CHAPTER 7
WORKING OF INFORMATION COMMISSION IN PUNJAB
SINCE 2006

Composition of the State Information Commissions (SIC) for each State under RTI, Act, 2005 itself reflects the intention of the legislature to implement the RTI, Act 2005 with its full potential and zeal. Indian Parliament has, by keeping in view the objectives and responsibilities enshrined in this Act\(^1\) and to provide the information more conveniently and in original form, constituted a State Information Commission for each State. Despite of this fact, there is Central Information Commission (CIC) at Union level, which is common for all the States. Moreover, the same methodology applies to the functioning of State Information Commissions and appointment of its members. The powers conferred by the statute clearly shows that the mindset of its makers is to constitute the State Information Commission as an independent statutory body having capacity to achieve the entire objectives defined under RTI Act. This aspect can be explain by defining the Constitution, powers and duties of the State Information Commission as defined in the relevant provisions of the RTI Act.\(^2\) Further, the object behind the establishment of State Information Commission seems to be that the proceedings in a civil court would be lengthy and dilatory, and such proceedings would be more expensive and would eat away a great part of the return of their

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\(^1\) Preamble of the Right to Information Act, 2005: An Act to Provide for the setting out the practical regime of the Right to Information for citizens to secure access to information under the control of Public Authorities, in order to promote transparency and accountability in the working of every Public Authority, the constitution of the Central Information Commission and State Information Commission and matters connected therewith and incidental thereto.

\(^2\) Section 15 and Section 18 of the Right to Information Act, 2005 respectively defines Constitution of the State Information Commission and Power & Functions of the State Information Commission.
labour. It is, therefore, within the objects of the Act to set up such a Commission, which would create more confidence and a greater sense of security in the minds of the citizens. Again, the conferment of a right of appeal from the decision of the State Public Information Officer does involve inherent easiness for the citizens.\textsuperscript{3}

Therefore, to repose confidence of the general public, legislature has maintained the status of SIC equal to the CIC. In other words, the SIC is not subordinate to the CIC.\textsuperscript{4}

An attempt has been made in this chapter to define the working of the Punjab State Information Commission (PSIC) with the help of legislative provisions, administrative functions performed by the Chief Information Commissioner under State Information Commission, Punjab (Management) Regulation, 2010 & the Punjab State Information Commission (Destruction of Judicial Record) Office Order 2011 and with the help of the actual functioning, i.e., different cases, which have been decided by the State Commission from its composition till date. The composition and membership of the Punjab State Information Commission (hereinafter, also referred to as “Commission”) is discussed hereunder:

\textbf{Composition and Members}

The Commission has been conferred with all the powers, so that it can perform each and every function assigned to it by various provisions of the Right to Information Act, 2005.\textsuperscript{5}

His Excellency, the Governor of Punjab, appointed Shri Rajan Kashyap, IAS (Retd.) as the Chief Information Commissioner of the

\textsuperscript{3} Prof. S.R. Bhansali, \textit{The Right to Information Act, 2005}, (2008), pp. 201.
\textsuperscript{4} Section 18 of the Right to Information Act, 2005.
first Punjab State Information Commission. He administered the oath of his office in Punjab Raj Bhawan on Tuesday, October 18, 2005.

Other four State Information Commissioners who were appointed include 1. Smt. Rupan Deol Bajaj, 2. Sh. P.K. Verma, 3. Sh. R.K. Gupta and 4. Sh. Surinder Singh. All these Information Commissioners were administered the oath of their offices by the Governor of Punjab on May 17, 2006. It is pertinent to noted here that on dated December 26, 2006, four more State Information Commissioners were appointed, namely Lt. Gen. (Retd.) P.K. Grover, Sh. Kulbir Singh, Sh. P.P.S. Gill and Smt. Ravi Singh. They were administered oath of their offices by the Governor of Punjab on January 25, 2007. Their tenure is for a period of five years or till they attain the age of sixty five years, whichever is earlier. The former as well as the present members of the Punjab State Information Commission are given below:

<table>
<thead>
<tr>
<th>S.No.</th>
<th>Name</th>
<th>Date of Oath</th>
<th>Date of Retirement</th>
</tr>
</thead>
<tbody>
<tr>
<td>1.</td>
<td>Sh. R.K. Gupta, SIC</td>
<td>17.05.2006</td>
<td>20.01.2010</td>
</tr>
<tr>
<td>2.</td>
<td>Lt. Gen (Retd.) P.K. Grover, SIC</td>
<td>25.01.2007</td>
<td>17.11.2010</td>
</tr>
<tr>
<td>3.</td>
<td>Rupan Deol Bajaj (IAS Retd.)</td>
<td>17.05.2006</td>
<td>22.12.2010</td>
</tr>
<tr>
<td>4.</td>
<td>Sh. Darbara Singh Kahlon</td>
<td>09.06.2009</td>
<td>12.03.2011</td>
</tr>
</tbody>
</table>

6 Ibid.
9 Section 16 of the Right to Information Act: Terms of Office and Conditions of Service.

- 433 -
At present, Shri Ravi Inder Singh, IAS (Retd.) Former Chief Secretary of the Govt. Punjab is the present Chief Information Commissioner of Punjab. He administered the oath of his office on June 29, 2009. His term of office is up to June 28, 2014. The Information Commissioners presently working in the Punjab State Information Commission, are as under:11

<table>
<thead>
<tr>
<th>S. No.</th>
<th>Name</th>
<th>Date of Oath</th>
<th>Date of Superannuation</th>
</tr>
</thead>
<tbody>
<tr>
<td>5.</td>
<td>B.C. Thakur (IAS Retd.)</td>
<td>11.08.2011</td>
<td>14.06.2015</td>
</tr>
</tbody>
</table>

Apart from these appointments, the Punjab State Information Commission also has other supporting staff members.12 A minimum number of office staff has been appointed, all of whom are computer literate. All such appointments are made on contract or retainership basis to perform specific designated tasks. The only person borrowed directly from the Government is Secretary to the Commission from

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11 Ibid.
12 Section 16 Sub-Section (6) of the Right to Information Act, 2005.
21.02.06 to 18.09.2006. In the year 2006, Sh. S.S. Sandhu, a senior IAS Officer held this post. After the State Government withdrew Sh. Sandhu for some other assignment, the Commission (in the year 2007) selected Sh. S.S. Grewal, a senior officer of the Defence Estates Service, a Central Service, for this assignment. The chart below shows the staffing pattern and mode of appointment:  

