The Right to Information Act, 2005 spells out the responsibility for overseeing the implementation of Right to Information law upon Central Information Commission. The enactment and implementation of Right to Information Act has brought about revolutionary changes in the functioning of Public Authority, as it made them answerable and responsible for their every act done in official capacity. The positive aspect of the transformative approach introduced by the implementation of Right to Information Act is that it has made transparency and access to information as a part of governance in the country. In general sense, implementation stands for ‘translating intent into action’.¹ The word ‘implementation’ is synonymous with ‘enforcement’. In technical sense, the word ‘enforcement’ is also defined as ‘events and activities that occur after the issuing of authoritative public policy directives, which include the effort to administer and the substantive impacts on people and events’.² The process of enforcement is especially important in case of any law that regulates complex behaviour. Until enforcement in real sense is carried out, it is often unclear what exact changes in behaviour will be required to meet with the objectives of these laws. It is a vital aspect of any effective public policy. The term ‘enforcement’ means ‘the range of procedures and actions employed by a State, its competent authorities and agencies, to ensure that organizations or persons are carrying out their tasks in the manner prescribed in the laws. In case of contravention or violation of provisions, the violator can be brought

¹ Cambridge Advance Learner’s Dictionary, 7.0.
² Richardson, Ogus and Burrows, Policing Pollution: A Study of Regulation and Enforcement, (1982).
or punished under the purview of civil, administrative or criminal action.³

Looking at the various provisions of the Right to Information Act, 2005, it is submitted that the term implementation, as accorded in Indian approach towards this law, includes making information accessible to the citizens, coordinating the activities of public offices, entertainment of appeal by competent authorities, interpreting and adjudicating and prosecuting the defaulters. For the purpose of implementation, the Act provides for various authorities, such as Central Public Information Officer, Appellate Authority, State Information Commission and Central Information Commission⁴.

6.1 Implementation of Right to Information Act, 2005

The laws are worthless until brought into implementation. The proper and effective realization of goals of any law depends upon its acceptance and proper implementation. The study of implementation of Right to Information Act, therefore, assumes significant part of this work. In order to make the study empirical, enormous data and information relevant to the different aspects of implementation like functioning of Central Information Commission and State Information Commission and level of implementation of various provisions of this Act have been collected.

An important part of the study is the exploration of the level of awareness among the subjects regarding various aspects of the Act. Therefore, the opinion of various Sections of the society, e.g. common man, students, consumer, bureaucrats, etc., regarding the level of implementation of the Act has been evaluated. The researcher has

⁴ Ibid.
adopted the technique of interview and questionnaire to elicit information for accomplishing the task.

6.2 Object of Establishment of Central Information Commission

The purpose of establishment of Central Information Commission is to provide for a separate mechanism from ordinary civil courts, as the procedure in the civil courts is quite lengthy and dilatory due to weight of longs lists of pending cases. In order to keep the persons unaffected from the dilatory tactics of the ordinary civil courts and save the time of information seeking persons, the Act provided for the setting up of such a commission to create the faith, confidence and a greater sense of security in the mind of common man. Regarding the status of Central Information Commission, it can be submitted that it is a body or authority, though not a court in the strict sense, which is invested with the judicial powers under the Act to adjudicate on the question of law or fact affecting the rights of people in a judicial manner. The authority required to act judicially should be invested with the trappings of a court, such as the authority to determine matters in cases initiated by parties, sittings in public, power to compel attendance of witnesses and to examine them on oath, duty to follow fundamental rules of evidence, provision for imposing sanctions by way of imprisonment, fine, damages, mandatory or prohibitory orders to enforce obedience to its commands.

6.3 Composition of Central Information Commission

The provision relating to composition of Central Information Commission has been made under Section 12(2) of the Act. The Section provides:

“The Central Information Commission shall consist of:

(a) the Chief Information Commissioner; and

(b) such number of Central Information Commissioners, not exceeding ten, as may be deemed necessary”.

The expression ‘as may be deemed necessary’ implies that the number of information commissioners may be increased from time to time as considered necessary by the Central Government.

In order to maintain impartiality in the appointment of the officials of the Commission, Section 12(3) lays down that the Chief Information Commissioner and Information Commissioners shall be appointed by the President on the recommendation of a committee consisting of:

(i) the Prime Minister, who shall be the Chairperson of the committee;

(ii) the Leader of Opposition in the Lok Sabha; and

(iii) a Union Cabinet Minister to be nominated by the Prime Minister.

In addition to above, the sub-Section also provides an explanation to clarify that in case there is no recognized leader of opposition, the leader of single largest group in the opposition in the Lok Sabha shall be the member of the appointment committee.⁶

6.4 Powers of the Commission

The Central Information Commission shall exercise all the powers conferred on it by or under this Act. The Act has conferred on it the power to inquire into a complaint under Section 18 and to hear the second appeal under Section 19.

⁶ Explanation.—For the purposes of removal of doubts, it is hereby declared that where the Leader of Opposition in the House of the People has not been recognised as such, the Leader of the single largest group in opposition of the Government in the House of the People shall be deemed to be the Leader of Opposition.
6.4.1 General Superintendence, Direction and Management of the Affairs of the Commission

Section 4(i) provides empowers the Commission to superintend the affairs of the Commission within the territory of India, except within the territory which is under the superintendence, direction or management of the State Information Commission. The expression ‘power of superintendence, direction or management’ has been used in broadest possible sense. This expression is subject to two inherent limitations: firstly, the Commission shall follow the rule of law and another is the Commission is required to act in accordance with principles of natural justice. Therefore, one can understand the relevance of philosophy of judicial review as all acts done by Central Information Commission are subject to judicial review. A simple reading of statutory language contained in this sub-Section suggests that the Central Information Commission has the power to call returns from the Central Public Information Officers or the Public Authorities, to make and issue general rules and prescribe forms for regulating the practice and proceedings of such Commission or the Central Public Information Officers or the Public Authorities and prescribe forms in which books, entries and accounts are to be kept by the officers. The power of superintendence extends to administrative and judicial superintendence. It may even be exercised \textit{suo moto} in the interest of justice. It can ask for records from the lower court and adjudicate the matter in the interest of justice.

The sub-Section further seems more important while going through the object underlying the phraseology of the Act, when it

---

7 Section 12 (4) The general superintendence, direction and management of the affairs of the Central Information Commission shall vest in the Chief Information Commissioner who shall be assisted by the Information Commissioners and may exercise all such powers and do all such acts and things which may be exercised or done by the Central Information Commission autonomously without being subjected to directions by any other authority under this Act.

8 Prof. S.R. Bhansali, \textit{The Right to Information Act, 2005}, (2008), p. 188.
depicts the power of direction and management of the affairs of the Commission to cover laying down the directions and instructions for compliance by the officers of the Commission and by the Central Public Information Officers or the Public Authorities. It is important to point out here that the nature of these powers is supervisory. This power has been conferred upon the Commission to ensure proper working of subordinate officers and authorities within the provided framework and set parameters.

6.4.2 Establishment of Benches

It will not be out of the place to state here that the power to manage the affairs of the Commission includes the power to establish a bench to hear the matter and to give power to one or more Central Information Commissioners to entertain interlocutory applications. The separate Bench or Benches can also be constituted by the Commission by virtue of this Section.

So far as the functioning of the Commission and conventions as to the weight to be given to the opinion of members is concerned, it is presumed that Chief Information Commissioner is first among equals. Nonetheless, the decisions of the Commission shall be in accordance with the opinion of the majority. Where a matter is heard by an even number of members of Commission, and they are equally divided, the matter shall be referred for hearing to the Chief Information Commissioner. Regarding Chief Information Commissioner, as stated earlier, he is only a member in multi-member information commission. He presides over the meeting of the Commission, yet his decision will be given weight like that of a member only, not beyond it. Even in
Pyare Lal Verma v. Ministry of Railways, an issue came up for consideration that Chief Information Commission, as a whole, is a body and it is the Chief Information Commission as whole that has been given powers under Sections 18, 19 and 20 of the Act. This body cannot be divided and as such, no single bench can take up judicial matters. No decision can, therefore, be passed by one or more members of the Commission unless it is passed by the full bench. It was held that scope of Section 12(4) is limited and it is meant only for the purpose of carrying out different executive functions along with the affairs of the Commission. The Chief Information Commissioner held that the very fact that the Government has already framed the rules and that these rules did not provide for constitution of the benches makes it very clear that the matters related with the constitution of benches and internal management affairs of the Commission were left to be decided by the Chief Information Commissioner and the Commission has been deciding these matters normally in the weekly meetings, the minutes of which are displayed on its website for the information of the general public.

The Commission is empowered to set aside the findings of the Central Public Information Officers or the Public Authorities if it observes that relevant and important documents have not been taken care of. It seems true that the authority, which has been conferred with powers under a law, is deemed to be vested with all incidental or ancillary powers to ensure that the powers conferred on it are effectively exercised. Thus, the powers of the Central Information Commission are wide enough and in case, it is found that Commission restrains itself from exercising its power of superintendence, direction

---

and management, the Supreme Court is empowered to give appropriate directions.

6.5 Functions of the Central Information Commission

1. The Commission is empowered to receive and inquire into complaints from any person relating to access to information under the control of Public Authorities and to decide appeals against the decisions of designated appellate officers.

2. The Commission shall impose penalties on erring Central Public Information Officers and recommend disciplinary action against those who have, without any reasonable cause, denied access to information under the provisions of the Act or deprived a citizen of his/her right to access to information with Public Authorities in a malafide manner. The quantum of penalty liable to be imposed is Rs. 250/- each day till the application is received or information is furnished, subject to the total amount not exceeding Rs. 25,000/-. 

3. The Commission has powers to require the Public Authority to compensate the complainant for any loss or other damage suffered.

4. The decision of the Commission on an appeal is binding and is not subject to further appeal in a court of law.

5. The Commission may make recommendations to Public Authorities not conforming to the provisions or the spirit of the Act, specifying the steps which, in its opinion, they ought to take for promoting such conformity.
6. While inquiring into a complaint under Section 18, the CIC has the same powers as are vested in a civil court while trying a suit under the Code of Civil Procedure, 1908, for the following purposes:

- summoning and enforcing the attendance of persons and compelling them to give oral or written evidence on oath and to produce documents or things;
- requiring the discovery and inspection of documents;
- receiving evidence on affidavit;
- requisitioning any public record or copies thereof from any court or office;
- issuing summons for examination of witnesses or documents; and
- any other matter, which may be prescribed.

7. The Commission may, during the inquiry into any complaint, examine any record under the control of the Public Authority, and no such record may be withheld from it on any grounds.

8. The Commission shall recommend to the Government every year, reforms on any "matter relevant for operationalizing the right to access information.

6.6 Functioning of Central Information Commission

- The Central Information Commission has been set up in the Ministry of Personnel, Pension and Public Grievances, Delhi. With the approval of the Central
Government, other offices of the Commission can be established in other parts of the country.

- The Government has sanctioned 72 posts for the Commission, including a Chief Information Commissioner and ten Information Commissioners. Of these, 31 were filled in the first six months of the implementation of the Act. Since the Commission was asked to outsource the administrative tasks, it procured services relating to data entry and housekeeping from a manpower service provider, who placed 11 data entry operators and six peons at its disposal.

- The Commission exercises its powers without being subjected to directions by any other authority.

- The Chief Information Commissioner enjoys complete financial and administrative powers of a Department of the Government of India, except in matters relating to the creation of posts, re-appropriation and writing-off losses for which it needs the specific concurrence of the Ministry of Finance.

- The general superintendence, direction and management of the affairs of the Commission are vested in the Chief Information Commissioner, who is assisted by the Information Commissioners.

- The Commission decided that all hearings would be held by at least two Information Commissioners jointly. Later, it was decided to leave it to the individual Information Commissioner to take a view on issuing orders singly, depending upon the complexity of the case.
• The Commission has made use of modern techniques, such as video conferencing for hearings where the Public Information Officer and the applicant are both located outside Delhi.

6.7 **Contribution of Central Information Commission in implementation of Right to Information (RTI)**

The contribution of Central Information Commission (hereinafter referred as CIC) can be discussed with the help of its decisions 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 the cases decided by the Commission from its inception and then analyze the most important cases or landmark orders, which, authoritatively interpreted the important provisions of the Act.

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 date, have been 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, have been analyzed to bring about their ratio, i.e., the summary and substance of the decision. The landmark cases have been analyzed 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 has been presented in its legal implications as well. 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.

The researcher has adopted the analytical method of research in evaluating the status of enforcement of the Right to Information Act, 2005. For the purpose of research, the researcher has selected sample cases during each year for highlighting the process of enforcement. The discussion on the basis of sample cases can be made under following heads:

Central Information Commission (CIC) has pronounced about 64,597 Decision Notices so far (between 1 April 2007 to 31 December 2011). It has reported that 26,574 appeals/complaints are pending with them as on 1st February, 2012. The increase in pendency is due to manifold increase in number of RTI applications made to Central Public Authorities from 2006-07 to 2009-10 and consequent increase in number of appeals/complaints filed with the Commission. Break-up is like this:

<table>
<thead>
<tr>
<th>Year</th>
<th>Receipt</th>
<th>Disposal</th>
<th>Pendency as on 1st April</th>
<th>Percentage (disposal/receipt)</th>
<th>Average annual disposal by individual IC/CIC</th>
</tr>
</thead>
<tbody>
<tr>
<td>2007-08</td>
<td>11621</td>
<td>7722</td>
<td>6820(2008)</td>
<td>68.57%</td>
<td>1544</td>
</tr>
<tr>
<td>2008-09</td>
<td>15426</td>
<td>13322</td>
<td>8924 (2009)</td>
<td>86.36%</td>
<td>1665</td>
</tr>
<tr>
<td>2009-10</td>
<td>22800</td>
<td>19482</td>
<td>12242(2010)</td>
<td>85.44%</td>
<td>2165</td>
</tr>
<tr>
<td>2010-11</td>
<td>28875</td>
<td>24071</td>
<td>17046(2011)</td>
<td>83.36%</td>
<td>2675</td>
</tr>
</tbody>
</table>

How do these Decisions influence our fundamental human right - Right to Information? What is the essence of these Decisions? Everyone is concerned about the impact of these Decisions. Though decision makers are required to decide on a case-by-case basis, depending on the facts and circumstances of the particular case, Decisions pronounced by Information Commissions are valued because of the guidance they provide on future similar cases. Such guidance should cut down the number of cases that would otherwise be brought to the Information Commissions on appeal. Public Authorities need not worry about making the same error of interpretation in response to other similar information requests. However, the Decisions have no formal status as precedents. This is an attempt to present the *ratio decidendi* (central core of meaning) or summaries of a few important Decisions issued by the Central Information Commission and State Information Commissions and judgments of the courts, in a classified manner, for easy understanding.

