1) deals with providing information within 48 hours in the case where there is a threat to life and liberty of a person/s. The applicants contended that there is an immediate threat as the protestors were on an indefinite hunger strike.

Judgment: The report of the ministers which was made public was supplied to the applicants.

The Commission, however, held that for an application to be treated as one concerning life and liberty under **Section 7(1)**, it must be accompanied with substantive evidence that a threat to life and liberty exists.

In the present case, the Commission rejected the application under **Section 7(1)**.

However, the Commission held that agitation with the use of *ahimsa* must be recognised as a bonafide form of protest, and therefore even if the claim of concern for life and liberty is not accepted, in a particular case by the public

authority, the reasons for not doing so must be given in writing in disposing the application.

Provisions involved:

Section 7(1) - *Subject to the proviso to sub-section (2) of Section 5 or the proviso to subsection (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.

3. **Period between asking for further fees and its payment is excluded for calculating the 30-day limit [Secs.7 (1) and 7(3)(a) of the RTI Act]**

Case: In the case of *Ram Chander Singh vs. Delhi Jal Board* (Appeal No.CIC/2006/WB/C/2006/00301, dated 30/12/2006), the applicant had applied for some information to the PIO of a public authority (Delhi Jal Board) regarding the meter readings he had received for his water connection.

In order to be provided the relevant information sought, he was asked to deposit further fees by the concerned Public Information Officer (PIO).

According to the applicant he could not get the information sought within 30 days of his application being accepted.

Judgment: The CIC in the appeal before it, held that in counting the 30 days time limit for providing the information under the RTI Act, the period between asking for the additional/further fees by the PIO and its final payment by the applicant is excluded in calculating the period of thirty days stipulated in **Section 7 (1)** of the RTI Act as per **Section 7(3)(a)**.

The appeal was therefore rejected.

Provisions involved:

Section 7 (1) - *Subject to the proviso to sub-section (2) of Section 5 or the proviso to subsection (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(3)(a) - *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 the fee prescribed under subsection (1), requesting him to deposit that fees, and the period intervening between the dispatch of the said intimation and the payment of fees shall be excluded for the purpose of calculating the period of thirty days referred to in that sub-section.

4. **Information to be provided free to BPL applicants under RTI Act [Proviso to Sec.7 (5) of the RTI Act]**

Case: In the case of *Shama Parveen vs. National Human Rights Commission* (Appeal No.CIC/OK/2006/00717, dated 18/4/2007), the applicant, belonging to the BPL category, had filed a petition in the National Human Rights Commission (NHRC).

She applied to the NHRC to seek information in regard to the processes, procedures and policies of the NHRC. She also wanted the certified copies of the file notings and orders passed by the members of the commission on the admittance of her case.

The PIO of the NHRC intimated to her that the complete information was available at the NHRC's office, and could be supplied to her and asked her to deposit further fees of Rs. 444 for obtaining the required documents.

She filed an appeal before the Appellate Authority of the NHRC, that since she belonged to the BPL category, she could not afford to pay the further fees.

Judgment: The Commission referred to the **Proviso to Section 7(5)** of the Act, and held that when as per the RTI Act, the applicant was not required to pay the

application fees of Rs. 10, she cannot be expected to pay Rs. 444, and therefore she should be provided information free of charges.

The Commission, however, laid down an important condition, that any public authority which provides information sought by a BPL applicant must ensure that

such an applicant is a genuine seeker of information, and is not working as a proxy for someone who merely wants to save money to obtain information.

Provisions involved:

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.

VII - Exemptions from disclosure of information (Section 8 of RTI Act, 2005)

The Right to Information Act does not provide access to citizens to all kinds of information held by the public authorities. Some exemptions from the disclosure of information have been provided in **Section 8(1)** of the RTI Act; categories of information listed in this section can be denied to the citizens by the PIOs. Citizens must also know the provisions of **Section 8** and the related judgments already listed in this section, so that they do not waste their and the PIOs' time,. It is mandatory for the PIOs to know this provision and develop a clear understanding of it, so that any denial of requested information by him clearly falls within the scope of **Section 8(1)**. The PIOs must also know that mere quoting of a clause of **Section 8(1)** is not sufficient; it should be backed by reasonable justification.

The PIO of a public authority can deny the following categories of information under the Act:

- Information whose disclosure will affect the security and integrity of India.
- Information barred from disclosure by a court.
- Information, whose disclosure would be a breach of privileges of the Parliament/Assembly.
- Information relating to commercial secrets.
- Information, which is available to a person due to a special relationship of trust (fiduciary relationship).
- Confidential information obtained from foreign governments.
- Information, the disclosure of which would endanger the life and physical safety of a person.
- Information, which would affect the process of investigation.
- Records of meetings of cabinet (council of ministers).
- Personal information, the disclosure of which has no relationship to any public interest.