<table>
<thead>
<tr>
<th>Name of Post</th>
<th>Mode of Appointment</th>
<th>Number</th>
</tr>
</thead>
<tbody>
<tr>
<td>Secretary to Commission</td>
<td>From Government on deputation</td>
<td>1</td>
</tr>
<tr>
<td>Secretary to CIC</td>
<td>From a Public Sector undertaking on deputation</td>
<td>1</td>
</tr>
<tr>
<td>Legal Adviser</td>
<td>Retainership</td>
<td>1</td>
</tr>
<tr>
<td>Manager Finance Administration</td>
<td>Contract</td>
<td>1</td>
</tr>
<tr>
<td>Consultant</td>
<td>Monitoring Retainership</td>
<td>1</td>
</tr>
<tr>
<td>System Administrator</td>
<td>Contract</td>
<td>1</td>
</tr>
<tr>
<td>Deputy Registrar (Legal)</td>
<td>Contract</td>
<td>1</td>
</tr>
<tr>
<td>Data Entry Operators/Asstt. Librarian/Receptionist</td>
<td>Contract</td>
<td>5</td>
</tr>
<tr>
<td>Peon/office messenger</td>
<td>Contract</td>
<td>3</td>
</tr>
</tbody>
</table>


- 435 -
The main office of State Information Commission Punjab accommodating CIC, administration and a court room is on two floors of SCO 84-85, Sector 17C, Chandigarh; one floor of SCO 32-34, Sector 17, Chandigarh, located close to the main office houses the office rooms of four SICs, and a second court room. Later, during the year 2007, when four more SICs were appointed, office space was created for them in the two existing rented buildings.

RTI Act envisages the State Information Commission as an autonomous, public-friendly institution that should be conveniently accessible to the common citizens. The Commission is also expected to provide justice conveniently and expeditiously, in so far as the delivery of information from Public Authorities is concerned. It was felt important that the public should not perceive the Commission as a governmental institution, but as a regulatory and adjudicating authority in so far as any complaints and appeals against Public Authorities are concerned. For these reasons, it was decided to locate the Commission’s offices and court rooms in premises conveniently

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accessible to the common public, and not within amid government offices in the civil secretariat etc.\textsuperscript{15}

It may be noted that it is for a temporary period that the Commission is functioning from hired office premises. The Commission has requested the State Government to build a permanent and regular office for the Commission elsewhere.

\section*{7.2 PSIC & Transparency}

As RTI Act 2005 stands for transparency, the Commission adopted a pattern of openness in creating the physical infrastructure for its office. Modern, cost effective designs were used for open offices for all staff. All office rooms are uniformly designed, are easily accessible, have no permanent walls or doors, and are interconnected by simple corridors.

Detailed information about the functioning, manpower, expenditure etc. is provided on the website of the Commission.\textsuperscript{16} Punjab State Information Commission, being a Public Authority under the Act, the projection of complete information about its own activities on its website serves as a model for adoption by the State government and its Public Authorities.\textsuperscript{17}

\section*{7.3 Systems and Administrative Structure}

The Commission has adopted Information Technology (IT) - enabled systems for office management, and also for work of the registry. When His Excellency, the then Governor of Punjab, General (Retd.) S.F: Rodrigues formally inaugurated the office of the Commission on May 11, 2006, PSIC became the first Information Commission in the country to have its own dedicated website. Apart

\begin{footnotesize}
\begin{itemize}
\item \textsuperscript{15} \textit{Ibid.}
\item \textsuperscript{16} Available at \url{www.infocompunjab.com}.
\item \textsuperscript{17} Punjab State Information Commission:Annual Report, (2006).
\end{itemize}
\end{footnotesize}
from complete up-to-date information regarding its functioning, the website (www.infocommpunjab.com) carries all cause lists of matters listed for hearing, along with all adjudicatory orders. The status of disposal and pendency of all cases of appeals and complaints before the Commission is updated on the Commission’s website every month.

7.4 Punjab State Information Commission: Monitoring the Implementation of the RTI Act, 2005

As mandated by the Right to Information Act, the Commission monitors the implementation of the Act. Ongoing monitoring enables implementation efforts to be continuously assessed, reviewed and strengthened so as to achieve ‘best practices’.

Under the Act, the Commission has been given specific responsibilities to monitor the Right to Information Act, 2005. The Commission is responsible for producing an Annual Report. Additionally, power is vested with the Commission under Section 19(8) to require Public Authorities to take action to comply with any part of the Act. The Commission is to make recommendations for the various reforms. This will happen when there is continuous monitoring of implementation.

This can be best achieved when all Public Authorities change from a ‘paper based system’ to a computer based system. This cannot happen overnight and in the transition, the Commission has to work with a combination of ‘paper based’ and computer based systems. To explain the requirements of reporting, the Commission had invited various Heads of Department and explained in detail what was

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18 Section 25 Sub-Section (1) The Central Information Commission or the State Information Commission, as the case may be, shall as soon as practicable after the end of each year, prepare a report on the implementation of provisions of this Act during that year and forward a copy thereof to the appropriate Government.

19 Section 25(3) (g) of the Right to Information Act, 2005; Recommendations for return.
required to be done by them and the Public Authorities under their charge to meet their obligations vis-à-vis monitoring systems required under the Act. To ensure effective inputs and standardization, the Commission had designed a set of formats, which the Departmental Heads were to submit. These include details of all the Public Authorities within their preview. The information collected by the Departments was then to be uploaded directly onto the Commission’s website. These formats are available on the Commission’s website and each Department has been given a user name and password to enable them access and upload.

Based on the information received from Departmental heads, this report contains the following monitoring information:

- Details of Departments and the Public Authorities under them.
- Number of requests for information made to each Public Authority.
- Number of decisions when access to information was denied and reasons thereof.
- Number of cases where disciplinary action was taken against an officer in respect of administration of RTI Act.
- Number of times various provisions were invoked and relevant Sections of the RTI Act used while rejecting requests.
- Total Registration fee collected.
- Total additional fee collected.
- Total penalty levied and collected.
The statistics available in the annual report of 2006 became an important monitoring tool in gauging the extent of implementation of the Act, and identifying Public Authorities that have not submitted adequate data, or incomplete data. This, in turn, helps identify departments, which require intervention by way of training or systems.  