The cases are broken down by Section or Exemption under the RTI Act to facilitate easy review. The cases come directly from the Information Commissions and Courts, which have websites.

RTI law is very dynamic in its development, interpretation and application because of the fairly recentness of the enactment and massive increase in Decisions pronounced by the Information Commissions over the past few months.

6.7.1 **Personal Appearance of the Applicant/Appellate is not necessary**

In the matter of *Shri Rajinder Prasad Jain v. NDMC,* the question arose as to the requirement of presence of the applicant-cum-appellant before the Appellate Authority in person. The facts of the

---

matter were thus: Appellant, Mr. Jain, applied to Mr. Sengupta, the PIO and Chief Architect (Architecture & Environs), NDMC, for information regarding features and processes in providing building permission of various structures located in the jurisdiction of NDMC. In reply, he found it incomplete and evasive. He, therefore, filed an appeal before the Appellate Authority, Mr. Keshav Chandra, Secretary, NDMC. Finally, the appellant complained against the Appellate Authority, as he found Chandra to be rude, offensive and evasive. The Appellate Authority contended that it was always ready to hear the appellant, but the case required to be postponed once because of his preoccupation and once on the appellant’s request. The appellant contested the latter. However, Appellate Authority averred that the time limit for the appeal had still not run out when the appellant resorted to a second appeal before the Commission. He stated that he was prepared to hold a hearing and provide any information asked for within the law. However, he did caution that the appellant was using the law to divert attention from his own illegal activities, for which he was liable to criminal action.

In reply to this, the appellant submitted that it was due to humiliation by Appellate Authority, Chandra, had subjected him to that prevented him from appearing before the Appellate Authority for a hearing. After examining the documents and hearing the contentions from both the sides, NDMC was directed to provide the information requested in the form asked for by the appellant, without insisting on the personal appearance of the appellant before him.

The judgment of the Central Information Commission reveals that while seeking the information under the provisions of the Act, it is not necessary to compel the applicant to appear before the Appellate
Authority. Even the statutory language itself in the statute nowhere mentions about the personal appearance of the applicant.

6.7.2 Elaboration of the Expression ‘Public Authority’

In Ms. Navneet Kaur v. CPIO, Department of Information Technology (DIT)/Electronics & Computer Software Export Promotion Council (ESC), the appellant sought the documents and records of the Sexual Harassment Complaint Committee on the complaint of the appellant against two officials alleging sexual harassment. The CPIO, DIT, informed the appellant that a clarification has been sought from the Department of Personnel as to whether a copy of the report of the committee could be furnished to the appellant before the disposal of the same by the disciplinary authority and on the advice of that Department, the matter has been referred to the Department of Women & Child Development and response of that department was awaited. Regarding ESC, it was informed to the appellant that RTI Act was not applicable to it as it was a non-governmental organization and not funded by the government, and accordingly, the application of the appellant was returned to her. Aggrieved by this, the appellant approached Central Information Commission. After entertaining the version of both the sides, the Commission took note of the Section 2(h), Right to Information Act, 2005 which provides that a body owned, controlled or substantially financed by the Government is a Public Authority. About the status of ESC for the purposes of RTI Act, the Commission clarified that it is an autonomous organization under the Department of Information Technology. The Commission, while relying on auditor’s report for the year 2004-05, pointed out that out of Rs. 11.8 crores income for the year, the grant-in-aid from the Department of Commerce and Information Technology was about Rs. 6.8 crores. Therefore, it was held that ESC has been substantially

---

financed by the government and the provisions of the RTI Act are applicable to ESC.

Accordingly ESC was directed to furnish to the appellant a copy of the inquiry report, and also copies of the minutes of the working committee relating only to the inquiry report and action taken thereon.

6.7.3 RTI jurisdiction, over Private Corporate bodies

In a decision that is likely to send alarm bells ringing for corporations, the Central Information Commission (CIC) recently ruled that information held by corporations or institutes could not be termed “private”, and should be made public. The Central Information Commission (CIC), in its judgment, held that Multinational National Companies (MNCs), private firms and other corporate houses are within the ambit of RTI and information can be obtained via the RTI route, if successfully argued that the information pertains to larger interest to the benefit of the public. In other words, all private “CORPORATES” registered under the Companies Act and other Statutory Acts (like S&E, S.T., Service Tax) are covered under the RTI Act.

It also means that all Corporates will have to appoint an in-house “Public Information Officer (PIO)” and also, an in-house “Appellate Authority”, against whom a final appeal may be filed with the S.I.C. or the C.I.C., as the case jurisdiction may be. Further, all Corporates will have to display most in-house information, which could be in public interest, on their websites and keep it ready in their office records for public inspection, etc.\footnote{\textit{Times of India}, Mumbai Edition, December 19, 2009, p. 13.}

In this case, the Commission allowed disclosure of income tax assessment records of Escorts Heart Institute and Research Centre and its promoters Dr Naresh Trehan and Rajan Nanda. This is a major
departure from the CIC’s previous orders, where income tax related information was ruled as personal information of third party.\textsuperscript{14} Interpreting Corporates as a “legal person” rather than a natural person, Information Commissioner, Shailesh Gandhi, said ‘person’ was attributed to an individual, rather than an institute or corporate. According to the order, the IT department had assessed tax evasion of an estimated Rs 500 crores by Escorts Limited and Escorts Heart Institute and Research Centre, Chandigarh and Delhi. While Rajan Nanda was assessed with tax evasion of Rs 8 crore, Dr Trehan was assessed with evasion to the tune of Rs 10 crore. While some cases have been remanded to be reassessed, there are others that are pending before the Delhi High Court or have been settled by the Income Tax Appellate Tribunal (ITAT).\textsuperscript{15}

A part of the order also recognized that whistleblowers were working in public interest and should be given access to information. Applicant Rakesh Gupta had asked for information regarding the income tax records of Escorts group, which, he alleged, had evaded tax. Ruling that the applicant was using the Right to Information (RTI) to expose tax evasion, Gandhi said, “If an informer is using RTI to get information...by showing that tax has been evaded, it cannot be denied that a larger public interest is being served of getting the public’s due taxes and curbing corruption”. Recognizing that Gupta played the role of a whistleblower and added “hundreds of crores” as additional income for the IT department, Gandhi overruled objections laid down by Appellate Authority to rule that giving the informant access to the records was serving “a larger public interest”. Gandhi added, “The applicant fears a lot of alleged tax evasion will go unpunished leading to a loss of revenue, and perhaps his reward money. If citizens monitor

\textsuperscript{14} Rattan Lal Sikri v. Chief Commissioner of Income Tax, Panchkula, Decision No. 40/IC(A)/06.

this through RTI, it could be a major gain for public revenue and perhaps a good check on corrupt officials”.

6.7.4 Disclosure of Information

The spirit of the Act makes it clear that it is an obligation of the government mechanism to provide information sought by the citizens so that transparency and accountability can be ensured in the process of governance. The study of various provisions of the Act depicts that in general circumstances, all information required to be given to the citizen. Nonetheless, the Act provides for certain information, which has been kept out of the purview of the Act, or in other words, where the authorities have been empowered to withhold the information. Section 8 of the Act exempts the authorities from giving information under Clauses (a) to (j) of sub Section (1) of Section 8. These provisions can be discussed as follows:

(i) Disclosure of which would prejudicially affect the sovereignty and integrity of India

The Parliament has been empowered to make any law for the control of freedom of speech and expression against all those citizens who favour secession of any part of India so as to affect its sovereignty and integrity. In case, it is felt that disclosure of any information to the citizen is likely to affect the sovereignty and integrity of India, the information may be refused from disclosure.

In K.S.Periyaswamy v. Ministry of Defence, DGQA, the appellant demanded information about Defence equipment from the Ministry of Defence. The Central Information Commissioner held that the information requested by the appellant is security related and its disclosure is clearly barred under Section 8(1)(a) of the RTI Act. In

\[\text{\textsuperscript{16}}\text{ Ibid.}\]
\[\text{\textsuperscript{17}}\text{ No. CIC/AT/A/2006/00201 dated 11.9.2006.}\]
addition to this, there is no doubt that the nature of the information requested by the appellant is also commercial. No firm would like that the supply orders received by it and its magnitude, inspection notes and so on be brought out in public. Potentiality of such disclosure to affect the firm's competitive position and commercial interest is considerable. Moreover, there is no public interest involved in the disclosure of the said information.

(ii) Disclosure of which would prejudicially affect the security, strategic, scientific or economic interests of the State

If it appears to the appropriate authorities constituted under the Act that the disclosure of any information to the citizen would prejudicially affect the security, strategic, scientific or economic interests of the State, the Authority may refuse the information from disclosure. In the matter of Ram Kumar Chaudhary v. Central Railway, Mumbai, the appellant asked for travel details of two persons for journey made between Pune-Mumbai-New Delhi performed during Ghatkopar bomb blast case. The respondents clarified that the matter was highly confidential in nature covered by Section 8(1) of the RTI Act and they were already in touch with the police authorities regarding the investigation of bomb blast case. The respondents clarified that any disclosure at any such a crucial stage was likely to impede the investigation process that was going on. Keeping in view this consideration, the application for seeking information was rejected by the Commission. Similarly, in Ritesh Parmar v. Commissioner of Customs, the appellant sought information regarding a case registered under COFEPUSA against Vyasjee Prasad. The purpose of seeking information was to check the violation of foreign exchange regulation and smuggling activities. It was held by the Commission

---

that the disclosure of such information would be detrimental to economic interest of the State.

In *Rameshadu v. Ministry of Personnel and Public Grievances*, the request was made by the appellant to CPIO for disclosing the content of the correspondence exchanged between the former President, late Shri K.R. Narayanan, and the former Prime Minister, Shri A.B. Vajpayee, between the period 28.2.2002 and 15.3.2002. Initially, the appeal was heard by a Bench consisting of two members of the Commission, which referred it to the Full Bench. Since the appellant was a resident of Vellore, it was decided to arrange the hearing through video conferencing. The CPIO, Ms. Harjot Kaur, Deputy Secretary refused to disclose the information on the following grounds:

1. Justice Nanvati/Justice Shah Commission of Enquiry also asked for the correspondence between the President, late Shri K.R. Narayanan, and the former Prime Minister on Gujarat riots and the Government of India claimed privilege under Sections 123 and 124 of the Indian Evidence Act, 1872 and Article 74(2) read with Article 78 and Article 361 of the Constitution.

2. That in terms of Section 8(1)(a) of the Right to Information Act, 2005, the disclosure of the requested information would prejudicially affect the sovereignty and integrity of India, the security, strategic, scientific or economic interest of the State.

Aggrieved by the order of the CPIO, the appellant preferred an appeal before the Appellate Authority, who is Additional Secretary in the department and submitted his contentions as under:

---

No. CIC/MA/A2006/00121.
1. That the RTI Act has an over-riding effect over the Indian Evidence Act and as such, the requisite information cannot be denied to him in view of the clear provisions of Section 22 of the said Act.

2. The information between the President and the Prime Minister cannot be denied under the RTI Act as such information is not covered under the exemptions provided for under Section 8 of the Act.

3. Articles 74(2), 78 and 361 nowhere states that the information or correspondence between the President and the Prime Minister should not be disclosed.

4. That the former President himself, at one point of time, revealed to the Press, the brief of what he wrote to the Prime Minister. As such, it cannot be argued that the disclosure of full content of the correspondence will, in any way, prejudicially affect the country.

5. The CPIO should have applied Section 10 of the Act and should have, at least, provided that part of the information, which can reasonably be severed from any part that contains prejudicial information.

The appellant also submitted that the RTI Act is an integral part of Articles 19 and 21 of the Constitution and that Articles 74(2), 78 and 361 cannot override Articles 19 and 21. Since the RTI Act is an integral part of Article 19 and 21; objections can only be raised under the provisions of Section 8 of the Act and not under any other provisions. The appellant also placed their reliance on *Raj Narain v.*
State of U.P.,21 S.P. Gupta v. Union of India,22 and S.R. Bommai v. Union of India.23

On the other hand, the counsel, on behalf of respondent, referred the judgment of the Supreme Court in Shamsher Singh v. State,24 where the information emanated from the President was held to be well covered within the spectrum of Article 74 and 78 of the Constitution. Article 74(2) clearly states that ‘the question whether any, and if so what, advice was tendered by the Ministers to the President shall not be inquired into in any court’. The Counsel for respondent, however, agreed to the fact that the President is also a public authority under the RTI Act. He is answerable to the people and is not beyond public scrutiny, although he may not be answerable in the court. The Commission said that keeping in view of Section 22, the privilege under the Evidence Act cannot be claimed. The Commission also held that Article 74(2), 78 and 361 of the Constitution of India do not *per se* entitle the Public Authorities to claim ‘privilege’ from disclosure. Cabinet papers, including records of deliberations of the Councils of Ministers, Secretaries and other officers, shall be made public, once a decision has been taken or the matter is complete. As such, the veil of confidentiality and secrecy in respect of cabinet papers has been lifted by the proviso to Section 8(1)(i) of this Act. Therefore, cabinet papers, including records of deliberations of the Council of Ministers etc., can be withheld or disclosure whereof can be denied only if (i) the matter is still pending, or (ii) the information comes under the specified exemptions u/s 8(1). Similarly, in B.R. Manhas v. Ministry of Home Affairs,25 the appellant requested for the information connected with the handing over the investigation in the

175 (3) SCR 360.
22 1982 (2) SCR 365.
23 AIR 1994 SC 1918.
24 AIR 1974 SC 2192.
25 No. CIC/AT/A 2006/00195.
Purulia Arms Drop case to CBI, whether the handing over of the case was at the initiative of the State Government or the Central Government, and a copy of the report submitted by the Ministry of Home Affairs to the Parliamentary Committee formed to probe the Purulia Arms Drop case. The CPIO and Appellate Authority claimed that the material was exempted from disclosure under Section 8(1)(a) of the Act. The Commission, while adjudicating the appeal, stated that all submissions made before a Parliamentary Standing Committee by the Department of the Government are treated as confidential as per parliamentary practice. Documents and other submissions handed over to the Committee became property of the Parliament. It is not open to a Department to disclose any information in respect of those submissions unless authorized by the Committee. It is, therefore, obvious that the information sought by the appellant, besides being confidential, is also a property of the Parliament. In so far as supply of this information to the appellant can potentially cause a breach of privilege of Parliament, therefore, it attracts the bar of Section 8(1)(c) of the RTI Act and is not liable to be disclosed by the PIO to the appellant. Besides, the Central Information Commission, while striking a balance between the importance of right to information and exemption from disclosure clause, observed that it has been the convention to allow a lot of leeway to the government agencies in matter of claim of national security and strategic interests as stated in exemption under Section 8(1)(a) of the RTI Act. The Commission does not expect such Public Authorities to invoke the exemption under Section 8(1)(a) lightly or frivolously.