However, a PIO may allow access to information to the applicants in spite of the above exemptions provided in **Section 8(1)**, if public interest in providing the information is greater than the harm done in private interest. Thus, the PIOs, while dealing with requests for information must always remember that public interest shall outweigh private interest in the disclosure of information, and that disclosure of information is the rule and denial of information is an exception.

1. Information on ongoing investigation [Secs. 8(1)(g) & 8(1)(h) of the RTI Act]

Case: In the case of *Ravinder Kumar vs. B.S. Bassi, Jt. Commissioner, Police* (F.No.CIC/AT/A/2006/00004, dated 30/6/2006), the applicant had sought details regarding the progress of an investigation of a case by the police.

Judgment: 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.

Provisions involved:

Section 8 (1) - *Notwithstanding anything contained in this Act, there shall be no obligation to give any citizen —*

(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.*

2. Answer scripts cannot be disclosed [Sec. 8 of the RTI Act]

Case: In the case of *Teresa Irish vs. CPIO, Postal Circle, Trivandrum* (Appeal No.ICPB/A-2/CIC/2006, dated 6/2/2006) the applicant was a candidate in a departmental examination conducted by the public authority for promotion purposes.

She filed an application with the public authority seeking information in the nature of a copy of her evaluated answer sheet in respect of the departmental examination she had appeared for promotion.

Judgment: The Commission held that access to answer scripts could not be provided to the candidates, as per **Section 8(1)(e)** of the RTI Act, which relates to a fiduciary relationship.

The Commission held that there is a fiduciary relationship, which exists between the examiner and the authority conducting the examination, and information regarding persons in a fiduciary relationship cannot be disclosed

Comments: It must be submitted that the Central Information Commission has not made a proper interpretation of the law relating to *fiduciary relationships* in this case.

Persons are said to be in a fiduciary relationship when there is a special relationship of trust between them, as for instance, the relationship between a doctor and his patients, or a lawyer and his clients.

There is no fiduciary relationship which exists, between an examiner and the examinees; therefore, there is no valid justification for not disclosing the answer scripts of candidates of an examination by referring to Section 8(1)(e) of the RTI Act.

Provisions involved:

Section 8(1)(e) - *Notwithstanding anything contained in this Act, there shall be no obligation to give any citizen, 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.*

3. Disclosure of answer scripts [Secs. 8(1)(e) and 8(1)(j) of the RTI Act]

Case: In the case of *George Paul vs. B.S.N.L.* (Appeal No.38/ICPB/2006, dated 29/6/2006), the applicant had appeared for a competitive-cum-qualifying examination, conducted by a public authority and wanted information in nature of a copy of his answer scripts, as well as the marks obtained by him and marks of other successful candidates.

Judgment: The CIC held that the information in nature of disclosure of the evaluated answer sheets/scripts of examinees cannot be provided to the candidates, as there is a fiduciary relationship which exists between the examiner and examinee.

The Commission held that this information falls under the exemptions from disclosure provided in **Sections 8(1)(e)** and **8(1)(j)** of the RTI Act, 2005.

However, the Commission ordered the public authority to disclose the list and marks secured of the other candidates to the applicant.

Provisions involved:

Section 8(1) - *Notwithstanding anything contained in this Act, there shall be no obligation to give any citizen,—*

(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;

(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.

4. Disclosure of marks secured [Secs. 8(1)(e) of the RTI Act]

Case: In *Neeraj Kumar Singhal vs. North West Railway, Jaipur* (Appeal No.11/53/2006-CIC, dated 2/5/2006), the applicant had asked for copies of marksheets and answer sheets of the candidates who were declared successful in the examination conducted by the Railways (a public authority).

The public authority, however, did not provide him with information saying it could not be provided, to the candidates.

Judgment: The CIC held that in case of competitive examinations, conducted by public authorities, the answer sheets could not be provided to the candidates as per Sections 8(1)(e) and (8)(1)(j) of the RTI Act.

The Commission, however, held that the marks secured by the candidates are not to be kept secret, and should be furnished to the candidate.

It was further held that the disclosure of marks is not against the provisions for exemption of disclosure of information under **Sections 8(1)(e)** of the Act, and therefore such information should be disclosed to an applicant.