7.4.1 Analysis of Reports Received

- Out of the 575 Public Authorities that have reported under Section 25, only 6 Public Authorities (1%) have received more than 100 requests for information.

- These 6 have received 7,127 requests, i.e. 71%.

- Maximum requests have been received by the DG Police (6,259 or 62% of the total).

<table>
<thead>
<tr>
<th>Requests for Information reported by various Public Authorities</th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>Director General of Police</td>
<td>6,259</td>
</tr>
<tr>
<td>PUDA</td>
<td>210</td>
</tr>
<tr>
<td>DC Ludhiana</td>
<td>198</td>
</tr>
<tr>
<td>DC Hoshiarpur</td>
<td>119</td>
</tr>
<tr>
<td>DC Bhatinda</td>
<td>118</td>
</tr>
<tr>
<td>Agricultural University</td>
<td>117</td>
</tr>
<tr>
<td>Mandi Board</td>
<td>106</td>
</tr>
<tr>
<td>Others (less than 100 requests)</td>
<td>2,929</td>
</tr>
<tr>
<td>Total Requests received</td>
<td>10,056</td>
</tr>
</tbody>
</table>


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7.5 Role of the Commission

Apart from the above discussion, the Commission has a number of key roles to play in ensuring that the RTI Act is an effective tool in assisting the public to access information. Specifically, PSIC is responsible for:

(a) Handling complaints and appeals.
(b) Monitoring implementation.
(c) Special human rights oversight.

7.6 Information Infrastructure

The organizational paradigm is indeed intertwined with the structure of an organization's information systems. The organization of PSIC, which is separated into distinct and well-defined organizational units/benches, was required to economize on the information and communications requirements across functional units/benches and reduces cost and complexity. The growing use of IT and the trend towards networking and client-server computing were both a cause and an effect of the organizational requirement. The structure accordingly was required to be more flexible and responsive. Lowering the costs of horizontal communications, facilitating teamwork, enabling flexibility and providing information support for time management and quality control were required as key enablers. The new organizational paradigm demanded new information systems as nothing can be more devastating for cross-functional teamwork than a rigid information system that inhibits cross-functional information flows. The Commission, therefore, unified these perspectives by noting that the structure of the organization's information system was a key element of organizational efficiency.\(^\text{22}\)

\[^{22}\text{Available at www.infocommpunjab.com.}\]
To fulfill this requirement, a system based on collection of interrelated and persistent data was visualized, which would simultaneously meet the requirements based on the role and functional structure of the organization of a number of users, that is:

(a) Store vast variety of information.

(b) Retrieve information.

Accordingly, a three-tier system was developed and adopted.

The main components of the system that has been brought into operation are:

(a) Information Commission System (INCOMS).

(b) Local Area Network (LAN) for the Information Commission for internal communication.

(c) Website for exchanging information with environment.

7.6.1 INCOMS

INCOMS is a Management Information Software, which was developed in March 2006. The main objective of this MIS software was to digitize the registry process of appeals/complaints under the RTI Act 2005 and to retrieve the information as reports. Based on the description of complete work flow of an Appeal/Complaint, a Software and Data Input Sheet was developed. The software was accordingly designed to manage large bodies of information. This involved definition of structures for information storage, provision of mechanisms for the manipulation of information, providing for the safety of information in the database and concurrency control, since the system was to be shared by a number of users.²³

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The life cycle of Appeal/Complaint commences from filing an appeal/complaint under RTI Act 2005 to the Commission. The Commission acknowledges it and categorizes it as Complaint or Appeal, and generates a case number. The First Response Notice is sent to the respondent asking him to supply information needed by the complainant/appellant within 15 days. If the respondent replies within 15 days with the requisite information, then the same is forwarded to the complainant/appellant asking him to confirm if he is satisfied with it. Based on the inputs received from the complainant/appellant, notice is issued to the respondent, if necessary. Notice is also issued to both the parties should there be no response from the respondent within the stipulated period. The case is then heard on a pre-fixed date and orders are passed in the presence of both the parties. The orders are subsequently sent by post also.

Some of the important features of INCOMS are:

(a) Facility to search cases based on various criteria.

(b) Access to various clients on LAN.

(c) Viewing of orders passed in various cases.

(d) Accessing history of the case.

(e) Generation of Hearing Notice in Word Format.

(f) User-based security.

INCOMS can generate following reports:

(a) Daily Case Register: Cases registered in a period.

(b) Allocation of cases to various benches.

(c) Issue of Hearing Notice.

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24 Ibid.
7.6.2 Local Area Network

To facilitate communication, SICP has established Local Area Network (LAN). It is a proprietary system connecting workstations and personal computers of various functionaries of the Commission. The LAN is capable of transmitting data at very fast rates, much faster than data can be transmitted over a telephone line. Each node in this LAN has its own CPU with which it executes program and is also able to access data and devices anywhere on the LAN. This means that many users can share data simultaneously. The LAN has also assisted in reducing paper-work in the Commission.25

7.6.3 Website

SICP hosts a website, www.infocommpunjab.com, to exchange information and for delivery of services with citizens. The most important anticipated benefits of this website include improved efficiency, convenience and better accessibility of public services. This website provides information voluntarily disclosed under Section 4 of the RTI Act 2005 as the Commission is also a Public Authority, Right to Information Act, 2005, Punjab Right to Information Rules 2007, Cause Lists and Orders passed under Sections 18 and 19 by various benches of the SICP. Facility also exists to contact the Commission through e-mail and to check the status of any case under progress with the Commission. The website is updated regularly and

25 Ibid.
orders passed under Sections 18 and 19 are logged on generally within a period of 48 hours of the hearing and these can be downloaded by the interested parties. In fact, all orders passed under Sections 18 and 19 since Commissions’ inception are available on the website.26

7.7 Financial Management

The accounting procedure through the Tally System has following advantages:

(a) Accounts are prepared in accordance with accounting standards.
(b) Assists in decision making.
(c) Records the transactions in a systematic manner while interpreting the results quickly.
(d) Provides requisite information instantly.
(e) Reduces manual effort and verification.
(f) Facilitates easy annual comparison.

Under the aegis of the Comptroller and Auditor General of India, the Accountant General, Punjab is the statutory auditor in respect of the accounts of Punjab State Information Commission. In addition to the statutory order, the Commission has introduced a system of internal audit, which is carried out quarterly by professional auditors from the private sector.