(iii) Information, the disclosure of which would harm the Competitive Position of a Third Party

A third party is a person other than the person making a request for information and includes a Public Authority. A third party may be a company, a corporation, a trust, a society or a foreigner. A Public
Authority, as defined under Section 2(h) is also a third party. If any information relates to (i) commercial confidence, (ii) trade secret, or (iii) intellectual property; ordinarily, it should not be disclosed. If such information is disclosed and it is likely to harm the competitive position of a third party, then the decision shall be taken by the competent authority regarding the permission for disclosure. The term ‘competent authority’ has been defined under Section 2(e) of the Act. If the larger public interest warrants the disclosure of such information, the competent authority, if satisfied, may permit disclosure of such information. In *D.D. Devdas v. Indian Bureau of Mines*\(^{26}\) the CPIO rejected the request to disclose the information under Section 8(a)(d) of the RTI Act, after consulting the third party, as it was commercial information in respect of the third party, the Central Information Commissioner had held that Section 8(1)(d) clearly bars disclosure of information falling under this category. Clause (d) specifically bars disclosure of information coming under this category. Thereafter in *K.S. Periaswamy v. Bharat Earth Movers Ltd.*\(^{27}\) this clause was invoked for seeking exemption from disclosure on the ground that the Board meetings and proceedings were confidential in so far as they comprised a host of matters concerning the commercial activities of the company, strategies, future plans, and so on, which if disclosed would harm the company’s competitive position *vis-a-vis* competitors. It was held that disclosure of such information was exempted under Section 8(1)(d) of the Act. Moving on the heels of this approach in *N. Anbarasan v. National Informatics Centre*,\(^{28}\) the Commission allowed exemption from disclosure of information regarding development of websites, documents and records relating to software developed by various departments of Government of Karnataka, it was also explained that NIC is also taking copyright for

\(^{27}\) No. CIC/AT/A/2006/00580 dated 8.2.2007.  
\(^{28}\) Appeal No.24/ICPB/2006.
its software, and that documents for the developments are all intellectual property. The Double Bench of Central Information Commission affirmed the decision of the CPIO with the caution that in case the information sought by applicant is a specific information and not related with any IPR etc., the information required to be furnished by the authority to the applicant. Nonetheless, the clause requires a careful application for balancing and removing the contradiction prevailing in these provisions. In case, no trade secret is involved or no third party is involved, the information must be provided to the applicant.29

The same approach was followed in *Anil Kumar v. Indian Telephone Industries Ltd.*30 where Double Bench of Central Information Commission observed as under:

Representatives of ITI explained that in so far as OCB 283 technology switches is concerned, the collaboration agreement with Alcatel has a confidentially clause by which, ITI has agreed not to disclose any technical know how received under the agreement. The information sought by the appellant, if furnished, would be in breach of the said confidentiality clause, and as such, the CPIO and the Appellate Authority rightly declined to furnish the information.

The Commission, in the light of the above, held that the CPIO has rightly applied the provisions of Section 8(1)(d) of the Act to decline the information. The Commission, however, directed the CPIO to furnish the only remaining information i.e. the number of systems

---

29 *K.B. Singh v. HMT Ltd.*, Bangalore, CIC/OK/A/2006/012 dated 2.5.2006.
ordered and its value, within 15 days from the receipt of the decision.\textsuperscript{31} Subsequently, in \textit{Sadasiv Dattatraya Nika, v. Chief Commissioner of Income Tax-II},\textsuperscript{32} the appellant sought the audited balance sheet of a company from the Income Tax Department, the Central Information Commissioner held that the information related to third party and the relevant document was neither created nor prepared by the Public Authority, nor was the outcome of their activities, the CPIO has rightly applied Section 8 (1)(d) and (e) for withholding the information.

However, it was clarified by the Commission in \textit{Ramesh Chand Sal v. National Institute of Science Communication & Information}.\textsuperscript{33} The Commission held that a contract with a Public Authority cannot be categorized as ‘confidential’ after completion. Even if some confidentiality is involved, public interest in a matter of the nature of case would warrant disclosure. Had it been a case of quotation, bid or tender or any other information, prior to conclusion of a contract, it would be categorized as trade secret, but once concluded, the confidentiality of such transaction cannot be claimed.

(iv) \textbf{Information available to a person in his fiduciary relationship should not be disclosed}

Information, which is given in trust to another person who stands in fiduciary relationship, cannot be disclosed. Regarding the meaning of term ‘fiduciary’, it is submitted that it is a relationship based on trust, trustee or trusteeship. Therefore, any information held or given in trust, or depending for its value on public confidence or securities or one who owes to another duties of a good faith, trust, confidence and candor, or who must exercise a high standard of care

\textsuperscript{32} 36/IC(A)/06 F.No. CIC/MA/A2006/0098 dated 10.5.2006.
\textsuperscript{33} No. CIC/WB/C/2006/0176 dated 18.6.2006.
in managing another’s money or property, is said to be held in a fiduciary relationship.\textsuperscript{34} Like a patient gives all information relating to his body disease to the doctor, a student gives information about his qualification and character to the Principal or teacher of the school or college, an employee gives certain information to the employer, a client gives information relating to the crime or civil wrong to his advocate. Such persons are supposed to keep the information given to them in trust because they stand in fiduciary relation and the information given to them is protected from disclosure, unless the competent authority is satisfied that the larger public interest warrants the disclosure of such information. But if the information relating to any occurrence, an event or matter, which is 20 years old, it may be provided to the person making request as per the provisions of Section 8(3). Various aspects under the fiduciary relationship can be discussed as under:

(a) \textbf{Fiduciary relationship between the client and the advocate}

When a counsel is engaged, the doctrine of legal professional privilege comes into existence, automatically creating a fiduciary relationship between the client and the advocate. There is no need for a formal agreement establishing fiduciary relationship. A client has to be confident that the information shared with a lawyer and received from that lawyer shall remain confidential. Without such confidence, there are risks of lack of openness between the client and the lawyer and the threat to the administration of justice. The Central Information Commission, in \textit{Major J.S.Kohli v. Telecom Regulatory Authority of India},\textsuperscript{35} held that the doctrine of legal professional privilege is sacred and as such, any information given by the client and received from the counsel need not be disclosed.

\textsuperscript{34} Canara Bank v. The Central Information Commission, Delhi, AIR 2007 Ker 225.

\textsuperscript{35} No. 41/ICPB/2006 dated 3.6.2006.
(b) **Fiduciary relationship between the employer and the staff**

In *Arun Kumar v. Punjab National Bank*, it was held by the Central Information Commission that the personal assessment forms or performance appraisal forms, which form basis for promotion in higher grade, submitted by the staff to the employer in fiduciary relationships cannot be shared, as it also does not relate to any public activity by the bank. Likewise, the views recorded in confidence by the peers on the matter of performance appraisal need not be publicly disclosed, since it may lead to personal acrimony. Moving a step further, the scope of this provision was expanded by the Commission in the matter of *Ajai Pal Singh v. State Farms Corporation of India Ltd.* where the appellant sought the information regarding the matriculation certificate, mark sheet and diploma certificate of the employee, which was indeed in the nature of personal information about a third party. The Commission, therefore, agreed with the CPIO that the information about the personal details of the employee were held by the State or the corporation in trust. Such information is, normally, not open to disclosure, except under the circumstances in which it can be proved that the disclosure of the information served a public purpose. Similarly in *P.K. Sharma v. Oriental Bank of Commerce*, the appellant had asked for the access of the files or record, which relates to personal information of a third party, which are submitted in fiduciary capacity. Without the concurrence of third party under Section 11(1), disclosure of which was barred. The same

---

50 No. 29/IC(A)/2006.
51 Tapas Dutta v. Indian Oil Corporation Ltd., Appeal No. 18/IC(A)/2006.
53 F. No. CIC/MA/A/2006/00132.
approach was further adopted and applied by the Central Information Commission in various cases.\textsuperscript{40}

On the other hand, the Kerala High Court held that information relating to posting, transfer and promotion of clerical staff of a Nationalized Bank can be supplied by the bank, as such information is not held in trust by the bank. Informed citizenry and transparency of information are vital to the functioning of the bank.\textsuperscript{41}

(c) **Fiduciary relationship between the borrowers and the bank**

Where the information has been sought from a bank on details of loans disbursed by the Shelgaon Branch of Bank of India, the CPIO put forth its contention that the information was covered under the exemptions provided under Section 8(1) (d) and (e) from disclosure and was in the nature of commercial confidence\textsuperscript{42}. The Commission, in number of cases, has held that the information on the details of borrowers and their loans were in the nature of commercial confidence and the information available was in its fiduciary relationship and is related with personal information’, therefore, the bank has correctly applied exemption under Section 8(1)(d), (e) and (j) of the Act from disclosure of information.\textsuperscript{43}

(d) **Fiduciary relationship between applicant and dealer**

In *Smt. Chaman Mathur v. HPCL*,\textsuperscript{44} it was held that the applicant submitted project reports and her personal information for


\textsuperscript{41} Supra note 33.

\textsuperscript{42} Manoj K. Kamra v. Punjab National Bank, Appeal No.17/IC(A)/2006.


\textsuperscript{44} No. 55/IC(A)/2006.
dealership in the fiduciary capacity. So, any information sought regarding applicant was barred by virtue of Section 8 of the Act.

(e) Fiduciary relationship between doctor and patient

The relationship between doctor and a patient is also covered within the purview of fiduciary relationship. In *Ajit Lakhani v. Bhabha Atomic Research Centre, Mumbai,* the appellant wanted certain information about his wife from the doctor, as a case between the appellant and his wife was pending in the High Court. The Commission did not agree with him that information about a possible abortion has any relationship to any public activity or interest. It was, thus, held that the denial of information about abortion, was justified both under Section 8(1)(j), since disclosure would amount to invasion of privacy and Section 8(1)(3), since it would directly transgress the fiduciary relationship between doctor and patient.

(f) Answer Books and Answer Key

Section 8(l)(e) of the RTI Act exempts a Public Authority from disclosing information if it is held in a fiduciary relationship unless the authority is satisfied that the larger public interest warrants such disclosure. Further, the CBSE claimed that its examination by laws barred re-evaluation, disclosure or inspection of answer books, and what was permissible was only a verification of marks.

The CBSE submitted that the procedure evolved and adopted by it in the evaluation of answer books ensured fairness and accuracy and made the entire process as foolproof as possible. Further, it claimed that if candidates were to be permitted to seek the re-evaluation of answer books, it would create confusion and chaos, subjecting its

---

elaborate system of examinations to delay and disarray, apart from necessitating huge additional staff and infrastructure.

The Calcutta High Court, which first heard the candidate’s challenge against the CBSE’s rejection of his application, directed the CBSE to permit the candidate to inspect his answer books even while denying the candidate any right to seek its re-evaluation under the RTI Act. The CBSE appealed against this direction in the Supreme Court.

In its detailed judgment delivered on August 9, the Supreme Court Bench comprising Justices R.V. Raveendran and A.K. Patnaik held that the definition of “information” under the Act referred, among other things, to documents, and that the answer book, submitted by a candidate to the examining body for evaluation and declaration of the result, was a document or record. The evaluated answer book becomes a record containing the “opinion” of the examiner and, therefore, it was “information” under the Act, the Bench observed.

The Supreme Court Bench concurred with the High Court that the provisions of the RTI Act would prevail over the bye-laws/rules of the examining bodies with regard to examinations if they were inconsistent with each other. Section 11 of the RTI Act specifically provides for this overriding effect of the Act over other provisions, which appear inconsistent. Therefore, the CBSE’s claim that it had to comply with its bye-laws that barred the inspection of answer books by candidates, rather than with the RTI Act, was untenable.\(^\text{47}\)

\((g)\) Information, the disclosure of which would endanger the life or physical safety of any person

Clause (e) of Section 8(1) provides that there is no obligation to give any citizen, information available to a person in his fiduciary relationship. However, if the competent authority is satisfied that the larger public interest warrants the disclosure of such information, then

\(^{47}\) *Ibid* at 49.
same can be provided to the applicant. Fiduciary relationship is one of trust and confidence, for example, the relationship of solicitor and client, spiritual adviser and his devotee, doctor and patient, creditor and debtor, etc. Under such relationship, the person in fiduciary relation is in a position to exploit the confidence deposed in him by the other person.

In *Canara Bank v. The Central Information Commission & Anr.*, the information requested for by the employee of Nationalized Bank relates to transfer and promotion of employees of the bank. Such information does not pertain to any fiduciary relationship of the petitioner bank with anybody coming within purview of Section 8(1)(e). The information relating to posting, transfer and promotion of clerical staff of a bank does not pertain to any fiduciary relationship of the bank with the employees within the dictionary meaning of the word ‘fiduciary’. Such information cannot be said to be held in trust by the bank on behalf of its employees and therefore, cannot be exempted under Section 8(1)(e).

### 6.7.5 Right to Know

Every citizen has a right to know how the State is functioning and why the State is withholding such information. The citizens have a right to know about affairs of the Government. But the right is not absolute. The secrecy can be legitimately claimed in respect of transactions with repercussions on public security.

The voters’ right to know the antecedents of candidates is based on interpretation of Article 19(1)(a), which provides that all citizens of this country would have fundamental right to “freedom of speech and expression” and this sphere is construed to include fundamental right to know relevant antecedents of the candidate contesting the election.