Provisions involved: *Sections 8(1)(e) and 8(1)(j) have already been quoted in the previous case.*

5. Information no longer available in records cannot be given [Sec. 8(1)(j) of the RTI Act]

Case: In the case of *T.V. Varghese vs. B.S.N.L.* (Appeal No.251/ICPB/2006, dated 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 years 1992 to 1998, and the marks obtained by each of the successful candidates.

The Appellate Authority of the public 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.

Judgment: 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.

Provisions involved: *Section 8(1)(j) has already been quoted in previous case.*

6. No disclosure in case of pending trial [Sec. 8(1)(h) of the RTI Act]

Case: In the case of *Ashok Agarwal, Jt. Commissioner of Income Tax vs. Department of Revenue* (Appeal No.01/IC (A)/2006, dated 16/02/2006), the applicant asked for certified copies of files relating to the prosecution proceedings against him, under Section 6 of the RTI Act, 2005.

Judgment: The Commission said that since the matter is sub-judice (in trial before a court of law), there is a due process of law under which the appellant may obtain the documents to defend himself in his case before the trial court.

The Commission rejected his appeal to obtain the documents from the public authority, and held that since the matter is under investigation, the exemption under **Section 8(1)(h)** would apply.

Provisions involved:

Section 8(1) - *Notwithstanding anything contained in this Act, there shall be no obligation to give any citizen —*

(h) Information which would impede the process of investigation or apprehension or prosecution of offenders.

7. Information on an ongoing investigation can be given in special circumstances [Sec. 8(1)(h) of the RTI Act]

Case: In the case of *Mangto Ram vs. Addl. Commissioner & PIO, Delhi Police* (Appeal No.CIC/AT/A/2006/00355, dated 26/12/2006), the appellant had filed an application with the police authorities.

The applicant wanted information on the ongoing investigation into the death of his daughter under mysterious circumstances.

Judgment: 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.

Provisions involved: *Section 8(1)(h) has already been quoted in the previous case.*

8. Vigilance report findings can be disclosed [Sec. 8(1)(h) of the RTI Act]

Case: In the case of *P.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 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.

Judgment: 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, and only the "gist"(the confidential part) could be kept confidential. The CIC ordered that the concluding part of the vigilance report be disclosed to the appellant.

Provisions involved: *Section 8(1)(h) has already been quoted in the previous case.*

9. **No disclosure in case of pending departmental enquiry [Sec. 8(1)(h) of the RTI Act]**

Case: 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.

Judgment: 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.

Provisions involved: *Section 8(1)(h) has already been quoted in the previous case.*

10. **Public authority to disclose information if public interest outweighs the harm to the protected interests [Sec. 8(1)(h) of the RTI Act]**

Case: 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 Sections 8(1)(g) and 8(1)(h) of the RTI Act.

Judgment: 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 would outweigh the harm to the protected interests, it can disclose the information, which was not the position in this case.

Note: The principle that the information from a non-public authority can be obtained indirectly from the concerned public authority which has the power to access such information under any other law for the time being in force was subsequently reaffirmed in the case of *Surendra vs. Directorate of Education, Delhi Government* (Appeal No.CIC/WB/A/2006/00521, dated 5/4/2007).

Provisions involved: *Section 8(1)(h) has already been quoted in the previous case.*

11. Contents of a departmental enquiry can be disclosed, if no bar from the Court [Sec. 8(1)(b) and Sec. 8(1)(h) of the RTI Act]

Case: In the case of *N.B.S. Manian vs. Deptt. 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 Commission). 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.

Judgment: 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. As 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.

However, the Commission upheld the decision of the public authority, for not disclosing the Confidential Report (CR) of the appellant, and held that **Section 8(1)(h)** permits such a prohibition.

Provisions involved: **Section 8(1)(h)** has already been quoted in the previous case.

Section 8(1) - Notwithstanding anything contained in this Act, there shall be no obligation to give any citizen, —

(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.

12. No disclosure of third-party confidential information [Sec. 8(1)(j) of the RTI Act]

Case: 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.

Judgment: 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 cannot be accepted in terms of the law as provided in **Section 8(1)(j)** of the Act.

Provisions involved:

Section 8(1) - *Notwithstanding anything contained in this Act, there shall be no obligation to give any citizen,—*

(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.

13. Frivolous applications not to be entertained [Sec. 8 of the RTI Act]

Case: In the case of *S.K. Lal vs. Ministry of Railways* (Appeal No.CIC/OK/A/2006/00268-272, dated 29/12/2006), the appellant had filed five applications to the railway authorities asking for "all the records" regarding the various services and categories of staff in the railways.