For facility of service, convenience, economy of effort and exchange of information, PSIC utilizes information technology. As the structure of the operating systems is large and complex, careful engineering was essential. The different components that have been highlighted give some idea of the spectrum of possibilities. These are,

26 Ibid.
by no means, exhaustive, but they give an idea of some designs that have been tried in practice to provide user satisfaction and improve efficiency. Technology has, thus, contributed significantly in the administration of Punjab State Information Commission.27

7.8 General Superintendence, Direction and Management of the Affairs of the PSIC

Chief Information Commissioner is empowered to perform administrative functions. These functions are General Superintendence, issuance of directions and management of the affairs of the State Information Commission.28

It was observed by the Bombay High Court in Lokesh Chandra & another v. State of Maharashtra & Ors.29 that the Chief information commissioner is authorized to issue directions to perform his administrative duties effectively. It was also clarified by the Hon’ble High Court that the quasi or judicial powers are equally divided between all the Information Commissioners. However, the administrative powers can be exercised, by the Chief Information Commissioner only; this is the prerogative of a Chief Information Commissioner. In that case, the concerned Court had relied on the decision of Hon’ble Supreme Court, State of Rajasthan v. Parkash Chand,30 that the Chief Justice on the judicial side is the first amongst equals and on administrative side the Chief Justice is the master of the roster; the similar position has been held by of the Chief Information Commissioner.

In exercise of the powers conferred in this Act, enabling Chief Information Commissioner for superintendence, direction and management of State Information Commission, the State Information

28 Section 15 Sub-Section (4) of the Right to Information Act, 2005.
29 AIR 2009 Bombay 147.
30 AIR 1998 SC 1344.
Commission, Punjab (Management) Regulation, 2010 for the management of the affairs of the State Information Commission was enacted.31

7.9 Procedure for Appeals and Complaints: SIC (State Information Commission)

7.9.1 Appeal or Complaint etc. to be in writing

Every appeal, complaint, application, statement, rejoinder, reply or any other document filed before the Commission shall be typed or printed or hand written neatly and legibly and the language used therein shall be formal and civilized and should not be in any way indecent or abusive. The appeal, complaint or an application shall be presented in at least three sets in a paper-book form, in case of Second Appeals and two sets in case of Complaints.32

7.9.2 Contents of Appeal or Complaint

1. An appeal or a complaint to the Commission shall contain the following Information, namely:

(i) Name, address and other particulars of the appellant or complainant, as the case may be;

(ii) Address of the State Public Information Officer (SPIO) or the State Assistant Public Information Officer (SAPIO) or PIO against whom a Complaint is made under Section 18 of the Act, and Second Appeal under Section 19(2) of the Act and address of the First Appellate Authority before whom the First Appeal was preferred under Section 19(1) of the Act.

(iii) Particulars of the decision or order, if any, including its number and the date it was pronounced, against which the appeal is preferred;

(iv) Brief facts leading to the appeal or the complaint;

(v) If the Appeal or Complaint is preferred against refusal or deemed refusal of the information, the particulars of the application, including number and date and name and address of the Central Public Information Officer to whom the application was made and name and address of the First Appellate Authority before whom the Appeal was filed;

(vi) Prayer or relief sought;

(vii) Grounds for the prayer or relief;

(viii) Verification by the appellant or the complainant, as the case may be;

(ix) Any other information, which may be deemed necessary and helpful for the Commission to decide the appeal or complaint. In case the appellant/complainant has alleged deficiency in the information supplied to him, he shall specify the exact deficiency.

(x) Copies of any communications with Public Authority/PIO made by the complainant/appellant and mentioned in his RTI application under Section 6 of the Act.
2. The contents of the complaint shall be in the same form as prescribed for the appeal with such changes as may be deemed necessary or appropriate.33

7.9.3 Documents to accompany Appeal or Complaint

Every appeal or complaint made to the Commission shall be accompanied by self attested copies/photo copies of the following documents, namely:

(i) The RTI application submitted before the SPIO/Assistant SPIO/PIO/APIO along with documentary proof as regards payment of fee under the RTI Act;

(ii) The order, or decision or response, if any, from the SPIO/PIO to whom the application under the RTI Act was submitted.

(iii) The First Appeal submitted before the First Appellate Authority with documentary proof of filing the First Appeal.

(iv) The orders or decision or response, if any, from the First Appellate Authority against which the appeal or complaint is being preferred;

(v) The documents relied upon and referred to in the appeal or complaint;

(vi) A certificate stating that the matters under appeal or complaint have not been previously filed or pending or decided by any of the Commissioners;

(vii) Copies with an index of the documents referred to in the appeal or complaint; and original application under Section 6 of RTI Act.  

7.9.4 Service of copies of Appeal/Complaint

Before submitting an appeal or complaint to the Commission, the appellant or the complainant shall cause a copy of the appeal or complaint, as the case may be, to be served on the SPIO/PIO and the Appellate Authorities, and shall submit a proof of such service to the Commission.

Provided that if a complainant does not know the name, address and other particulars of the SPIO/PIO or of the First Appellate Authority and if he approaches the Commission under Section 18 of the Act, he shall cause a copy of his Complaint Petition to be served on the concerned Public Authority or the Head of the Office and proof of such service shall be annexed along with the Complaint Petition.

7.9.5 Presentation and scrutiny of Appeal or Complaint

(i) The Registrar or an officer specially designated by CIC for this purpose shall receive any Second Appeal or Complaint Petition addressed to the Commission and ensure that

(a) The appeal or complaint, as the case may be, is submitted giving details as specified below (ii)

(b) That all its contents are duly verified by the appellant or the complainant, as the case may be;

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(c) That the appeal or the complaint is in accordance with the Regulations.

(ii) The Registrar or the officer designated for this purpose shall also ensure that the Appeal or the Complaint Petition contains copies of all required documents such as:

(a) RTI application

(b) Receipt of the RTI Application

(c) Proof in regard to payment of fee/cost, if any;

(d) Decision/reply etc. from the SPIO, if any;

(e) Appeal to the First Appellate Authority;

(f) Decision of the First Appellate Authority, if any.

(g) Copies of all communications made with Public Authority/PIO, which have been referred to in the Appeal/Compliant Petition, as the case may be.