---

48 AIR 2007 Ker. 225: 2008 (1) RTI 564 (Ker).
6.7.5.1 Citizen’s right to know and openness in Government

The citizen’s right to know the facts, the true facts about the administration or government, is thus, one of the pillars of a democratic State.\footnote{S.P. Gupta v. Union of India, AIR 1982 SC 149.}

Thus, it is quite clear that a person who is not a citizen cannot claim this right. Secondly, CIC held that, “from the records, it appears that the appellant has submitted the application under the RTI Act, 2005 in his individual capacity, signing, no doubt, as President of his Association, but not for a separate entity. Although the Act guarantees right to information only to a citizen, in the instant case, the appellant is seeking information on behalf of other members of the Association, or simply a group of citizens, not a body corporate. The basic objective of the Act is to give information, rather than to withhold or deny a right”. It further stated that, “since delay has taken place, albeit, without any fault from the side of CPIO/AA. The information may be given free of charge. Under the circumstances, question of imposing penalty does not arise.”\footnote{Section 21 of Right to Information Act, 2005.}

6.7.5.2 The Procedure for Providing Information Should be Applicant-Friendly

In Manish Sisodia v. DDA,\footnote{Application No CIC/WB/A/2006/00004, dated 30.12.2006.} the applicant filed an application before the PIO, East Zone, DDA, seeking information regarding eviction of jhuggi dwellers from Rajeev Camp, Mayur Vihar, claiming expedition under Proviso to Section 7(1) of the Right to Information Act 2005 on the grounds of life and liberty.

Section 7 of the Act lays down the procedure for disposal of request. Accordingly, subject to the Proviso to sub-Section (2) of Section 5 or the Proviso to sub-Section (3) of Section 6, the Central

---

\textsuperscript{50} S.P. Gupta v. Union of India, AIR 1982 SC 149.  
\textsuperscript{51} Section 21 of Right to Information Act, 2005.  
\textsuperscript{52} Application No CIC/WB/A/2006/00004, dated 30.12.2006.
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.

On not receiving a response, the appellant filed an appeal with the Appellate Authority, which also failed to respond. He, therefore, filed an appeal before the CIC. The DDA filed its response to the appeal claiming to have answered his application just within the time limit prescribed, also asking for Rs. 28/- as further fee. The appellant claimed that he never received this letter and has submitted a stamped affidavit in his support. He asked for levy of penalty that handling of this case by the DDA was not applicant-friendly. CIC held that, “although the Appellate Authority cites that letter in his response to the appeal, there is no effort to send a copy even at the stage of first appeal to the appellant whose appeal speaks of the information not having been provided. Since information was not received by the appellant within the time limits specified in Sec 7(1), this information will be provided free of charge”. It further added “in conclusion, the DDA, being a Public Authority that is a major recipient of citizens’ applications for information, is advised to strengthen their machinery for processing and providing information in response to applications”.

6.7.5.3 Information Seekers cannot be Penalized or Victimized

An Enquiry by the CIC has been conducted during 28th - 30th September, 2006 at Banaras Hindu University, Varanasi.\(^{53}\) The enquiry

\(^{53}\) CIC/OK/A/2 006/00051.
had been ordered by the Commission to find out whether Shri Dhananjay Tripathi, an RTI user, has been victimized by the Public Authority for his using the Act. Shri Dhananjay Tripathi, an ex-student of Bachelor of Physical Education, had filed an RTI application requesting the Public Authority to make enquiry report public in the matter of death of Shri Yogesh Rai, another student of the B.P.E, BHU, Varanasi. In this case, the matter pertained to admission of students in a particular course. On perusing the records, it was found that the merit list for the Department was prepared while overlooking the uniformity principle. The Commission, after the investigation, found that the rules were not strictly followed and were amended as per the convenience of the BHU Administration and their beneficiaries. The Commission was of the view that ‘if the merit list would have been prepared as was prepared in 2005-06, Shri Dhananjay Tripathi would have found a place in the composite merit list in the BHU candidate category’. The CIC, therefore, recommended the BHU administration to:

(i) Follow a uniform moderation policy for admission in M.P.E. course for the year 2006-07 as done by them for M.Sc. (ag.);

(ii) Prepare the merit list not only by indicating the aggregate marks, but also the separate marks scored by each candidate in the entrance and the physical efficiency test;

(iii) Admit Shri Dhananjay Tripathi in the M.P.E. course for the year 2006-07 with immediate effect and grant him a grace period upto the date of admission for the purpose of attendance;

(iv) To ensure that an applicant seeking information from the University under RTI Act, 2005 is not victimized in future".

- 380 -
6.7.5.4 Direction to Submit Explanation for Non-Implementation of RTI Act

In the case of Dr. D.V. Tolaney v. Vice-Chairman, DDA Commissioner,\textsuperscript{54} where the complainant had filed the application under Central Right to Information Act, 2005, whereas the Engineer-in-Chief, MCD replied under Delhi Right to Information Act, 2001, the CIC observed that it reflects only his ignorance and lackadaisical attitude towards the implementation and understanding of RTI Act; and that he must submit an explanation in this regard.

6.7.5.5 Imposition of Penalty on CPIO

In the matter of D.P. Sangar v. Ministry of Environment & Forests,\textsuperscript{55} both appellant and respondent were absent from the hearing. It was found that the letter to the Commission had been described neither as appeal under Section 19 nor complaint. Besides, while Shri D.P. Sangar had made an application to the Information Officer, there had been no appeal in this case on deemed refusal, except directly to the Commission. However, the Commission found the response of the Public Authority, Ministry of Environment & Forests flawed and therefore, treated it as a complaint under Section 18(1)(b) & (c).

The Ministry of Environment & Forests referred to exemption claimed under the RTI Act under Section 8(h), when there is no such Section in the Act. The Commission observed, referring to Section 8(1)(h) of RTI Act, 2005. The information can only be denied if it would impede the process of investigation or apprehension or prosecution of offenders. The Public Authority had not cared to describe, in what way, the application can now impede prosecution since it sought information already 10 to 20 years old, starting with the proposal for prosecution in 1987. There was no explanation why

\textsuperscript{54} MCD, F. No. CIC/WB/C/2006/00031.
\textsuperscript{55} Adjunct to No. CIC/WB/C/2006/00072.
respondent had been so tardy as to reply, refusing information, to an application made on 18.11.2005 only on 03.07.2006.

In light of the above, the complaint of the applicant was accepted and orders of the Director (Vigilance), Ministry of Environments & Forests set aside. The CPIO was directed to re-examine the information sought and make available all information that motivated the Public Authority in initiating prosecution.

The letter of response to the application, till such time as notice was issued to the Public Authority by the Commission, had led to suspicion of malafide denial. CPIO, Ministry of Environment & Forests was, therefore, directed to show cause under Proviso to Section 20(1), within 15 days, as to why a penalty at Rs. 250/- a day should not be imposed starting from 19.12.2005, the date specified under Section 7(1) for providing information, without valid ground, running till 03.07.2006, upto a maximum of Rs. 25,000/-.

In pursuance of the Commission’s decision, the matter was re-examined by the CPIO of the Ministry and the information was denied to the applicant on the following grounds:

A case is pending against the applicant in the court of Sub-Judge, Raipur and that the copies of the relevant note sheets have already been submitted in the court of Special Judge in a sealed cover. The matter is, therefore, subjudice and within the purview of the Special Court. Since the papers are in the custody of the Court, the applicant has the option to seek these documents from the Hon’ble Court, if so required. As regards other information, it has been mentioned that the information requested is not specific, since the details of circular numbers, date, etc., have not been given. As regards other information sought, the CPIO came to the conclusion that it is outside the purview of the RTI Act, since the applicant is asking reasons instead of asking for a copy of the documents. The
Commission carefully examined the matter and observed that the Department had filed certain documents in the Special Court at Raipur in sealed cover.

6.7.5.6 **Delay In Providing Information**

In the case of *A.N. Gupta v. Ministry of Personnel, Public Grievances & Pensions, Department of Personnel & Training (DoPT)*, the appellant applied to the CPIO, DoPT seeking information on the premature termination of his services as Director, Finance, Housing & Urban Development, HUDCO. On getting unsatisfactory response, he moved a first appeal before the Appellate Authority. On not receiving a reply, he moved a second appeal before CIC asking for directions to CPIO, Ministry of Personnel Public Grievances and Pensions (Department of Personnel and Training), Office of the Establishment Officer, to furnish the information/documents as requested by the applicant.

The respondent supported his reply with:

1. Photo copies of the documents/correspondence between Ministry of Personnel, PG & Pensions (DoPT-Office of the EO) and Ministry of Urban Employment & Poverty Alleviation in regard to premature termination of the appellant along with its all enclosures sent by MOUEPA to DoPT-EO/Cabinet Secretary.

2. Photocopy of the reply along with its enclosures sent by MOUEPA to Shri D.P. Goel, Under Secretary in the Office of EO to Govt. of India and copy of letter addressed to DoPT by the Ministry.

---

3. Photocopy of other notes leading up to the termination of the appellant and photocopy of the approval letter issued by DoPT-EO conveying ACC approval to MOUEPA.

4. Some information sought by the appellant related to the correspondence of Ministry of Housing & Urban Poverty Alleviation, which falls within the jurisdiction of that Ministry. The applicant was advised to contact the concerned CPIO in the Ministry of HUPA.

5. The information relating to the records of the ACC was denied under rule 8(l)(i), which was wrongly typed as 8(j). The applicant was also advised that in case he prefers an appeal, he may file an appeal before Appellate Authority.

In his appeal, the applicant had sought the same information, which was denied by the CPIO. The Appellate Authority upheld the decision of the CPIO. The papers relating to the noting of the Appointments Committee of the Cabinet were denied to the application under rule 8(1)(G) of the RTI Act, 2005 as the disclosure of the cabinet papers was not connected with any public activities or interest.

The delay in disposal of the Appeal took place due to the fact that officer was preoccupied with extreme workload pertaining to the ACC matters.

The CIC held:

(a) Under Section 6(3)(ii), although CPIO Shri S.K. Ahluwalia has not transgressed the Act because he has informed the appellant of “the concerned authority” as mandated under Section 6(1), he has defaulted in not transferring the application or that part of it as was appropriate to the MoHUPA under Section 6(3).
(b) Papers relating to noting submitted to the ACC can, in no way, seek exemption under Section 8(l)(j). The very act of submitting a note to the ACC is, in fact, a public activity and cannot in any way be deemed to be a private activity. Shri S.K. Ahluwalia, in the hearing, however, pleaded that in fact, the denial fell under Section 8(l)(i) in keeping with DoPT's interpretation of proviso to Section 8(l)(i). A similar matter came before the Commission in *I.K. Bhalla v. DoPT*,\(^{57}\) where the Commission held that cabinet papers include papers brought into existence for the purpose of preparing submissions to the Cabinet. The following observations of the Apex Court in the aforesaid case concerning "Cabinet Papers" are noteworthy:

"Cabinet papers are, therefore, protected from disclosure not by reason of their contents but because of the class to which they belong. It appears to us that papers also include papers brought into existence for the purpose of preparing submission to the Cabinet (emphasis added)\(^{58}\).

In *R.K. Jain v. Union of India*,\(^{59}\) the following submissions of the Solicitor-General further describe as to what is meant by Cabinet papers.

"Notings by the officials, which lead to the Cabinet note and Cabinet decision and all papers brought into existence to prepare Cabinet note are also its part".

---

\(^{57}\) CIC/WB/C/2007/00414.


In view of the clear findings of the Commission, even in its earlier decision, that the Department cannot claim exemption under Section 8(1)(i) of the Right to Information Act, 2005, buttressed by the rulings of the Apex Court in defining Cabinet papers, the Cabinet decision, the reasons thereof, and the material on the basis of which the decision was taken, is liable to be disclosed once the decision has been taken, and the matter is complete, or over, which, in this case, it is.

6.7.5.7 A Rational Disclosure Policy can be drafted to Disseminate Information

In the matter of Sandeep Unnithan v. Integrated HQ, Ministry of Defence (Navy), Sandeep Unnithan, a journalist, filed an application under the RTI Act before the Ministry of Defence (MoD) seeking details of INS Khukri sinking in the Arabian Sea waters on the night of December 08.09.1971 and rescue operation conducted by the INS Kirpan. He also asked for a copy of the report of the Board of Inquiry instituted into the causes of the sinking of the INS Khukri on the night of December 08.09.1971. “Responding to this plea, the Ministry of Defence (MoD) replied that no inquiry was convened to look into the reasons of Khukri’s sinking in the Arabian Sea waters on the night of December 8-9-1971. The MoD (Navy) also refused to reveal a 23-page report on “Debrief of the survivors of INS Khukri,” taking a plea that divulging the same would affect the country’s sovereignty and integrity. The First Appellate Authority also rejected his request. It was said that the report contained details pertaining to performance parameters, operational-restrictions, tactical evaluations and recommendations in respect of Indian Navy as well as enemy ships, submarines and aircraft. The applicant, therefore, approached the CIC.

---

The bench headed by Chief Information Commissioner, while passing the order, observed that the “CPIO Integrated Naval HQ has, in the first instance, while responding to the information sought by appellant, in seeking exemption from disclosure u/s 8(1)(a), not cared to detail the reasons for rejection of the request for part of the information sought, as mandated u/s 7(8)(i)”. CIC suggested that a “rational disclosure policy” of the Defence forces would refurbish their image in the eyes of the citizens, and asked MoD to classify information that could be opened to the public domain. “Such voluntarily disclosed information, of course, without compromising national security, saves unnecessary speculation about the causes and effects of an event. It also saves the armed forces the odium of attempting to hide failures behind excessive secrecy—an odium, which, in fact, may be wholly undeserved. A rational disclosure policy refurbishes the image of the armed forces and only helps enhance confidence in their capability in the eyes of the people of the country whose security, it is the forces’ duty to ensure”. CIC suggested: “We recommend that the Indian Armed Forces build up their storehouse of information, as mandated under provisions of RTI Act, for disclosure for the benefit of the students of India’s Defence and to enhance the people’s trust in the armed forces’ undoubted capacity to ensure national security”.