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

Judgment: The Central Information Commission observed that though the RTI Act allows citizens 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 sorts 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." While dismissing the appeal, the CIC recorded its appreciation of the efforts made by the Railways to provide the applicant with the information sought.

Comments: It must be submitted that a PIO cannot refuse to accept an RTI application or provide information in most of the cases, and the RTI Act makes it compulsory that every public authority is duty bound to accept all RTI applications.

The public authorities are also not supposed to question the applicant under the RTI Act about the reasons for filing an application and asking for particular information. Only in the rarest of rare circumstances, where it is clearly established that an applicant has filed an RTI application just to harass the public authority, an application can be termed frivolous.

14. Report of departmental enquiry can be disclosed with conditions [Secs. 8(1) and 2(j) of the RTI Act]

Case: In the case of *Nahar Singh vs. Deputy Commissioner of Police & PIO, Delhi Police* (Appeal No.CIC/AT/C/2006/00452, dated 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 8(1) & (2)** of the RTI Act.

Judgment: The CIC held that the report of lower public officers to their seniors can be shared with an 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.

Provisions involved:

Section 8(1) mentions exemption items (a-j)

Section 2(j) - “Right to Information” means the right to information accessible under this Act which is held by or under the control of any public authority and includes the right to—

- (i) inspection of work, documents, records;
- (ii) taking notes, extracts or certified copies of documents or records;
- (iii) taking certified samples of material;

obtaining information in the form of diskettes, floppies, tapes, video cassettes or in any other electronic mode or through printouts where such information is stored in a computer or in any other device.

15. Information in respect of a period, prior to twenty years [Secs. 8(1) and 8(3) of the RTI Act]

Case: In the case of *S.R. Pershad vs. Directorate General of Supplies & Disposals* (37/ICPB/2006, dated 26/6/2006), the appellant had sought some information, which is exempted under the Act but which was more than 20 years old.

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

Judgment: 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) cannot be applied if the information sought is older than 20 years

In other words, even if the information sought is exempted in terms of sub-section (1) of Section 8, but the same relates to a period 20 years prior to the date of application, then the same shall be provided to an applicant, if the same is available with the concerned public authority.

Provisions involved:

Section 8(1) mentions exemption items (a-j)

Section 8(1) - Notwithstanding anything contained in this Act, there shall be no obligation to give any citizen,-

(a) Information, disclosure of which would prejudicially affect the sovereignty and integrity of India, the security, strategic, scientific or economic interests of the State, relation with foreign State or lead to incitement of an offence;

(c) Information, the disclosure of which would cause a breach of privilege of Parliament or the State Legislature;

(i) Cabinet papers including records of deliberations of the Council of Ministers, Secretaries and other officers:

Section 8(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.

16. Consultation between the President and the Supreme Court cannot be disclosed [Secs. 8(1)(e) and 11(1) of the RTI Act.]

Case: In the case of *Mukesh Kumar vs. Addl. 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.

Judgment: The CIC held in the appeal that the entire process of consultation between the President of India and the Supreme Court of India cannot be disclosed

The CIC held that such a process of consultation is exempted under **Sections 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.

Provisions involved:

Section 8(1) - *Notwithstanding anything contained in this Act, there shall be no obligation to give any citizen,—*

(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;

Section 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 a submission of the third party shall be kept in view while taking a decision about the disclosure of information:*

Provided that except in the case of trade or commercial secrets protected by law, the 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.

17. Reasons for rejection of requests for information must be clearly provided [Sec. 8(1) of the RTI Act]

Case: 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, without providing any further reasons as to how the information sought could not be provided under the RTI Act.

Judgment: 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.

Provisions involved:

Section 8(1) - Notwithstanding anything contained in this Act, there shall be no obligation to give any citizen,—

(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.

Section 20(1) - Where the Central Information Commission or the State Information

Commission, as the case may be, at the time of deciding any complaint or appeal, is of the opinion that the Central Public Information Officer or the State Public Information Officer, as the case may be, 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 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 impose a penalty of two hundred and fifty rupees each day till the application is received or information is furnished, so however, the total amount of such penalty shall not exceed twenty-five thousand rupees:

Provided that the Central Public Information Officer or the State Public Information Officer, as the case may be, shall be given a reasonable opportunity of being heard before any penalty is imposed on him:

Provided further that the burden of proving that he acted reasonably and diligently shall be on the Central Public Information Officer or the State Public Information Officer, as the case may be.