(iii) The Registrar/DR/Assistant Registrar/designated officer, as the case may be, shall scrutinize every appeal/complaint received and will ensure—

(a) That the Appeal or the Complaint Petition is duly verified and required numbers of copies are submitted;

(b) That all the documents annexed are duly paged and attested by the appellant or the complainant.

(c) That the copies of the documents filed and submitted are clearing, distinct and legible;
(iv) That the Registrar/DR/Assistant Registrar/Designated Officer will return any such appeal or the complaint, if it does not meet the requirement or conform to the standard as set out above and permits its resubmission in proper form.

(v) All appeals and complaints not returned as above and found in order shall be registered and a specific number will be allocated.

(vi) The Registrar or any other officer authorized by him shall endorse on every appeal or complaint the date on which it is presented.

(vii) The appeals and complaints shall bear separate serial numbers so that they can be easily identified under separate heads.

(viii) If any appeal or complaint is found to be defective and the defect noticed is formal in nature, the Registrar/DR/AR/Designated Officer, as the case may be, may allow the appellant or complainant to rectify the same in his presence or may allow time to rectify the defect. If the appeal or complaint has been received by post and found to be defective, the Registrar may communicate the defect(s) to the appellant or complainant and allow him time from the date of receipt of communication from the Registrar to rectify the defects.

(ix) If the appellant or complainant fails to rectify the defects within the time allowed in clause above, the appeal or complaint shall not be entertained.36

7.9.6 Filing of Counter Statement by the State Public Information Officer or the First Appellate Authority

After receipt of a copy of the appeal or complaint, the State Public Information Officer or the First Appellate Authority or the Public Authority shall file counter statement along with documents, if any, pertaining to the case. A copy of the counter statement(s) so filed shall be served to the appellant or complainant by the SPIO, the First Appellate Authority or the Public Authority, as the case may be.\(^{37}\)

7.9.7 Posting of Appeal or Complaint before the Information Commissioner

The procedure for the Posting of appeal or complaint before the Information Commissioner is as under:\(^{38}\)

(i) An appeal or a complaint, or a class or categories of appeals or complaints, shall be heard either by a Single Bench consisting of one Designated Information Commissioner or a Division Bench of two Designated Information Commissioners, or a Full Bench of three or more Designated Information Commissioners, as decided by the Chief Information Commissioner by a special or general order issued for this purpose, from time to time.

(ii) An appeal or a complaint or class or categories of appeals or complaints may be heard by a Bench either in person or through video conference facility. The proceedings of a Bench conducted through the video conference shall be valid.


- 453 -
(iii) Where in the course of the hearing of an appeal or complaint or other proceeding before a Single Information Commissioner, the Commissioner considers that the matter should be dealt with by a Division or Full Bench, he shall refer the matter to the Chief Information Commissioner who may thereupon constitute such a Bench for the hearing and disposal of the matter, including the referring bench.

(iv) Similarly, where during the course of the hearing of a matter before a Division Bench, the Bench considers that the matter should be dealt with by a Full Bench, or where a Full Bench considers that a matter should be dealt with by full Commission, it shall refer the matter to the Chief Information Commissioner who may thereupon constitute such a Bench for the hearing and disposal of the matter, including the referring Bench.

7.9.8 Amendment or withdrawal of an Appeal or Complaint

A Bench may, in its discretion, allow a prayer for any amendment or withdrawal of an appeal or complaint during the course of its hearing if such a prayer is made by the appellant or complainant on an application made in writing. However, no such prayer may be entertained by the Commission after the matter has been finally heard or a decision or order has been pronounced by the Commission.39

7.9.9 Personal presence of the Appellant or Complainant

(i) The appellant or the complainant, as the case may be, shall be informed of the date of hearing at least seven clear days before that date, except in cases involving life or liberty where a shorter notice may be given.

(ii) The appellant or the complainant, as the case may be, may at his discretion be present in person or through his duly authorized representative at the time of hearing of the appeal or complaint by the Commission.

(iii) Where the Commission is satisfied that circumstances exist due to which the appellant or the complainant is being prevented from attending the hearing of the Commission, the Commission may afford the appellant or the complainant, as the case may be, another opportunity of being heard before a final decision is taken or take any other appropriate action as it may deem fit.

(iv) The appellant or the complainant, as the case may be, may seek the assistance of any authorized person while presenting his case before the Commission and the person representing him may not be a legal practitioner.

(v) If an appellant or complainant at his discretion decides not to be present either personally or through his duly authorized representative during the hearing of an appeal or complaint before the Commission, the Commission may pronounce its decision or order in the matter ex parte.  

7.9.10 Date of hearing to be notified

The Commission shall notify the parties the date and place of hearing of the appeal or complaint in such manner as the Chief Information Commissioner may, by general or special order, direct.  

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7.9.11 **Issue of Summons**

Summons to the parties or to the witnesses for appearance or for production of documents or records or things shall be issued by the Registrar/DR/AR under the authority of the Commission, and it shall be in such form as may be prescribed by the Commission.\(^{42}\)

7.9.12 **Communication of Decisions and Orders**

(i) Every decision or order of the Commission or any of its Benches shall be signed and dated by the Commissioner or Commissioners who have heard the appeal or the complaint or have decided the matter.

(ii) Every decision/order of a Bench of Commission may either be pronounced in one of the sittings of the concerned Bench, or may be placed on its website and may be communicated to the parties under authentication by the Registrar or any other officer authorized by the Commission in this regard.

(iii) Every such decision or order, whenever pronounced by a duly constituted Bench of a Single Information Commissioner or by a Division Bench or by a Full Bench of three or more Information Commissioners, shall be deemed to be the decision or order by the Commission under the Act.\(^{43}\)

7.9.13 **Abatement of an Appeal/Complaint**

The proceedings pending before the Commission shall abate on the death of the appellant or complainant.\(^{44}\)


\(^{44}\) Rule 19 of the State Information Commission, Punjab (Management) Regulations, 2010.
7.10 The Punjab State Information Commission (Destruction of Judicial Records) Office Order, 2011

Apart from the Punjab State (Management) Regulation, 2010, the Punjab State Information Commission has, by making an Order of 2011, substituted The Punjab State Information Commission (Destruction of Judicial Records) Rules, 2009, to regulate the destruction of judicial records of case-files and papers of complaints and appeals decided by all Benches of the State Information Commission, Punjab, so as to enable it to regulate the maintenance and destruction of such record.45

7.10.1 Records when treated as having reached completion

(a) The Judicial record in a case shall be treated as having reached completion on passing of a final order by a Bench of the State Information Commission and its subsequent compliance by the concerned parties or in the event of a Civil Writ Petition having been preferred against the decision of Bench of the Commission in the High Court of Punjab & Haryana/Supreme Court of India, on the date of compliance of final order of the High Court of Punjab & Haryana/Supreme Court of India, as the case may be.