6.7.5.8 Information to be provided without Delay

In Pratap Singh Gandas v. DERC, the appellant applied to PIO, DDA for information on action taken reports/status on a list of 520 complaints. On receiving no response within thirty days, the applicant appealed to the First Appellate Authority, DDA. The Appellate Authority dismissed the appeal. He appealed to CIC for punishment to PIO under Section 20 of the Act. The respondent, DDA, in its reply stated that the delay in providing the information arose

from a delay in receiving a reply from the legal branch of the DDA whose advice was required on the basis of a circular regarding the applicant from the Principal Secretary (Home), Govt. of Delhi. After investigating the case, the CIC held that the action of the PIO, in delaying a response, was misplaced. It opined: “It seems that the decision is dictated by a feeling that the complaints should first be resolved and then information given, which accounts for the dismissal of the first appeal. This is laudable but also unjustified. Under the law, recourse to which the applicant has taken, it is incumbent on the Public Authority to provide such information as it commands, not anticipate information that will become available in the future. In the present case, it was only the current status of action on the complaints that had been sought. The RTI Act cannot be confused with an instrument for grievance redress, albeit the information obtained through it can be so used with telling effect. The PIO will, therefore, provide the information sought to the applicant for each of the 520 complaints within fifteen days”. Penalty was also imposed on the Public Authority for delay in providing information.

In Dr. D.P. Bhadoria v. Health & Family Welfare (H&FW) Dept. GNCT Delhi, penalty was levied on the Public Authority for delay in providing information. In this matter, information sought was provided only after two months; therefore, explanation was sought by the Commission from Additional Secretary, H&FW. In her report, she submitted that there was a delay in receiving a reply from Medical Superintendent, GTB Hospital and there were further delays due to official reasons for preparing and submitting the reply. However, no explanation was sought from GTB Hospital. The Commission held that the PIO has been unable to justify the further delay, which took place in her office at the level of Office Superintendent and Dealing Assistant. At Rs. 250/- a day, the penalty for 15 days amounting to Rs.

3750/- was levied. An official at the level of Dealing Assistant, who works only under the directions of his superiors, cannot be held liable for this amount. The amount will, therefore, be shared equally between the PIO and Office Superintendent.

6.7.5.9 Concern of Central Information Commission On Delay In Supplying Information

In the case of Shri Amit Ghosh v. Department of Pension & Pensioners' Welfare (DoP&PW), New Delhi, the appellant averred that his request under RTI Act, 2005 submitted to the Central Public Information Officer, Department of Pension & Pensioners’ Welfare, New Delhi, seeking answers to specific queries on Family Pension, has not been responded to. The complainant further alleged that no order has been passed by the First Appellate Authority of the Department on his appeal under Section 19(1).

In response, the CPIO, Ms. Geetha Nair, Under Secretary, informed the Commission that the application of the complainant could not be traced in the Desk of the CPIO and as soon as it was traced, it was promptly replied. The CPO enclosed a copy of the response sent to the complainant with her comments. She further commented that subsequent applications of the complainant on related matters have been duly responded to. She also enclosed copies of responses sent to the complainant from time to time. The CPIO also expressed regret for this delay and has requested the Commission to condone.

A similar view was expressed by the First Appellate Authority, Shri K.S. Chibb, Deputy Secretary, DoP&PW.

The Commission observed that there does not seem to be a malafide intention on the part of the CPIO to refuse or deny the

---

desired information nor was there any obstruction in any manner on
the part of the CPIO in furnishing the information to the applicant.
The CPIO was directed to be careful in such matters in future and
respond to RTI matters promptly and within the given timeframe. It
further observed that future failure on their part to adhere to the
timelines would attract the relevant provisions of the said Act.

6.7.5.10 Private Unaided School Not Public Authority

In the case of Mrs. Laxmi v. Mrs. Indim Rani Singh, Public
Information Officer & Dy. Director, the appellant sought details of
the amount disbursed for E.W.S. cases by the school, other fee
concession & scholarships to students along with their respective
amount and addresses & contact details for the year 2009-10 and 2008-
09. The PIO refused the information claiming that the requested
information is not available in the office record of this District, as the
information is not required to be submitted by Unaided Public Schools
as per Delhi Schools Education Act, 1973. The CIC observed that the
information can only be provided if it is held by the Public Authority,
but the school is a private authority, and thus, the RTI application
cannot be transferred.

In the case Mr. Shyamlal Yadav v. Department Of Personnel, the
appellant sought the following information from the respondent:

1. Total number of Secretary rank officers serving under the
   Government of India at present.

2. Has every such Secretary rank officer declared his/her,
   spouse and children’s details of assets and liabilities as
   per the AIS (rules), 1968?

---

64 Appeal No. CIC/SG/A/2 010/0 0055 6 decided on 16.04.2010.
65 Appeal No. CIC/WB/A/2009/000669 dated 17-6-2009 Right to Information Act, 2005
   - Section 19.
However, the information was denied to the appellant on the ground that the requisite information is personal in nature and exempted from disclosure under Section 8(1)(j) of RTI Act, 2005. Aggrieved by the refusal to part information, appellant moved an appeal before the Appellate Authority, DOPT, which was also rejected. In his second appeal before the CIC, the appellant averred:

“Secretaries to the Government of India are among the pillars of our bureaucratic system, and the administration up to the grass roots level is always motivated and inspired by their deeds. Therefore, by hiding the information about their assets and liabilities, the said CPIO and the Appellate Authority have defeated the purpose of RTI Act. If we are able to get the details of their assets and liabilities at the time of appointment and the latest one, we can analyze their richness, like the elected representatives. I, therefore, appeal, that you may please ask the said CPIO and the Appellate Authority to provide the requested information regarding the first and latest declarations of assets and liabilities made by Secretary rank officers of GOI”.

It was held by the Commission that the property statements of private individuals serving in government become part of Government records. The larger public interest justifies the disclosure of such information. The authority deciding the application can proceed to the next step, after recording its prima facie satisfaction, to issue notice to the “third party” i.e. the public servant who is the information subject, why the information sought should not be disclosed. After considering all these views and materials, the CPIO or concerned State PIO, as the case may be can pass appropriate orders, including directing disclosure.
6.7.5.11 Disclosure of Assets of the Judges of Higher Judiciary

In Subhash Chandra Agarwal v. Secretary General, Supreme Court of India,\textsuperscript{66} the appellant sought for a copy of the Resolution dated 7.5.1997 of the Full Court of the Supreme Court ("the 1997 Resolution"), which requires every judge to make a declaration of all assets. He further sought information relating to declaration of assets, etc, furnished by the respective Chief Justices of States. The CPIO informed the applicant that a copy of the said resolution would be furnished on remitting the requisite charges. He was also told that information relating to declaration of assets by the judges was not held by, or under the control of the Registry of the Supreme Court, and therefore, it could not be furnished. The decision of three Commissioner Bench of CIC is yet another significant step forward in institutionalizing the transparency in very important constitutional estate – Judiciary.

Principles laid down in this case

1. Information regarding personal assets of Judges

According to Sections 2, 4, 8 and 22 of the Right to Information Act, 2005, all the Judges functioning at various levels in the judicial hierarchy form part of the same institution and are independent of undue interference by the Executive or the Legislature. Introduction of the stipulation of declaring personal assets is to be seen as an essential ingredient of contemporary accepted behaviour and established convention. A person has right to information under Section 2(j) of the Act in respect of the information regarding making of declarations by the judges of the Supreme Court pursuant to the 1997 Resolution. It can hardly be imagined that Resolutions, which have been unanimously adopted at a Conference of Judges would not be binding on the judges, and its efficacy can be questioned.

\textsuperscript{66} Appeal No. CIC/WB/A/2008/00426 dated 06.01.2009.
Judges have to declare their assets as a requirement that is not being introduced for the first time as far as subordinate judges are concerned. They have, for long, been required to do that year after year in terms of the Rules governing their conditions of service. As regards accountability and independence, it cannot possibly be contended that a Judicial Magistrate, at the entry level in the judicial hierarchy, is any less accountable or independent than the Judge of the High Court or the Supreme Court. If declaration of assets by a subordinate judicial officer is seen as essential to enforce accountability at that level, then the need for such declaration by judges of the Constitutional courts is even greater. While it is obvious that the degree of accountability and answerability of a High Court Judge or a Supreme Court Judge can be no different from that of a Magistrate, it can well be argued that the higher the Judge is placed in the judicial hierarchy, the greater the standard of accountability and the stricter the scrutiny of accountability of such mechanism. All the judges functioning at various levels in the judicial hierarchy form part of the same institution and are independent of undue interference by the Executive or the Legislature. The introduction of the stipulation of declaring personal assets is to be seen as an essential ingredient of contemporary accepted behaviour and established convention.

2. **Chief Justice of India is a Public Authority**

According to Section 2(e) of the Right to Information Act, 2005, expression “public authority”, as used in the Act, is of wide amplitude and includes an authority created by or under the Constitution of India, which description holds good for Chief Justice of India.

3. **Asset declaration by Judges is Information**

According to Section 2(f) of the Right to Information Act, 2005, in the absence of any specific exclusion, asset declarations by the
judges held by the CJI or the CJs of the High Courts, as the case may be, are “information”. However, the draft judgment and personal notes of judges (notes taken by the Judges while hearing a case) cannot be treated as final views expressed by them on the case. They are meant only for the use of the judges and cannot be held to be a part of a record “held” by the Public Authority.

4. **Chief Justice of India (CJI) cannot be a fiduciary vis-a-vis Judges of the Supreme Court**

   According to Section 2(f) & 8 of the Right to Information Act, 2005, information regarding personal assets of the judges of Supreme Court, the CJI (Chief Justice of India) cannot be in a fiduciary capacity. Judges of the Supreme Court hold independent office, and there is no hierarchy in their judicial functions, which places them at a different place than the CJI. Declarations are not furnished to the CJI in a private relationship or as a trust, but in discharge of the Constitutional obligation to maintain higher standards and probity of judicial life and are in the larger public interest. It cannot be held that the asset information shared with the CJI by the judges of the Supreme Court are held by him in the capacity of fiduciary, which, if directed to be revealed, would result in breach of such duty. Section 8(e) does not cover asset declarations made by judges of the Supreme Court and held by the CJI. The CJI does not hold such declarations in a fiduciary capacity or relationship.

5. **Disclosure of Judges’ Assets must be in larger public interest**

   According to Section 8(1)(j) of the Right to Information Act, 2005, any declaration of assets by judges, i.e., contents of asset declarations, pursuant to the 1997 Resolution, are entitled to be treated as personal information, and may be accessed in accordance with the procedure prescribed under Section 8(1)(j). They are not otherwise subject to disclosure. Therefore, as regards contents of the
declarations, the applicants would have to, whenever they approach the authorities, under the Act, satisfy them under Section 8(1)(j) that such disclosure is warranted in “larger public interest”.

It was Edmund Burke who observed that “All persons possessing a portion of power ought to be strongly and awfully impressed with an idea that they act in trust and that they are to account for their conduct in that trust”. Accountability of the Judiciary cannot be seen in isolation. It must be viewed in the context of a general trend to render governors answerable to the people in ways that are transparent, accessible and effective. Behind this notion is a concept that the wielders of power, i.e., legislative, executive and judicial, are entrusted to perform their functions on condition that they account for their stewardship to the people who authorize them to exercise such power. Well defined and publicly known standards and procedures complement, rather than diminish, the notion of judicial independence. Democracy expects openness and openness is concomitant of free society. Sunlight is the best disinfectant.

Apart from several decisions of the Commission, in which it has been decided that a property statement is indeed open to disclosure, this is nevertheless third party information. The definitive ruling in this regard is that of Delhi High Court in S. C. Agrawal vs. Supreme Court of India.\(^67\)

Allowing the appeal, the CIC directed the CPIO to issue notice to third parties and proceed to disclose the information sought by appellant, if no viable objection based on exemption under Section 8(1) is received within 10 days of the date of issue of such notice by CPIO.

\(^67\) WP No. 288/2009.
6.7.5.12 Disclosure of information such as Assets of a Public servant cannot be construed as an invasion on the privacy: ACR (Annual Assessment Report) of an employee is a public document

In Mr. Jayant G. Joshi vs Bank Of India,\textsuperscript{68} the appellant sought the Information because of the recent Sou moto decision of DC declaration of assets by officers, Employees is in line with Anti-corruption Lokpal Bill by Sri. Anna Hazare (Draft on graft- DNA 17.42011) enforced to get transparency, accountability in administration for those who serve in private and public concern. Numerous complaints were in media on corrupt working of Managing Committee (MC) of coop. societies and officers/employees of banks. Being an activist the matter of Sri. Krishna CHS Khar (W) was enquired; CC enclosed having Chairman. Mr. P M Ramchandani own flat No.3 among 12 flat owners society worth of crores; claimed officer employed in Sholapur branch of 801 handling public funds also. Non-declaration of assets in both lines with doubtful society working enforces to file this RTI for following information:

1. U/s 4(1) b ii.iii.-v duties, channel of supervision/accountability of officers/employees with circular/orders issued by 801 with "Do and Don't" guidance at branch level be given. The RTI enactment latest orders for citizen at branch level be given.

2. The undertaking given by each employee on joining signed by Mr. Ramchandani be given, with details of member of any committee [4(1) b vii].

3. U/S 4(1) b x monthly salary drawn with taxation paid as form no. 16 a public document/certificate of employer for last 5 yrs. with Scale/designation of Mr. Ramchandani be given.

4. U/S 4(1) b x facilities to citizens for obtaining information conveyed up to branch.

\textsuperscript{68} Decision No. CIC/SG/A/2011/003103/16921

- 396 -
5. Declaration of assets/properties by employee with any loan facility to above person be given.

6. Declaration M-20 in MSS act 1960, public document given by above employee to Dy. Registrar Coop. society intimated to employer BOI be given to us.

ii) Permission of employer hold posts of chairman in MC of coop. society if issued be given with rule copy.

7. The list of tour, H. Q. permission taken by above employee with reasons in last four years be given U/s 4 (1) b-function and duties.

8. u/s 4(1) b iii decision of employer on channel of supervision and accountability-if any complaint/enquiry started/concluded on misuse of fund of above employee be given.

9. List of RTI registered on BOI as public complaint on bank and consumer relation in last two yrs. Any double bench decision of CIC and by high court be given. 10.1) in light of above desired information if above employee (Sri P M Ramchandani) is working appreciably on dual post/responsibility (with 80) rule copy) will you issue a certificate of appreciation to us.2) If his working is against the banking rules, what action is initiated against employee with its rule copy be given to us.