18. Results of field trials of genetically modified crops to be disclosed [Sec. 8(1)(d) of the RTI Act]

Case: In the case of *Divya Raghunandan vs. Deptt. Of Biotechnology* (13/4/2007), the applicant had asked for information about the field trials of genetically modified (GM) crops, conducted by the Department of Biotechnology, to look into the feasibility of growing these crops and to assess their harmful impact if any, i.e., their toxicity or allergenicity

The seeds of these crops were developed by a multinational company. The DBT (public authority) refused to provide the appellant with the required information.

The DBT argued that the findings of the trials could not be disclosed, as it would amount to impinging the commercial secrets of the companies according to **Section 8(1)(d)** of the RTI Act.

Judgment: The Commission, in its order, held that the information sought concerned the interests of a large number of farmers and other communities, therefore such information has to be disclosed in public interest.

The Commission further held that the information sought does not concern commercial secrets as per the terms of **Section 8(1)(d)** of the RTI Act, and is therefore not exempted from disclosure.

Provisions involved:

Section 8(1) - *Notwithstanding anything contained in this Act, there shall be no obligation to give any citizen,—*

(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 the larger public interest warrants the disclosure of such information.

VIII - Partial Disclosure of information (Section 10 of RTI Act)

Citizen can have partial access to that information which is covered under exemptions from disclosure [Section 8(1) of RTI Act]. If the request for information has been rejected by a PIO on the ground that it relates to information, which is exempt from disclosure [under Section 8(1) of the RTI Act], then some part of the information, which is not covered in the exemption list, can be disclosed. Such information should be reasonably severed from the information, which falls in the exemption list.

This means if a document or record contains information, part of which is exempted from disclosure under the RTI Act while the other part is not exempted from disclosure, then the PIO of a public authority can sever (separate) the parts and provide information which is not exempted to the applicant.

Where partial access to information is provided to an applicant, the PIO must inform the applicant:

- a. Only part of the information after separating it from the record, which falls under the exemption list [Section 8(1)].
- b. The reasons for providing only part of the requested information.
- c. The name and designation of the person (PIO) giving this decision.
- d. The details of additional fees, which the applicant has to pay to obtain the partial information.
- e. The details of the Appellate Authority and the time limits for filing such an appeal in case the applicant is not satisfied with the partial information and he wants full information.

Section 10(1) of the Act emphasises the fact that an applicant can have access to partial access to even those records and information on documents under exemption list [Section 8(1)]. It is the responsibility of the PIO to reasonably separate that part of information from the main part, which falls in the exemption list.

1. Information can be severed and supplied (Section 10(1) of the RTI Act)

Case: In the case of *Paramveer Singh vs. Punjab University* (Appeal No.CIC/OK/A/2006/00016 dated 15.6.06),the applicant had applied for information regarding the merit list for selection of candidates to a particular post in the University.

However,the information regarding this was contained in some document,which also contained some information ,which was exempted from disclosure,as per the RTI Act.

But no proper information was supplied to the applicant, due to negligence of the University's PIO in identifying and collecting the proper information.

Judgment: In the above case, the Commission held, that the university should streamline its university record management system in such a manner that information, which is to be disclosed, could be easily provided after separating those that is exempted as per **Sec.10 (1)** of the RTI Act.

The Commission held that every public authority, particularly after the implementation of the Right to Information Act must take all measures in pursuance of pro-active disclosure requirements, to implement efficient record management systems in their offices so that the requests for information can be dealt with promptly and efficiently.

Provisions involved:

Section 10(1) - Where a request for access to information is rejected on the ground that it is in relation to information which is exempt from disclosure, then, notwithstanding anything contained in this Act, access may be provided to that part of the record which does not contain any information which is exempt from disclosure under this Act and which can reasonably be severed from any part that contains exempt information.

IX - Third Party Information (Section 11 of RTI Act, 2005)

The Right to Information Act also covers individuals/firms/organisations which directly do not fall within the scope of the Act but they have submitted some of their information related to contracts, business deals or financial details to government agencies (public authorities). Such information can be accessed under the Right to Information Act by the citizens. These individuals/firms/organisations are covered under the definition of third-party under the RTI Act.

The definition of a third-party under **Section 11** of the RTI Act covers anyone other than the public authority dealing with the application and the requester (applicant) for information as shown below:

First-party	The person submitting an application or appeal.
Second-party	The public authority responsible for processing the application.
Third-party	Any other person or body including another public authority.

The records supplied by a third party but held by a public authority are included within the definition of “information” under the RTI Act, and can be the subject matter of request for information. Section 11 of the RTI Act requires that if the information asked by a citizen relates to a record that has been supplied by a third party, and is not treated as confidential by that party, the PIO of a public authority is at liberty to provide such information to an applicant.