(b) In the case of registers and other papers in the Judicial Branch, the date of completion shall be the date on which the registers were closed, and in the case of files and other papers, the date on which the final order was passed thereon.46

45 Section 15(4) of the Right to Information Act, 2005, enables the Chief Information Commissioner to pass administrative Orders. These Orders come into force with effect from 2011.

7.10.2 Preparation of index and separation of Parts

All judicial record, on having reached completion, shall be consigned to record Section/record room of the Commission under the charge of Registrar/Deputy-Registrar, latest by 30th December of each year, against a proper receipt.

After receipt of a judicial record in the record Section/room, a fresh index will be prepared. All papers will be numbered and entered in the index under the appropriate part to which it belongs, after segregating records into three parts as detailed in Para 9 of this order.47

7.10.3 Records when to be taken up for destruction

All records, registers and case-files of the complaints or appeals filed before the State Information Commission under Section 18 or Section 19 of the Act shall be retained in the record room from the date of completion till the expiry of the period prescribed under this Order 5 and on expiry of such period, these may be destroyed with the approval of the Registrar or Deputy Registrar, if so empowered by the Chief Information Commissioner.48

Provided that Registrar of the Commission or the Deputy Registrar of the Commission, if so authorized by Chief Information Commissioner, on a reference from the concerned Commissioner, who decided the complaint or appeal, as the case may be, for reasons to be recorded in writing, order that any particular paper or the record of any particular case be preserved beyond such period;49

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Provided further that original record, if filed by any PIO or Public Authority or officer of Government or produced by such officer shall not be destroyed, if not previously reclaimed, but shall invariably be returned to the Public Authority or PIO or the office from which these were produced, on such PIO or Public Authority or office approaching the State Information Commission *suo moto* or in response to notice under Order 8 of this Order.\(^{50}\)

### 7.10.4 Supervision of destruction

The destruction of judicial records and related Registers may be carried out from time to time as may be necessary, under the overall superintendence of the Registrar/Deputy Registrar. However, Registrar or the Deputy Registrar, with the approval of the Chief Information Commissioner, may designate one or more senior officers of the Commission to supervise the actual destruction of record, on the spot.\(^ {51}\)

### 7.10.5 Manner of destruction of records

(i) The destruction of judicial records shall be effected in any of the following manner:-(a) tearing so as to render it unlikely that the documents so torn may be used again, (b) tearing and burning it, (c) destroying with the help of a Paper Shredding Machine. The mode of destruction shall be decided by the Registrar or Deputy Registrar.

(ii) The record, after the Supervising Officer/s has certified that the destruction has rendered such judicial record/register of no value, unless the same is burnt, shall be sold as waste under the orders of the Registrar/Deputy

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\(^{50}\) Proviso 2nd to Order 5 of the Punjab State Information Commission ( Destruction of Judicial Records ) Office Order, 2011.

Registrar and proceeds of the sale shall be credited to the relevant receipt Head (0070 Other Administrative Service other receipts).\(^{52}\)

### 7.10.6 Notice before Destruction of records

In January each year, a notice specifying the judicial record, which will be destroyed during the year will be displayed on the Notice Board in the office of the Commission and also displayed on the website of the Commission. Unless claimed within 30 days from the date of issuance of notice by the party entitled to claim any part of the Judicial record, destruction of the judicial record mentioned in the notice will ensue. Return of documents to parties will be made under the orders of the Registrar or of Deputy Registrar, if so empowered by the Chief Information Commissioner.\(^ {53}\)

### 7.10.7 Segregation of Records

Every judicial record of Second Appeal/Complaint under the Right to Information Act, on its consignment to record room/record Section, shall be segregated into three parts:

- **Part (i):** The final order of a Bench of the Commission deciding Second Appeals/Complaints under Section 18 or Section 19 of the Act.

- **Part (ii):** The record of Case of Second Appeals/Complaints in which an Appeal or Civil Writ Petition is pending in any court of law.

- **Part (iii):** The record of complaint or appeal cases where a penalty or fine was imposed or compensation was awarded by a Bench

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\(^{52}\) Order 7 of the Punjab State Information Commission (Destruction of Judicial Records) Office Order, 2011.

\(^{53}\) Order 8 of the Punjab State Information Commission (Destruction of Judicial Records) Office Order, 2011.
of the Commission or in which disciplinary action had been recommended.\textsuperscript{54}

\textbf{7.10.8 Period for retention of Parts 1, 2 and 3 of the Judicial Record}

All judicial record having reached completion and on consignment to record room/record Section under Order 4 of this Order, except the record as listed in the three parts below, shall be preserved for a period of at least five years, where after it may be destroyed as per the procedure laid down in this Order.

\textbf{Part I} of the Judicial Record shall be preserved for 5 years in original form and electronically on the website of the Commission for at least 15 years.

\textbf{Part II} of the Judicial Record shall be destroyed only after the final decision of appeal or CWP in High Court or Supreme Court, as the case may be, and its compliance.

\textbf{Part III} of the judicial record where a penalty was imposed under Section 20 of the Act or compensation was awarded under Section 19(8)(b) of the Act, shall not be destroyed till such time as the penalty or compensation or fine has been realized or disciplinary action under service rules initiated under Section 20(2) has attained finality.

Notwithstanding anything contained herein, no judicial record shall be destroyed, even though the period of preservation in this Order may have expired, unless the annual report of the Commission relating to the year to which the record pertains has been placed on the

\textsuperscript{54} Order 9 of the Punjab State Information Commission (Destruction of Judicial Records) Office Order, 2011.
floor of Vidhan Sabha, Punjab, as required under Section 25(4) of the Right to Information Act.55

7.10.9 Note of destruction to be made in register, etc.

Letter ‘D’ with date indicating that a case-file or record consisting of Part 1 or 2 or 3, as the case be, has been destroyed on that date may be made in red ink in the index of the respective case bundle as well as in the relevant column of the record registrar in which such paper or record is entered.56

7.10.10 Non-Judicial Record/Registers

Administrative record and Accounts Registers or any other papers and files maintained for administrative purposes are to be preserved and destroyed only as per provisions contained in the Punjab Financial Rules and instructions issued by State Government from time to time.57

Notwithstanding anything contained herein, so long as an objection is outstanding and the Accounts have not been completely checked and accepted in Audit, these and the supporting documents should not be destroyed even though the period of preservation in the Order/PFR may have expired.58

The period of retention in the record room for any Judicial Record, Judicial/administrative Registers and papers not specified in

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this Order shall be decided by the Registrar/Deputy Registrar with the approval of the Chief Information Commissioner.59

7.11 Adjudication

The adjudicatory role of the Commission is delineated in Section 18 (Powers and functions of Commission), Section 19 (Appeals) and Section 20 (Penalties).