However in reply the PIO said that the matter has been referred to our Legal Department for seeking legal opinion. Therefore reply in the matter will be sent by Appellate authority upon receipt of legal opinion from our legal Department. But no Information has not been provided. It has provided grounds for the First Appeal. Order of the FAA (First Appellate Authority):

1. Information can be accessed from Bank’s website www.bankofhdia.com.

2. Information pertaining to third party, Hence same is exempted from disclosure of information under Sec. 8 (1) (d) of RTI Act.

- 397 -
Grounds for the Second Appeal: Information provided is unsatisfactory

Relevant Facts emerging during Hearing:

1- The PIO will have to provide the declaration of assets and properties by the employees to the Appellant. This information cannot be considered exempt under Section 8(1) (d) of the RTI Act. Commission has already decided in CIC/AT/A/2008/01262/SG/2109 dated 27/02/2009 that the assets of public servants would have to be disclosed when a citizen uses the Right to Information. The Commission can allow denial of information only based on the exemptions listed under Section 8 (1) of the act. The PIO has claimed that the information should not be disclosed since it is exempted from disclosure under Section 8 (1) (j). Information which has been exempted is defined as: "information which relates to personal information the disclosure of which has no relationship to any public activity or interest, or which would cause unwarranted invasion of the privacy of the individual unless the Central Public Information Officer or the State Public Information Officer or the appellate authority, as the case may be, is satisfied that the larger public interest justifies the disclosure of such information:"

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

1. It must be personal information. Words in a law should normally be given the meanings given in common language. In common language we would ascribe the adjective 'personal' to an attribute which applies to an individual and not to an Institution or a Corporate. From this it flows that 'personal' cannot be related to Institutions, organisations or corporates. (Hence we could state that Section 8 (1) (j) cannot be applied when the information concerns institutions, organisations or corporates.). The phrase 'disclosure of which has no relationship to any public activity or interest' means that the information must have some relationship to a Public activity. Various Public authorities in performing their functions routinely ask for 'personal' information from Citizens, and this is clearly a public activity. When a person applies for a job, or gives information about himself to a Public authority as an employee, or asks for a permission, licence or authorisation, all
these are public activities. The information sought in this case by the appellant has certainly been obtained in the pursuit of a public activity.

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

Therefore the disclosure of information such as assets of a Public servant, which is routinely collected by the Public authority and routinely provided by the Public servants, cannot be construed as an invasion on the privacy of an individual. There will only be a few exceptions to this rule which might relate to information which is obtained by a Public authority while using extraordinary powers such as in the case of a raid or phone-tapping. Any other exceptions would have to be specifically justified. Besides the Supreme Court has clearly ruled that even people who aspire to be public servants by getting elected have to declare their property details. If people who aspire to be public servants must declare their property details it is only logical that the details of assets of those who are public servants must be considered to be disclosable. Hence the exemption under Section 8(1) (j) cannot be applied in the instant case. In view of this the PIO's and the third party's claims for exemption of this information are not allowed. PIOs are advised to ensure that such information is provided to the Appellant within 30 days of receiving the RTI Application.

6.7.5.13 Remand of Appeal by Central Information Commission to First Appellate Authority for Further Action
In S. Vaikundarajan v. Department of Personnel & Training (DoP & T), New Delhi, the appellant sought a copy of the report with enclosures received from State Government of Tamil Nadu for inclusion of Indian Administrative Service, Tamil Nadu cadre, for the year 2006 and 2007. The CPIO informed the appellant that this document has emanated from the Government of Tamil Nadu and has been marked as CONFIDENTIAL by them, and as such, before supplying the same, the consent of the State Government will be required in terms of provision of Section 11 (1) of the RTI Act, 2005. However, the CPIO forwarded the application of the appellant to PIO, Public (Special A) Department, Secretariat/Chennai with a request to provide the requisite records directly to the appellant. The appellant is of the opinion that since the requested information is available with DoP&T and that is a public document not relating to particular third party information, and not a personal document, forwarding his request to the State Government amounts to rejection of his request and on this ground, he approached the Appellate Authority of the department. The appellant moved second appeal before the CIC alleging that the Appellate Authority has not passed any order.

Because the first Appellate Authority has not addressed the questions of the appellant, which are of direct concern to the DoPT, the Commission decided to remand the appeal to the First Appellate Authority to dispose of the appeal of the appellant within ten working days of the date of receipt of this notice. If not satisfied with the information provided by the Appellate authority, the appellant will be free to move a second appeal.  

6.7.5.14 Remand of Complaint by Central Information Commission to First Appellate Authority


Section 19(3) of RTI.

- 400 -
In the case of Mr. Suresh Kumar v. Public Information Officer, Assistant Commissioner, Municipal Corporation of Delhi, Deptt. of Education, West Zone, School Building, Vishal Enclave, upon dissatisfaction from response to his application to PIO, instead of approaching First Appellate Authority, the complainant filed a complaint with the Commission under Section 18 of the RTI Act, 2005. The complainant did not use the alternate and efficacious remedy of First Appeal available under Section 19(1) of the RTI Act. Consequently, the First Appellate Authority never had a chance to review the PIO’s decision as envisaged under the RTI Act.

Therefore, the CIC remanded the matter to the First Appellate Authority with a direction to decide the matter in accordance with the provisions of the RTI Act, after giving all concerned parties an opportunity to be heard.

6.8 ‘Information’ under Section 2, RTI Act, 2005

The right to information includes an access to the information, which is held by, or under the control of, any Public Authority, and includes the right to inspect work, documents, records, taking notes, extracts or certified copies of documents, records and certified samples of the materials and obtaining information, which is also stored in electronic form.

Information is the keyword as far as the RTI Act is concerned. The term “information” is a much wider expression, and it includes definition of “record”. Taken together, definition of “information” includes - (i) records, (ii) documents, (iii) memos, (iv) e-mails, (v) opinions, (vi) advices, (vii) press releases, (viii) circulars, (ix) orders, (x) logbooks, (xi) contracts, (xii) reports, (xiii) papers, (xiv) samples, (xv) models, (xvi) data material held in any electronic form, (xvii)
information relating to any private body, which can be accessed by a Public Authority under any other law in force for the time being, (xviii) any document, manuscript and file, (xix) any microfilm, microfiche and facsimile copy of a document, (xx) any reproduction of image or images embodied in such microfilm (whether enlarged or not), and (xxi) any other material produced by a computer or any other device.72

Information, including all above mentioned expressions, now stands defined legally for the first time and this, in one stroke, widens the scope, magnitude and nature of existing "record management", as understood hitherto. We have moved from "record management" to "information management", and this will require a far more comprehensive regime of creation, management and recording. The role and responsibilities of a PIO are considerable.73

6.8.1 Free Flow of Information for Public Record

In the matter of Indira Jaising v. Registrar General,74 the Supreme Court observed that "it is, no doubt, true that in a democratic framework, free flow of information to the citizens is necessary for proper functioning, particularly in matters, which form part of public record". However, there are several areas where such information need not be furnished. Even the Freedom of Information Act, 2002 does not say, in absolute terms, that information gathered at any level in any manner for any purpose shall be disclosed to the public. The inquiry ordered and the report made to the Chief Justice of India, being confidential and discreet, is only for the purpose of his information and not for the purpose of disclosure to any other person.

---

73 Ibid at 19.
In the case of *Dinesh Trivedi, M.P. v. Union of India*, the Supreme Court observed thus; “to ensure the continued participation of the people in the democratic process, they must be kept informed of the vital decisions taken by the Government and the basis thereof. Democracy, therefore, expects openness and openness is a concomitant of a free society. Sunlight is the best disinfectant. But it is equally important to be alive to the dangers that lie ahead. It is important to realize that undue popular pressure brought to bear on decision-makers in Government can have frightening side-effects. If every action taken by the political or executive functionary is transformed into a public controversy and made subject to an enquiry to soothe popular sentiments, it will, undoubtedly, have a chilling effect on the independence of the decision-maker, who may find it safer not to take any decision. It will paralyze the entire system and bring it to a grinding halt. So there are two conflicting situations, almost enigmatic, and the answer is to maintain a fine balance which would serve public interest”.

6.8.2 Disclosure of Information/Documents

In the *State of Uttar Pradesh v. Raj Narain*, the Supreme Court opined that a witness, though competent, generally, to give evidence, may in certain cases claim privilege as a ground for refusing to disclose matter, which is relevant to the issue. Secrets of State/State papers, confidential official documents and communications between the Government and its officers or between such officers, are privileged from production on the ground of public policy or as being detrimental to the public interest or service. Injury to public interest is the reason for the exclusion from disclosure of documents whose contents, if disclosed, would injure public and national interest. Public interest, which demands that evidence be withheld, is to be weighed

---

76 AIR 1975 SC 865.
against the public interest in the administration of justice that courts should have the fullest possible access to all relevant materials. When public interest outweighs the latter, the evidence cannot be admitted. The Court will *proprio motu* exclude evidence, the production of which is contrary to public interest. It is in public interest that confidentiality shall be safeguarded. The reason is that such documents become subject to privilege by reason of their contents. Confidentiality is not ahead of privilege. It is a consideration to bear in mind. It is not that the contents contain material, which it would be damaging to the national interest to divulge, but rather that the documents would be of class, which demands protection. To illustrate the class of documents would embrace Cabinet papers. Foreign Office dispatches papers regarding the security of the State and high level inter-departmental minutes. In the ultimate analysis, the contents of the document are so described that it could be seen at once that in the public interest, the documents are to be withheld.\(^{77}\)

### 6.8.3 Direction to PIO to Supply Information

In the case of *U.P. Bhartiya v. University of Allahabad*,\(^ {78}\) the complainant filed three RTI applications with the Public Information Officer, University of Allahabad seeking information regarding the recruitment of Assistant Registrar in the University of Allahabad. Upon not getting any reply from the PIO within the stipulated period of 30 days, the complainant approached the Central Information Commission directed the PIO to supply the required information within 15 working days from the date of receipt of that order.

The Commission took exception to the fact that PIO had absented himself from the hearing without any reason. Strangely, the authorization letter, which the representatives of the respondents

---

brought with them was one signed by someone (signature totally illegible) and that too on behalf of the PIO. The Commission took strong objection to such an attitude of the authorities and directed the PIO to be personally present at the next hearing.

6.8.4 Direction to Provide Information

In the case of *I.K. Bhalla v. Deptt. of Personnel & Training (DoPT)*, the complainant sought information from the Director (ACC) & CPIO/DoPT regarding the promotion of Superintending Engineer to Chief Engineer and Chief Engineer to higher post in the Ministry of Shipping, Road Transport and Highways, in the light of judgment of Apex Court in *Union of India v. B.S. Aganoar*. The CPIO claimed exemption under Section 8(l)(i) of the RTI Act and requested the complainant to review his application and specify the information sought, but not to use the RTI for settling personal grievances. Consequently, the complainant made an application seeking inspection of a specific file. The CPIO responded thus:

“Earlier in February 2006, you had requested for a copy of the file, in response to which, you were informed that the documents requested for by you form part of Cabinet papers and are exempted under Section 8(l)(i) of the Act. Not satisfied with this, you made a complaint/appeal to CIC. Your appeal was heard and decided by the CIC...In pursuance of the order of the CIC, your request for ex-post-facto promotion was considered objectively and you were informed”.

Not satisfied, the complainant moved Supreme Court with the following prayer:

“It is quite clear that on one pretext or the other, DOP&T officers do not want to show this file, which otherwise would expose

---

70 Complaint No. CIC/WB/C/2007/00414, dated 17.08.2007.
80 AIR 1998 SC 1537; (1997) 8 SCC 89.
their corrupt practices and ulterior motives. Therefore, I request CIC for the necessary actions under RTI Act, 2005”.

In this context, the Supreme Court examined if the appellant can have any right for disclosure under the Proviso to sub-clause (i) to Section 8, which provides for the disclosure of information on Cabinet papers, including records of deliberations of the Council of Ministers, Secretaries and other officers, of only (1) the decision, (2) the reasons thereof, and (3) the material on the basis of which the decision was taken, “after the decision has been taken, and the matter is complete, or over”. In this case, all the three ingredients of the Proviso were fulfilled. The Supreme Court directed:

“The CPIO is therefore directed to apprise the Commission about the factual position about existence of the concerned file. If the relevant records and papers are available and the matter was dealt with by the Cabinet in 1991-92, it ought to be treated as the decision has been taken and the matter is complete, in which case all the relevant papers should be disclosed. Thus, the exemption under Section 8(1)(i) would not be applicable. The CPIO, however, showed us a brief note prepared by the Secretary, ACC in 1992, in response to the representations made by the appellant, which revealed that the proposal for promotion of the appellant was rejected on the ground of less than 3 months of remaining service before superannuation”.

The Department, in pursuance of the aforesaid decision, therefore, cannot now claim exemption under Section 8(1)(i) of the Act. Another question that needed to be considered was whether the concerned file is a part of the Cabinet papers. Cabinet papers have not been defined per se in the Act. A description about the Cabinet papers is available in Doypack Systems Pvt. Ltd. v. Union of India,81 according to which, Cabinet papers include papers brought into

existence for the purpose of preparing submissions to the Cabinet. The following observations of the Apex Court in the aforesaid case concerning “Cabinet Papers” are noteworthy:

“Cabinet papers are, therefore, protected from disclosure, not by reason of their contents but because of the class to which they belong. It appears to us that papers also include papers brought into existence for the purpose of preparing submission to the Cabinet”.

In R.K. Jain v. Union of India, the following submissions of the Solicitor-General further describe as to what is meant by Cabinet papers.

“Notings of the officials which lead to the Cabinet note and Cabinet decision and all papers brought into existence to prepare Cabinet note are also its part”.

The Supreme Court further held that the material, on the basis of which the decision was taken, is liable to be disclosed once the decision has been taken, and the matter is complete, or over, which, in this case, it is. The CPIO is, therefore, directed to provide the information sought: by arranging inspection on a mutually convenient time and date by the applicant within 21 working days from the date of receipt of this order. Because this inspection was not allowed within the time mandated, it will be permitted free of cost.