If the information is treated as ‘confidential’ by a third party, then the following steps will have to be taken by the PIOs:

- The PIO has to give a written notice to the third party within five days of the receipt of an application for information seeking his opinion, whether the information should be disclosed to the applicant or not.
- The third party has to make a submission to the PIO within 10 days, whether to disclose the information or not.
- Within 40 days of the receipt of the application, the PIO has to make a decision. Should the information related to the third party be provided to the applicant or not, and then convey his decision to the third party.
- The third party can appeal against the decision of the PIO to disclose information relating to him/her to an RTI applicant to appellate authorities.

A PIO should use his discretion in dealing with the application seeking information related to a third party. While using his discretion, he should keep in mind trade and commercial secrets protected by law, protection of the violation of privacy of individuals and public interest outweighing the harm to the interests of the third party.

Under **Section 11** (third party) of the Act, all the private industries, banks or any other firms, which has some kind of business dealings/contractual relationships with the public authorities, are covered. Citizens can ask for information about these firms from the public authorities, which maintain their records.

1. Third Party has no absolute right to refuse information disclosure about it [Sec. 11(1) of the RTI Act]

Case: In the case of *K.K. Mahajan vs. Cantonment Executive Office* (CIC/AT/A/2006/00014, dated 22/5/2006), the appellant, an employee of a public

authority, had applied for some information relating to the prosecution of another employee (third party), because under similar circumstances the appellant was convicted while the other employee was exonerated.

The public authority refused to provide him the information he had asked for on the ground that the third party had refused the disclosure of information about it to the applicant.

Judgment: The CIC held that the RTI Act does not give a third party an automatic right to order the public information officer (PIO) of a public authority, not to disclose information pertaining to it.

The CIC further held that the public authority is required to evaluate the third party's case in terms of the provisions of **Section 8(1)(j)** and **Section 11(1)** of the RTI Act, 2005, and find out that the information asked is not barred from disclosure.

Even if the information is barred from disclosure then the public authority is to examine if it would be in the public interest to disclose the information sought and its disclosure will outweigh harm if any to the individual third party.

The public authority has to arrive at the findings by properly assessing the facts and circumstances of the case. A speaking order should thereafter be passed accordingly.

Provisions involved:

Section 8(1) - *Notwithstanding anything contained in this Act, there shall be no obligation to give any citizen,—*

(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.

Section 11(1) *has already been quoted in Case No.15.*

X - Powers and Functions of the Information Commission (Sections 18,19 & 20)

The power of enforcement and compliance of the Right to Information Act has been given to the CIC or SIC. The CIC/SIC have the powers of a civil court of law, in the discharge of their functions such as summoning and enforcing attendance of persons or documents, discovery and inspection of documents, etc. In addition, the CIC/SIC can ensure the compliance of the RTI Act in the correct manner by directing the public authority to take necessary action for implementing the Act.

The CIC/SIC is also the apex body of appeal (second appeal) under the Right to Information Act. However, the first appeal is to be filed with the first appellate authority under Section 19 of the RTI Act, 2005. An applicant can file the first appeal against the order of the PIO, if the information asked by an applicant is refused or only part of the information requested by the applicant is provided. The First Appellate Authority is usually a designated senior officer of a government department (public authority where the request for application had been submitted). The first appeal has to be filed within 30 days from the date of receipt of the decision, regarding refusal of information by the PIO of the public authority.

If the applicant is not satisfied with the decision of the first appellate authority, then he can file a second appeal to the CIC or the SIC, as the case may be. This appeal must be filed within 90 days from the date of decision of the AA (in the first appeal). There is no time limit, which is prescribed under the Act, for disposing the second appeal for CIC/SIC.

Besides the provision of appeal, there is a provision of *complaints* for the applicant as well. If an applicant has not been able to submit an application to the PIO; he has been denied information; his/her information request has not been responded within the time limits fixed under the Act; he has been charged unreasonable fees by the PIO; he has been given false or incorrect information or he/she faces any other problems relating to obtaining the information, then the applicant can file a complaint with the CIC/SIC.

While hearing the appeal if the CIC/SIC finds that the PIO has deliberately denied information or provided incorrect information, then it can impose a penalty of Rs 250 per day till the information is furnished, subject to a total of Rs 25,000 [Section 20]. It can also recommend disciplinary action against the PIO, under the service rules of the department. The Commission, in its order, can award compensation to the applicant or impose a penalty on the PIO of a public authority.

The applicant has one more avenue of appeal after the CIC/SIC. He/she can challenge the decisions of the CIC/SIC under the writ jurisdiction of the High Courts (Article 226) or the Supreme Court.