State Information Commission, Punjab became operational with the assumption of office by Chief Information Commissioner, Punjab on October 18, 2005. Initially, the institution of cases before the Commission for adjudication was small, since public awareness about the rights under the Act was limited, and also on account of the time-related procedural requirements as laid down in the Act. During the course of the year 2006, the number of matters for adjudication began to increase from month to month.

With the appointment of four State Information Commissioners on May 17, 2006, the Commission constituted four benches for adjudication, consisting of one division bench of Chief Information Commissioner and one State Information Commissioner, and three Commissioners sitting in single benches. The status of institution and disposal of complaints and appeals by the Commission since 2005 to August 2011 is given below:60

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60 Available at www.infocommpunjab.com.

- 463 -
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- 464 -
7.12 Working of Information Commission Punjab

The working of the Punjab State Information Commission can be evaluated 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 PSIC. 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 for highlighting the process of enforcement. The discussion on the basis of sample cases can be made under following heads:
7.12.1 Section 18 operates in consonance with, and not in conflict with, or independent of, the rest of the Act, including provisions of Section 19. The two Sections are not in competition, but complement each other; therefore, to be interpreted harmoniously.

**Title of the Case**

_Shri Kesar Singh v. The Public Information Officer, O/o Punjab and Haryana High Court, Punjab, Chandigarh._

**Facts of the Case**

The complainant sought from the respondent copies of evaluated answer-sheets of all the five papers along with the marks obtained by him in each paper in the P.C.S. Judicial Branch Main-2010 Examination held from 15 to 17.10.2010 at Chandigarh. His request for information, however, was declined by the PIO, relying on Rule 4 of the Rules framed by the Hon’ble Punjab and Haryana High Court under Section 28 of the Right to Information Act, 2005 called as High Court of Punjab and Haryana (Right to Information), Rules 2007. Aggrieved, the complainant approached the State Information Commission.

**Facts in issue**

(a) Rule 4 of the Punjab and Haryana High Court (Right to Information), Rules 2007.

(b) Jurisdiction of the Punjab State Information Commission under Section 18 and 19 of the Right to Information Act, 2005.

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Analysis of the decision

The Commission decided that it had no power to issue such a direction to PIO/Public Authority under Section 18 of the Right to Information Act. Section 18 opens with the words, “Subject to the provisions of this Act . . . “, which imply that Section 18 operates in consonance with, and not in conflict with, or independent of, the rest of the Act, including provisions of Section 19. In other words, Section 18 is as much ‘subject’ to the other provisions of the Act, as it is to Section 19. The two Sections are not in competition, but complement each other and are, therefore, to be interpreted harmoniously. Section 18 does not override the remedy of Section 19; if anything, it is Section 18, which is subject to Section 19.

Under Section 18, not only there is no provision to empower the Commission to direct the PIO/Public Authority concerned to supply information being asked for by a citizen, but any such direction, in fact, in certain circumstances, may result in violation of substantive provisions of the Act itself. If the information being asked relates, to or has been supplied by a third party and it may have been treated it as confidential by that third party, provisions of Section 11 would be attracted and the procedure prescribed under that Section shall have to be followed. When a citizen directly approaches the Commission under Section 18 by way of complaint, the procedure under Section 11 and also the right of the third party to appeal under Section 19(2) and 19(4) are bypassed, and therefore, any order directing the PIO to part with third party information would violate the statutory rights of the third party. On the other hand, Section 19 is much wider in its scope and sweep; the Commission is not a mere investigating body, as it is under Section 18, but specific powers have been conferred under
Section 19 to compensate the information seeker for any loss or other detriment suffered and still more importantly, the Commission enjoys the authority to issue corrective mandate to PIO/Public Authority on the matters listed under Clause 8 of the Section 19. These powers are sweeping; the Commission may direct the Public Authority to provide access to information, to take any such steps as may be necessary to secure compliance with the provisions of the Act, including by appointing PIO, by publishing certain information or categories of information, by making necessary changes to its practices in relation to maintenance, management and destruction of record, or enhance the provision of training for officials on RTI Act, etc. These powers are not only vast, but more positive, beneficial and corrective in nature than the limited investigative and punitive regime under Section 18.

From the above discussion, it is clear that except in respect of grounds or cause of action not specifically covered by provisions of Section 19, a citizen who directly approaches the Commission by way of a complaint under Section 18, without exhausting the remedy of First Appeal under Section 19(1), be relegated to the First Appellate Authority for redress of his grievance. Thereafter, if the grievance still persists, he would be free to approach the Commission either by way of complaint under Section 18 or by way of Second Appeal under Section 19(3). Which of these two alternative routes he chooses is his choice, but the route he chooses would circumscribe the relief he may get, for the two Sections are not similar in terms of the outcome or relief for the information seeker. Section 18 will not go beyond the provision of punishment for the PIO; Section 19, apart from any possible penalty and compensation, may also deliver the sought information to the citizen.
A welfare society is essentially a group of residents created by them for their own self interest and for mutual welfare. Such society, by nature of their objectives and Charter of functions, is expected to be transparent and open, rather than secretive. Welfare and secrecy do not go together.

Case Title

*Shri H.L. Bhandari, 52, Tagore Nagar ‘A’, Civil Lines, Ludhiana v. The Public Information Officer o/o the President/General Secretary, The Tagore Nagar ‘A’ Welfare Society, Civil Lines, Ludhiana. 62*

Facts of the case

The case is based on the fact that The Tagore Nagar ‘A’ Welfare Society has been continuously receiving grant from the State Government. These are the following instances:

(a) Rs. 1 lakh was received out of the Chief Minister’s Fund on 20.12.2010.