6.8.5 Direction to Supply Information without Payment of Fee

In the case of Lakshmi Chauhan v. Ministry of Environment & Forests, the appellant sought information regarding Environmental

82 AIR 1993 SC 1769.
84 Under Section 7(1) of the Right to Information Act, 2005.
85 As per Section 7(6) of the Right to Information Act, 2005.
Impact Assessment (EIA) of a 1200 MW thermal power project by BALCO at Chattisgarh from the CPIO, MoEF. This was refused on the ground that it was submitted without the necessary fee. However, the CPIO also informed the appellant that a proposal for environmental clearance had been received from BALCO but returned on for want of complete mandatory documentation. Stating that the information provided in the response was an attempt at shielding BALCO, the appellant moved an appeal before the CIC, without taking recourse to the First Appellate Authority, MoEF, with the following averments:

1. Postal Order of Rs. 10\(^87\) was sent with the application.

2. The fee by postal order has been accepted by the notification dated 17.05.2006 of Ministry of Personnel/Government of India.

3. As per the letter of CPIO, J.M. Mauskar, JS, MoEF, Government of India, the document relating to above project has been sent on 17.11.2006.

As per the EIA notification of MoEF, there is a reference of environment clearance of 1200 MW project in the local newspapers referring the letter of Zonal Officer of Environment Protection Circle, Korba, which shows that documents relating to above project are available with Director, MoEF, Paryavaran Bhavan, CGO Complex, New Delhi.

Because the First Appellate Authority did not have chance to address the questions of appellant, which are of direct concern to the Public Authority, and because appellant has pleaded no ground for making a direct complaint to CIC under Section 18, or apprehension of malafide on the part of the MoEF, the Commission decided to remand this appeal to the First Appellate Authority, MoEF. However, since the

name of the First Appellate Authority was not known to CIC, the appeal was sent to Ms Meena Gupta, Secretary MoEF, who will redirect it to the officer who is senior in rank to the CPIO, and is designated as Appellate Authority under Section 19(1) for the case in question, who, in turn, will dispose of the appeal of the appellant within 15 working days from the date of receipt of this decision. If not satisfied with the information so provided, appellant shall be free to move a fresh second appeal before CIC. Because the information sought was not provided within the mandated time-frame despite payment of fee, if there is any further information to be provided, it will now be provided free of charge.

6.8.6 Restrictions on Information Pertaining to Judicial Decisions

In the case of *Khanapuram Gandaiah v. Administrative Officer*, the Supreme Court observed thus: “The definition of “information” within the meaning of Section 6 of the Right to Information Act of 2005 shows that an applicant can get any information, which is already in existence and accessible to the public Authority under the law. Under the Act, an applicant is entitled to get copy of the opinions, advices, circulars, orders, etc., but he cannot ask for any information as to why such opinions, advices, circulars, orders, etc., have been passed, especially in matters pertaining to judicial decisions. A judge speaks through his judgments or orders passed by him. If any party feels aggrieved by the order and/or judgment passed by a judge, the remedy available to such a party is either to challenge the same by way of appeal or by revision or any other legally permissible mode. No litigant can be allowed to seek

---

88 Under Section 19(3) of the Right to Information Act, 2005.

89 Under Section 7(6) of the Right to Information Act, 2005.

90 AIR 2010 SC 615.
information as to why and for what reasons the judge had come to a particular decision or conclusion”.

6.8.7 Request for Obtaining Information (Section 6)

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 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.

(2) An applicant making request for information shall not be required to give any reason for requesting the information or any other personal details, except those that may be necessary for contacting him.

(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 application is made, shall transfer the application or such part of it as may be appropriate to that other public authority and inform the applicant immediately about such transfer:

Provided that the transfer of an application pursuant to this sub-Section shall be made as soon as practicable, but in no case later than five days from the date of receipt of the application.\(^{91}\)

In the case of Madhu Bhaduri v. CPIO,\(^{92}\) under Section 6(1) & 6(2), by asking the applicant to apply in a prescribed proforma and also inserting a clause in which reasons are sought “whether applicant is owner of the property or GPA holder or has any other interest in obtaining the information”, the CIC held that all applications are to be in writing or through electronic means accompanied by the prescribed fee. However, for ease of reference and response, this does not preclude a Public Authority from prescribing a standard format. DDA, at its own expenses, printed the forms so that all necessary information to be provided is standardized. There is no violation of Section 6(1), but clause 3 of the form seeking reasons is violative of Section 6(2). DDA agreed to amend the form and thereafter, review application was filed by the complainant. The CIC observed that no department is proscribed from designing an application that facilitates identification, and therefore, ease of access to information sought. It cannot be treated as a substitute for simple application as laid down in Section 6(1). CIC further observed that the absence of standard application can’t be a ground for rejection of application. However, the Commission did not agree with the view of the applicant that the

\(^{91}\) Section 6 of the Right to Information Act, 2005.

authority to prescribe formats would inevitably be misused by Public Authorities.

6.8.8 Direction for Fresh Appeal

In the case of *K.C. Rakesh v. Municipal Corporation of Delhi (MCD)*, the appellant sought from the respondent copies of file noting on files concerning counting of service, fixation of pay and sanction of earned leave of appellant who retired as Additional Director (PE). It was refused on the grounds that this did not come within the purview of the term “information” in accordance with the DoPT instructions available on their website. The first appeal to the Appellate Authority upheld the decision of PIO. The appellant, then, moved a second appeal before CIC on the same grounds as the first appeal.

Upholding the appeal, CIC relied on an earlier ruling, in *Pyare Lal Verma v. Ministry of Railways*, wherein the Full Bench of CIC observed that the definitions of both the words “information” and “record” are inclusive definitions. It has widened the meaning of both the words, as under the settled law of legal interpretation, an inclusive definition not only signifies what it generally connotes, but also what it specifically includes. Looked from this viewpoint, unless “file notings” are excluded specifically from the word “file”, the file would include both parts—the part containing correspondence and the part containing opinions and advices, which is commonly known as “notings”.

The golden rule of construction as pronounced by the Hon’ble Apex Court in the above cases, the Preamble to the Statute and the Statements of Objects and Reasons also help in arriving at the true meaning of the words used in the enactment and accordingly, the

---

94 Appeal No. CIC/OK/ A/2006/00154.
provisions contained, need to be read in the context of the objectives of the Act, which are set out in the Preamble. Viewed from this context, the Right to Information Act was enacted:

- to set out a practical regime of RTI,
- to secure access to information under the control of Public Authorities,
- to promote transparency and accountability in the working of every Public Authority.

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

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

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

\[9^{1}\] Section 2(i) and 2(f) of the Right to Information Act, 2005.

- 413 -
In this connection, it must be pointed out that the definitions of the words “records”, “information” and “Right to Information” were almost the same under the Freedom of Information Act, 2002. But it was for explicit provision in Section 8(l)(e) of the said Act that the “file notings” were exempted from disclosure. The Section 8(l)(e) of the Act of 2002 reads as under:

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

(e) “Minutes or records of advice including legal advice, opinions or recommendations made by any officer of a public authority during the decision making process prior to the executive decision or policy formulation”.

While, the Act of 2005 incorporates other exemptions provided for in Sections 8 and 9 of the Act of 2002, it has not incorporated any such provision, which will exclude the “file notings” from disclosure. The Parliament, in fact, intended that the “file notings” are no more exempted and, as such, these are to be made available to the people. The reason for deletion of these specific words from the draft of the Act as mentioned by Additional Solicitor General in his arguments is more likely to be because the definitions cited above are clear and comprehensive on the subject and inclusion of the words “would be rendered redundant”. Attention here is drawn to the definition of the word ‘file’ as contained in the “Manual of Office Procedure” of the DoPT.66 ‘Definitions’, clearly state, ‘File means a collection of papers on a specific subject matter assigned a file number and consisting of one or more of the following parts:

(a) Correspondence

This would imply that ‘notings’ are an inextricable part of a record as defined under Section 2(f) and further defined under Section 2(i)(a) of the Act unless it had been specifically exempted. Without that, by excluding ‘notings’ from a file, the DoPT would be going against their own Manual and established procedure mandated by them. This would also mean that if ‘notings’ are not to be a part of the file, then first, an amendment would have had to be carried out on the definition of a file in the DoPT’s own Manual.97

Thus, from whichever angle the provisions of the Right to Information Act are looked into, “file noting” cannot be held to be excluded unless they come in conflict with public interest, as aforesaid, or are excluded under any of the provisions of the RTI Act, 2005. File noting is to be made available to applicants under the Right to Information Act, unless they come in conflict with public interest, including preservation of confidentiality of sensitive information, and are therefore, excluded under any of the provisions of the Act.98

6.8.9 Direction for Fresh Second Appeal

In the case of Karanjit Singh v. Additional District Magistrate (ADM), South West, GNCT Delhi,99 the CIC received three appeals from the appellant praying for “True, Correct and Factual complete

---

97 Ibid.
98 Ibid.
details/reply’ to the information sought in three applications. These applications seeking information regarding consolidation/demarcation of land in village Chhawla were originally moved with the PIO, ADM (SW) Kapashera. However, before the PIO could reply, the appellant had moved the first appeal in all three cases. Upon the failure of First Appellate Authority to render any decision, the appellant preferred second appeal before the Commission.

Because the first Appellate Authority did not address the questions of appellant, on the basis of information provided, albeit delayed, by PIO since he moved his first appeal, which are of direct concern to his Public Authority, and because appellant pleaded no ground for making a direct complaint to CIC under Section 18, or apprehension of mala fide on the part of the Deputy Commissioner (SW), the Commission decided to remand the appeal to first Appellate Authority and Deputy Commissioner (SW). It was also directed that appellants are at liberty to prefer the Second Appeal before the Commission along with the decision of the first Appellate Authority, if necessary, or after a period of 30 days from the date of making the Appeal before the Departmental Appellate Authority.

In the of M. Kharmynthon v. P.I.O., M.P.S.C., Shillong, after examined the matter, the Commission does not consider it appropriate to entertain the Second Appeal in the present form and advised the Appellants to first approach the Departmental Appellate Authority and the information they have already received from the PIO. However, they are at liberty to prefer the Second Appeal before the Commission along with the decision of the first Appellate Authority, if necessary, or after a period of 30 days from the date of making the Appeal before the Departmental Appellate Authority (DDA).

---

100 Assigned ID Nos. 205, 206 & 207.
6.8.10 Direction for Fresh Appeal and Opportunity to Appellant to be Heard

In the case of *Ms. Jamuna Devi v. Indo-Tibetan Border Police (ITBP)*, the appellant sought information regarding inspection of service book of her late husband and photocopies of records of payment made by the Central Welfare Fund from 1992 to 2001. The respondent refunded the application fee deposited and informed her that the information sought was refused on the ground that the authorized officer had directed that she was not the legal wife of the deceased. Without seeking recourse to a first appeal, the appellant moved a second appeal before the Commission. Consequently, the Commission decided to remand the appeal to Inspector General, ITBP, Ministry of Home affairs.

6.8.11 Directions to pay compensation

In the case of *Ms. M.N. Trivel v. Central Government Health Scheme*, it was held by the Commission that non-application of mind by both the CPIO and the appellate authority has resulted in the appellant’s having to interact with CPIO and this Commission repeatedly, causing mental harassment to her, this is a fit case, wherein, in exercise of the powers conferred on this Commission under Section 19(8) of the Right to Information Act, the appellant should be compensated. Accordingly, the public authority is directed to pay a sum of Rs.5, 000 (five thousand) to the appellant as compensation.

6.8.12 Opportunity to Appellant to be Heard

---

103 Appeal No. 30/ICPB/2006.
In the case of *Narender Kumar Vasudeva v. Dy. Conservator of Forests (DCF), GNCT, Delhi,* the appellant sought the following information from the respondent:

1. What is the time limit for cutting of trees?
2. After the permission is granted, till what time it is valid?
3. The person who takes permission, how many trees he has to implant against cutting of one tree?
4. The DCF (Central) has granted permission to cut trees at PS Hauz Kazi, for how long it was valid?
5. In property No. 1561-62, Mohalla Rodgran, Lal Kuan, Delhi-110006, two trees of pipal were cut without permission on 03.01.2003. Information to this effect was given in writing under signatures of public to Hon’ble PM, Home Minister, Environment Minister and Commissioner of Police. Even after receipt of letter in the office of the respondent, the trees were cut. After cutting the trees, the employees of respondent inspected the site, but what action has been taken after that? Against whom action was to be taken and in what time-frame?
6. Give the name, address and designation of the officer and report of action taken.
7. On cutting of 2 trees of pipal, what action has been taken, who has not taken action, give his name, address and designation.

The respondent replied with the following:

---

105 Vide letter No. FI/ (2)/PA/CF/2000/P2414-16, dated 03.01.2001.
106 (15-20 years old).

- 418 -
1. Time limit for cutting of trees is 30 days from the date of issue of permission.

2. Ten trees are to be implanted against cutting of one tree.

3. The application of complainant has not been produced in the office of the respondent.

4. Under Delhi Preservation of Trees Act, 1994 Section 11(c)(5), the responsibility of property is of the owner of the property.

Not satisfied with the reply, the appellant moved his first appeal, which was rejected on the following grounds:

(a) The permission granted in this case by the Tree Officer has been found correct as per record.

(b) The permission as such does not mention the period of validity of the said order. Thus, the claim of the applicant that the order is invalid is not sustainable.

In response to the appeal (with CIC) notice, the respondent submitted thus:

“After due hearing as enclosed . . . DCF(C) has disposed of the case viewing that permission was granted by the Forest Department and hence, no permission is required in the said complaint. Again, it was dealt but action is not available. Subsequently, DCF(C) has issued additional direction for planting of 10 saplings and its maintenance for 5 years”.

In his rejoinder to the response, the appellant, once again, raised the issue of delay in responding to his initial application and to his first appeal, and claimed that the information given is regarding permission granted for felling of trees in an area other than that for
which he has made the request. The appellant argued that the information supplied to him concerns trees other than those for which he has sought information.

CIC focused on two issues in this case:

- Violation of time limit mandated under Section 7(1) of the RTI Act, 2005;
- Whether the information provided to the appellant is incorrect/incomplete or misleading?

Settling the first issue, the CIC decided that the respondent is unable to explain the delay, which makes supply of information one full month overdue. The concerned PIO was issued show cause as to why he should not be held liable for penalty at Rs. 250/- per day, amounting to Rs. 7,500/-. 

Discussing the second issue, the CIC referred the Delhi Preservation of Trees Act, 1994. The appellant averred that there has been a violation of Section 8 of this Act through the felling of trees without obtaining the mandated provision to “fell, cut, remove or dispose of a tree” under Section 9 of that Act, which reads as follows:

“Restrictions of felling and removal of trees—Notwithstanding anything contained in any other law for the time being in force or in any custom or usage or contract and except as provide in this Act or the rules made there under, no person shall fell or remove or dispose of any tree or forest produce in any land, whether in this ownership or permission of the Tree Officer.