The powers and functions of the CIC/SIC have been defined in Section 18, 19 and 20 of the Act. Public authorities and PIOs should know that non-compliance of the RTI Act can draw the information commission's ire, which can impose penalties on the PIOs or direct public authorities to implement the Act in letter and spirit.

1. **Commission not a forum for execution of a court decree [Sec. 18(1)(e) of the RTI Act]**

Case: In the case of *Ajay Goel vs. D.C.P.* (Appeal No.CIC/AT/C/2006/00035, dated 28/6/2006), the appellant filed a complaint with the CIC under Section 18(1)(e) of the RTI Act, against the police department (a public authority).

The applicant had sought the help of the CIC against the police department which was not taking action to carry out the decree of the High Court passed in a particular case.

Judgment: The Commission (CIC) dismissed the complaint filed by the complainant.

The CIC held that it was not the appropriate forum to hear complaints under **Section 18(1)(e)** of the RTI Act, for execution of a decree passed by the High Court and dismissed the appeal.

Provisions involved:

Section 18(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,—*

(e) who believes that he or she has been given incomplete, misleading or false information under this Act.

2. **No additional information can be sought at the appellate level [Sec. 19 of the RTI Act]**

Case: In the case of *Mahadeo Barik and others vs. General Manager South Eastern Railway, Kolkata*, (CIC/OK/A/2006/00069, dated 18/5/2006), the appellant had filed an appeal against the order of the public authority, which had refused to provide him with the information sought.

The appeal, however, was very lengthy with several repetitions and use of highly technical legal language.

The appellant had also asked for information on some new points during the appeal.

Judgment: It was held by the CIC that an appeal should be drafted in a simple and direct manner and must be brief. It must not be unnecessarily long, too detailed and contain technical language with several repetitions.

The CIC further held that no fresh grounds for seeking additional information can be allowed to be urged at the appellate level under **Section 19** of the RTI Act, unless found to be of a nature that would require their admittance, if the same has not been brought up in the application to the public authority.

3. **'Reasonable cause' justified for the delay in providing information [Sec. 20 of the RTI Act]**

Case: In the case of *Amal Das vs. Arun Mishra*, PIO, UT Admn. Daman, (Appeal No.CIC/PB/A/2006/00074, dated 28/6/2006), the appellant had filed a complaint with the CIC under Section 18 of the RTI Act, for the delay in providing information to him.

Judgment: It was held by the CIC that in cases of delay in providing information, the *reasonable cause* as laid down in **Section 20**, due to which the information asked from a public authority could not be provided in time, should be considered.

The CIC ruled that if the delay in providing information is due to some urgent official work, in which the employees of a public authority are engaged, e.g., preparation of the departmental budget, which could not be postponed, then in such cases, the delay can be condoned under the Act.

Provisions involved:

Section 20(1) - *Where the Central Information Commission or the State Information Commission, as the case may be, at the time of deciding any complaint or appeal is of the opinion that the Central Public Information Officer or the State Public Information Officer, as the case may be, 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 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 impose a penalty of two hundred and fifty rupees each day till the application is received or the information is furnished, so however, the total amount of such penalty shall not exceed twenty-five thousand rupees:*

Provided that the Central Public Information Officer or the State Public Information Officer, as the case may be, shall be given a reasonable opportunity of being heard before any penalty is imposed on him:

Provided further that the burden of proving that he acted reasonably and diligently shall be on the Central Public Information Officer or the State Public Information Officer, as the case may be.

4. **Disciplinary action against Appellate Authority [Sec. 20(2) of the RTI Act]**

Case: In the case of *Dr. Anand Akhila vs. Council of Scientific and Industrial Research* (CIC/EB/C/2006/00040, dated 24/4/2006), the applicant had asked for certain information from the PIO of the CSIR (public authority). The information was refused by the PIO stating that it was exempted under the RTI Act, and was informed about the appellate authority with which he could file the first appeal.

The Appellate Authority, however, without filing a formal appeal by the applicant/appellant, sent a letter to the applicant that the information asked by the applicant could not be supplied.

Judgment: The CIC recommended disciplinary action against an *Appellate Officer* by extending the meaning of **Section 20(2)** of the RTI Act.

The Commission held that though an appellate authority is not covered under the penal provisions of the Act but in this case, it clearly failed to uphold the Act in the public interest.

It was observed that this decision might be sent to the public authority to consider disciplinary action against the Appellate Authority, under their service rules.