Provided that if the tree is not immediately felled, there would be grave danger to life or property or traffic, the owner of the land

---

107 Section 8 of the Delhi Preservation of Trees Act, 1994.
may take immediate action to fell such tree and report the fact to the Tree Officer within twenty-four hours of such felling”.

The information supplied by the respondent showed that the trees were, in fact, felled in violation of the Act, although the Department has not treated this as being so. However, the CIC observed: “The enforcement of the Delhi Preservation of Trees Act, 1994 is not within our purview, but within the purview of Tree Officers or the Dy. Conservator of Forests who, in this case, is respondent. The conservator or Forest Protection Department may, therefore, examine this issue. However, even though we suspect the decision to be incorrect, the information supplied is as per information held by the Department, and therefore, cannot be termed incomplete, incorrect or misleading. In fact, the information so supplied provides an opportunity to the appellant to agitate the rectification of any error that has occurred in the felling of trees which are of concern to him”.

6.9 File Notings

The Commission noted with serious concern that some Public Authorities were denying request for inspection of file notings and supply copies thereof to the applicants despite the fact that the RTI Act, 2005 does not exempt file notings from disclosure. The reason they were citing for non-disclosure of ‘file notings’ was the information posted on the DOPT website to the effect that ‘information’ did not include file notings. Thus the DOPT website was creating a lot of unnecessary and avoidable confusion in the minds of the Public Authorities. The Commission directed the Secretary, Ministry of Personnel & Public Grievances, in exercise of powers conferred on it under Section 19(8) of the Right to Information Act, 2005, to remove the instruction relating to non disclosure of file notings from the website within 5 days of the issue of this order.

---

108 Available at www.righttoinformation.gov.in.
failing which, the Commission shall be constrained to proceed against
the Ministry of Personnel.\footnote{109}{CIC/OK/A/2006/00154 – 13.07.2006.}

In the case of \textit{Pyare Lal v. Ministry of Railways},\footnote{110} the
Commission observed that while the Act of 2005 incorporates other
exemptions provided for in Section 8 and 9 of the Act of 2002, it has
not incorporated any such provision, which will exclude the “file
notings” from disclosure. Contrary to what DOPT claims, it appears
that the Parliament, in fact, intended that the “file notings” are no
more exempted and, as such, these are to be made available to the
people. The reason for deletion of these specific words from the draft
of the Act as mentioned by Additional Solicitor General in his
arguments is more likely to be because the definitions are clear and
comprehensive on the subject and inclusion of the words would be
rendered redundant. Attention, here, is drawn to the definition of the
word ‘file’ as contained in the ‘Manual of Office Procedure’ of the
DOPT. ‘Definitions’,\footnote{111} clearly states, ‘File means a collection of
papers on a specific subject matter, assigned a file number and
consisting of one or more of the following parts:

\begin{itemize}
\item[(a)] Correspondence
\item[(b)] Notes
\item[(c)] Appendix to Correspondence
\item[(d)] Appendix to Notes’
\end{itemize}

This would imply that ‘notings’ are an inextricable part of a
record as defined u/s 2(f) and further defined u/s 2(i)(a) of the Act
unless it had been specifically exempted. Without that, by excluding
‘notings’ from a file, the DoPT would be going against their own

\footnote{109}{CIC/OK/A/2006/00154 – 13.07.2006.}
\footnote{110}{Appeal No. CIC/OK/A/2006/0015.}
\footnote{111}{Supra note 94.}
Manual and established procedure mandated by them. This would also mean that if ‘notings’ are not to be a part of the file, then first, an amendment would have had to be carried out on the definition of a file in the DOPT’s own Manual. Thus, from whichever angle the provisions of the Right to Information Act are looked into, “file noting” cannot be held to be excluded, unless they come in conflict with public interest as aforesaid or are excluded under any of the provisions of the RTI Act, 2005.

In the case of *Satya Pal v. CPIO, TCIL*, file notings were not furnished stating that they are exempt from disclosure. The CIC cited Preamble to the RTI Act, which says that the Act has been enacted to vest with the citizens, the right of access to information under the control of Public Authorities in order to promote transparency and accountability in the working of any Public Authority. Conscious of the fact that access to certain information may not be in the public interest, the Act also provides for certain exemptions from disclosure. Whether file notings fall within the exempted class is the issue for consideration. In the system of functioning of public authorities, a file is opened for every subject/matter dealt with by the Public Authority. While the main file would contain all the materials connected with the subject/matter, generally, each file also has, what is known as, note sheets, separate from, but attached with, the main file. Most of the discussions on the subject/matter are recorded in the note sheets and decisions are mostly based on the recording in the note sheets and even the decisions are recorded on the note sheets. These recordings are generally known as “file notings”. Therefore, no file would be complete without note sheets having “file notings”. In other words, note sheets containing “file notings” are an integral part of a file. Sometimes, notings are

---

113 Under Section 8(1)(d) & (e) of the Right to Information Act, 2005.
made on the main file also, which obviously would be a part of the file itself. In terms of Section 2(i), a record includes a file and in terms of Section 2(j), right to information extends to accessibility to a record.\textsuperscript{114}

Thus, a combined reading of Sections 2(f), (i) and (j) would indicate that a citizen has the right of access to a file of which the file notings are an integral part. If the legislature had intended that “file notings” are to be exempted from disclosure, while defining a “record” or “file”, it could have specifically provided so. Therefore, in terms of the existing provisions of the RTI Act, a citizen has the right to seek information contained in “file notings” unless the same relates to matters covered under Section 8 of the Act. Thus, the reliance of the respondent on the website clarification of the Department of Personnel to deny the information on the basis that ‘file notings’ are exempted, is misplaced. However, if the respondent still felt that the said file notings are exempt under Section 8(d) & (e), he is at liberty to place the file notings before the Commission to determine whether the same is exempt under these Sections and even if so, whether disclosure of the same would be in the public interest or not.

In the case of Maj. J.S. Kohli (Retd) v. CPIO, TRAI,\textsuperscript{115} the appellant sought inspection and take copies of certain documents, including file notings, in relation to a certain letter of TRAI. While furnishing various information sought for by the appellant, the respondent declined the request of the appellant for “file notings” on the ground that as per clarification by the government, “file noting” is not included in “information”. The first Appellate Authority did not decide the appeal. CIC held that appeal should have been disposed off


\textsuperscript{115} Appeal No.ICPB/A-5/CIC/2006 – Date of order 17.02.2006 – Section 2(i).
by the Appellate Authority within time and directed it to dispose of the same within 10 days of receipt of the order.

6.9.1 Restriction on File Notings

The disclosure of the text of the proposed amendments to the RTI Act has given the lie to the statement put out by the PM’s office to the effect that the amendments actually give for the first time the right to citizens to access file notings and that the restrictions relate only to notings on defence and personnel related matters. Apart from the fact that the Central Information Commission had repeatedly ruled that the amended Act did not restrict access to file notings, it can be seen that the text of the amendment restricts access to all file notings, except substantial file notings on plans, schemes, programmes of the Central Government or a State Government, as the case may be, that relate to development and social issues. This is done by amending the definition of records in the Act.

This amendment will, by itself, take the life out of the Act. It is the notings, which are supposed to deal with the reasons and rationale for any order or decision of the government. Very often, it is the noting of honest officer, which explains what is wrong with a proposed decision of the government. In the Panna-Mukta Oil deal, it was the noting of the then S.P., CBI, which gave the reasons and circumstances that raised the question - why the decision to hand over ONGC’s developed oilfields to ENRON and Reliance was against public interest and corrupt? Moreover, it is only the notings of various officers, which will often reveal whether the officer’s role was above board or whether he was acting on extraneous considerations. Thus, notings are often critical for fixing accountability. In the absence of notings, it would not be possible for people to fully appreciate the rationale for a decision and the decision-making process.
Though the amendment restricts notings on most subjects, except “substantial file notings on plans, schemes and programmes on development and social issues”, whatever that means, it may be noted that even if they related to only Defence and Personnel related matters, it would still be objectionable. This is because information (including notings) on Defence and security matters are already exempt\textsuperscript{116} and there is no justification for exempting notings on personnel related matters. The transfers, postings, disciplinary proceedings, suspensions, and promotions to government servants play a critical role in governance. It is well known that there is a lot of corruption and extraneous influence in such matters in most governments, which is having a deleterious effect on governance. Honest officers are often victimized by posting them on superfluous jobs or sending them on what are called punishment postings. Corrupt officers are often rewarded with plum postings and postings on crucial positions. It is well known that many ministers have fixed the quantum of bribes for postings and transfer of officers of departments, like police, excise, income tax, etc. In Maharashtra, it was discovered in response to an application under the RTI Act that the postings of most police officers were on the requests and recommendations of MPs and ministers. By far, the most effective way of checking such arbitrariness and extraneous influence in such personnel related matters is by having complete transparency in such matters, so that people can see not just the final decision,\textsuperscript{117} but also the rationale and the entire decision-making process, which culminated in the final decision.

It is often said that such disclosure of notings related to personnel matters would inhibit officers from expressing themselves freely and frankly. The truth, however, is as pointed out by Justice

\textsuperscript{116} Under Section 8(1) (a) of the RTI Act, 2005.
\textsuperscript{117} which is always said to be on exigencies of service.
Bhagwati in *S.P. Gupta’s case*,\(^{118}\) that no honest officer is likely to be inhibited from frankly expressing himself for fear that what he writes may one day see the light of day. It is only the dishonest officer wanting to write something dishonest who is likely to be deterred by such transparency. In fact, such transparency would act as a shield for an honest officer who is less likely to be victimized by a dishonest boss, since the people would at least be able to see what was happening.

### 6.10 Right to Information - Expanding the Horizons

The 6\(^{th}\) Annual Convention of the Central Information Commission was held in New Delhi on October 14, 2011. The Convention discussed four topics, namely — Transparency and accountability: with special reference to Public Private Partnership Projects; RTI Act: Potential & efficacy in curbing corruption and grievance redressal; RTI Act - Exemption Provisions & Second Schedule; and Experiences and Prospects of Information Commissions.

At the convention the Prime Minister, Dr. Manmohan Singh, announced that a bill for whistleblowers’ protection is being brought in the Parliament. Shri Satyananda Mishra,\(^{119}\) stated that in a short period of six years, RTI law has found its way into the daily conversation of people. It is not uncommon to hear people say ‘I will RTI if so-and-so is not done.’ It has become a verb. He opined that the Right to Information (RTI) Act is the second most important legal document we have given to ourselves after the Constitution of India.

In his opening address, Shri V. Narayansamy\(^{120}\) stated that the knowledge is power and the transparency is solution. The Government

\(^{118}\) AIR 1982 SC 149.
\(^{119}\) Chief Information Commissioner.
\(^{120}\) Hon’ble Minister of Personnel Public Grievances & Pensions, Government of India.
is making all efforts for making the people aware. He also stated that the Government has recently created an identity for the RTI Act in the form of an Anthem. The Hon’ble Minister exhorted that the Indian law on the Right to Information is a model and unique legislation for the developing world. Government of the day has been working steadily towards creating the culture of openness in place of the culture of secrecy.

The vote of thanks was proposed by Shri M L Sharma. In his remarks, he observed that it is the paramount task of the Central Information Commission and the State Information Commissions to strike a balance between the need to disclose information and at the same time to disallow information which may adversely affect the national security or the efficiency of the administrative machinery. He thanked the RTI practitioners and stated that the Commission is sure that their field experience will enrich the proceedings of the technical sessions.

6.11 RTI Prospects and Challenges

This Act is an outcome of the people who created a movement out of their desperation for good governance and to eliminate the unnecessary discretion and bias that plague government decision. People can question different departments and agencies in which doings and misdoings of the administrators had been a secret. Bewar in Rajasthan proved that informed citizens would assert their rights and break off the prevailing sense of apathy and helplessness. For long, the citizens were denied even the most basic information on the running of the local governments. India is the only country that lacks a policy of releasing government records into the archives for use by researchers. It is not the administrators that are keen to prevent disclosure of some file notings, rather it is the political class. The

---

121 The Information Commissioner, CIC.
dishonest bureaucrats and dishonest politicians can become a worried lot over the disclosure of information. The Act has started broadening its purview. The Government of India recently said ‘all defence purchase files would be open to scrutiny under the RTI Act.’ But they will be made public after contracts have been concluded with the successful bidders.\(^{122}\)

The relatively weak financial position of the *Panchayats* might hinder the process of progress. The *Panchayats* are the vehicle of development and have to play an important role in the implementation of the Act. India is predominantly rural and the *Panchayats* will contribute a lot in implementing the Act, and it has to be a partner in this process. Excluding the *Panchayats* in this process will destroy the very purpose of the Act; thereby, rendering it meaningless, like many previous Acts. If implemented with serious commitment, the RTI Act and Employment Guarantee Act (NREGA) might bring political democracy closer to economic democracy.\(^{123}\) In fact, the Act is a radical one, but it can only bring results when it is used cautiously both by people and the concerned department.\(^{124}\) For this, the Central Information Commission (CIC) must be proactive. The strength and stability of the government in a political democracy can be established when formulation of policy is made through people’s active participation.

The RTI Act is not without challenges, both direct and indirect. The first is the manner in which it is conceptualized and implemented. There is confusion as to the scope of the RTI Act, the areas in which RTI Act can be applied and the areas which are immune from the privy of the Act. It is important because it would be difficult on the part of

\(^{122}\) *The Hindu*, February 1, 2006.


the common man in the villages to make use of the Act and to
determine the scope of the Act due to lack of readymade availability
of such classified categories, which fall within the privy of the Act.
The awareness is imperative for common people both to know how
they are governed and to participate actively in the process of auditing
their representatives. The continuation of separate State laws might
also dilute and cause confusion.

Awareness is important because it is the best means of
combating specific instances of corruption, and for promoting
accountability through the RTI Act. Publicity by government of
various activities at the sub-district levels is essential as a first step to
carry out the Act. Another serious challenge the Act is facing is
whether the political elites and the so-called steel frame, India in
bureaucracy, will share information with the common people. Again,
even if information is obtained, there is no guarantee that the
government or administrators would act promptly and take action
against the tainted officials.