Provisions involved:

Section 20(2) - *Where the Central Information Commission or the State Information Commission, as the case may be, at the time of deciding any complaint or appeal is of the opinion that the Central Public Information Officer or the State Public Information Officer, as the case may be, has, without any reasonable cause and persistently, failed to receive an application for information or has not furnished information within the time specified under subsection (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 Central Public Information Officer or the State Public Information Officer, as the case may be, under the service rules applicable to him.*

XI - Miscellaneous Judgments

1. Address of the applicant need not be personal

Case: In the case of *Bibhav Kumar vs. University of Delhi*. (CIC/OK/A/2006/00050, dated 3/7/2006), the applicant had applied for certain information from Delhi University (public authority).

He had provided the address of a non-governmental organisation(NGO) he was associated with, for the purpose of correct delivery of replies in response to his application.

Judgment: The Commission noted that the appellant has applied in his own name as a citizen as per the requirement of **Section 3** of the RTI Act and had only given the address of an NGO for the purpose of correct delivery by post.

It was accordingly held that merely giving the address of some organisation does not imply that the institution was asking the information, and an RTI application could not be rejected on this ground alone, therefore the concerned public authority was directed to immediately provide the information sought and the PIO was penalised according to provisions of **Sections 7 & 20** of the RTI Act.

2. Decisions by single member CIC benches are valid

Case: In the case of *Pyare Lal Verma vs. Ministry of Railways* (Appeal No.CIC/OK/A/2006/00154, dated 29/1/2007), the appellants had challenged the delivery of judgments of the Central Information Commission by single member benches of the Commission.

Judgment: The CIC held that there is no provision in the RTI Act, requiring that every case that comes before the Commission should be disposed by a full bench comprising all the Members of the Central Information Commission (CIC).

The Commission referred to the **Section 12(4)** of the RTI Act and its **Preamble** and **Statement of Objects and Reasons** to rule that the single-member benches of the Commission can hear appeals and deliver the orders of the Commission.

3. No misuse of the provisions of the Act to settle personal scores

Case: In the case of *Sabu Kuriakose vs. N.C.E.R.T.* (Decision No.CIC/OK/A/2006/00485, dated 21/2/2007), the applicant had applied for voluminous information regarding the procedures and criteria for appointment to different posts in the National Council of Educational Research and Training.

The applicant was a candidate for many positions advertised from time to time in this public authority and he was not selected for them.

In order to harass the public authority he started flooding it with repeated applications which provided him with most of the information that was available with it.

Judgment: The Commission held that the applicant was trying to misuse the provisions of the RTI Act, and warned that the Commission would not tolerate the provisions of this progressive Act, to be subverted by individuals for vested interests.

4. Public authorities to observe due diligence in applying the RTI Act

Case: In the case of *Girdhari Lal vs. Municipal Corporation of Delhi* (Decision No.CIC/WB. /2006/00472), the applicant had sought information regarding certain buildings and the action taken by the MCD against them for illegal and unauthorised constructions carried out.

The public authority, MCD, did not provide him with the relevant information arguing that this information was related to third parties and said that it was a commercial secret covered under exemptions to the disclosure of information, as per the provision contained in **Section 8(d)** of the RTI Act.

Judgment: The Commission held that there is no clause '8(d)' of the Act, but the clause referred to is in fact **Section 8(1)(d)** of the Act. The Commission also held that "those dealing with the RTI Act are advised to be more careful in dealing with the Act, and are advised to understand the law correctly before dispensing the orders under it. The Commission also held that the public authority should examine the case afresh on merits.

5. Review of a decision delivered by a public authority

Judgment: In the Review Application No.1/2006, dated 16/5/2006, before the Central Information Commission, the CIC laid down the following important conditions, which must be satisfied, for review of a decision delivered by the PIO of a public authority:

- There is a technical error in the decision
- There was an omission to consider certain material facts relevant for the decision
- The appellant was not given an opportunity of being heard
- The PIO has not given enclosed relevant supporting documents in his comments furnished to the Central Information Commission (CIC)

References

- Website of the Central Information Commission www.cic.gov.in
- *The Right to Information Act,2005 -A Guide for Civil Society Organizations* [Hyderabad : Centre for Good Governance,2006]
- *Report of the National Convention on the Right to Information Act, 13th.October-15th.October2006.*
- Nigam, Shalu, *About Your Right to Information* (Delhi: We - The People Publishers,2006)
- Wadia, Angela: *Global Sourcebook on Right to Information* (Delhi: Kanishka Publishers,2006)
- *Your Guide to Using the Right to Information Act 2005* (Delhi: Commonwealth Human Rights Initiative,2006)
- *The Right to Information Act 2005* (The Gazette of India, dated 21 June 2005)