(b) Rs. 1 lakh was received from the then Minister, Shri Rakesh Pandey during 2006-07. Another Rs.1 lakh was received from Shri Harnam Dass Johar, the then Minister, during the same period.

(c) Rs. 5 lakhs received from late Shri Lajpat Rai, the then Member Parliament, and again from the Chief Minister’s Fund on 11.11.2008.

(d) Rs. 1.50 lakh received from the Punjab Government/Block Development and Panchayat Officer.

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62 Decided by Punjab State Information Commission, Complaint Case No. 827 of 2011.
Lastly, it was pointed out that the society has been regularly receiving funds from the Municipal Corporation, Ludhiana under the Mohalla Sanitation and Park Management Schemes.

Relying on the above facts, the complainant argued that the Society is regularly receiving financial assistance directly from the State Government and also from its instrumentality, namely Municipal Corporation. Block Development Officer had also given grants. Therefore, the Society is squarely covered under Section 2(h)(d)(II) of the Act.

Fact in Issue

Whether the Tagore Nagar ‘A’ Welfare Society, Ludhiana is a Public Authority within the meaning of Section 2(h)(d)(ii)?

Analysis of the decision:

A welfare society is essentially a group of residents created by them for their own self-interest and for mutual welfare. Such society, by nature of their objectives and Charter of functions, is expected to be transparent and open, rather than secretive. Welfare and secrecy do not go together. This is all the more imperative as the society received funds and financial resources from the State Government and the local bodies. The fact that the funds were given by the Chief Minister/Minister/Member of Parliament from their discretionary resources would not make any difference because this money, in any case, is coming from the State Exchequer. Therefore, the Tagore Nagar ‘A’ Welfare Society, Ludhiana is a Public Authority within the meaning of Section 2(h)(d)(ii).
7.12.3 NRI Sabha Punjab, Jalandhar is a Public Authority

Title of the Case

Shri Jasvir Singh v. The Public Information Officer, o/o the Chairman, NRI Sabha-cum-Divisional Commissioner.63

Facts of the case

The complainant sought some information from NRI Sabha Punjab, Jalandhar, but it was declined on the ground that the Sabha is not a Public Authority but a private NGO formed for the welfare of Non-Resident Indians.

Facts in issue

Whether the NRI Sabha Punjab, Jalandhar is a Public Authority, within the meaning of Section 2(h) of the Right to Information Act, 2005?

Analysis of the decision

PSIC held that government exercises control over NRI Sabha. A plain reading of its Constitution shows that government officials, at all levels of NRI Sabha’s organization, play important role in decision making. They virtually run the affairs of the Sabha. The role of the Government is not only advisory or of a facilitator but its control is extensive and intrusive, amounting to virtually managing the organization. The Government officials also play a key role in the formation of Sabha and its registration under the Societies Registration Act. The Constitution of the Sabha states that in case it is wound up, all its assets will vest in the Government. In view of the above provisions, the inescapable conclusion is that Government exercises direct effective control over the Sabha and its affairs. This

63 Decision by the Punjab State Information Commission in Complaint Case No. 2791 of 2010.
control falls within the scope of Section 2(h)(d)(i) of the Right to Information Act, 2005, and therefore, the respondent is a Public Authority.

7.12.4 Denial of Information by the water Supply & Sewerage Department set aside by the Commission.

Title of the Case

*Shri Prem Dass v. PIO, O/O XEN, Water Supply & Sewerage.*

Facts of the Case

RTI application filed by the appellant was dated and five months are already over. Not only no information was provided to him, but the information was denied to him altogether by the respondent under Section 8(1), stating that it is personal information, which has no connection with public interest. Aggrieved by that Order, an appeal was filed before the Commission. In reply, the respondent informed that they have not been able to collect the entire record asked by the appellant, since they are busy in preparing an important water supply and sewerage project for financing on an international basis through Bank of Japan which is a time bound project. They also requested the State Information Commission to give some more time so that the required record could be collected. However, no reference was given regarding the basis on which it was stated that it is personal information, which has no connection with public interest.

Fact in Issue

Whether the denial of Information by the Department of Water Supply & Sewerage, Div. No. 2, Amritsar, is justifiable or not?

Analysis of the decision

Since the present stand of the respondent is opposite to what had been stated by it earlier, the Commission decided that enough time has been taken by the respondent already and there is no leeway for further delay. Thus, the respondent was directed to immediately supply the information to the appellant.

7.12.5 The aims and objectives of the RTI Act are to bring about transparency in the government working and decisions and to make the record of the Government open to the citizens.

Title of the Case

Sh. Vipan Kumar Gupta v. PIO, O/O XEN, PWD (B&R), Barnala

Facts of the Case

The complainant approached PSIC with a complaint against the respondent about supplying inadequate information.

Facts in Issue

Information provided to the complainant is sufficient or not?

Analysis of the Decision

The aims and objectives of the RTI Act are to bring about transparency in the government working and decisions and to make the record of the Government open to the citizens. However, in this case, it is seen that there is a basic lack of knowledge of the Government budgeting procedures, which are based on projections, vis-à-vis release of actual amounts of funds to the field officer, which the applicant is not able to understand. In this case, the applicant was not
purposely trying to harass, or to create hurdles in the functioning of, the PIO’s office, as alleged, but basically, he has not been able to comprehend the procedures of making funds available in the field to the Government functionaries. That is why he had certain apprehensions and suspicions. However, it is not for the PIO to bridge the gaps of knowledge in the mind of public. Transparency, by itself, will bring about awareness and appreciation of the implications of Government working by the citizens and they would educate themselves in this behalf.

7.12.6 PIO has ignored to attend the hearings deliberately and has shown disregard to the orders of the Commission and also to the provisions of the RTI Act, which is mandated for bringing transparency in the system. Hence, deserves to be penalized for such carelessness on his part.

Title of the Case

*Sh. Ajaib Singh v. Public Information Officer, O/o Assistant Food & Supplies Controller.*

Facts of the Case

The complainant sought information from the respondent on 7 points regarding name & designation of officials working in the office of AFSO, Nabha; quantity of kerosene oil provided by the Government; name & designation of the wholesale distributors; Income Tax Returns filed by the officials, particulars of the staff employed on casual basis etc. On not having received the information, the complainant filed a complaint before the Commission. The respondent PIO or his representative did not bother to attend the hearing even after three notices nor the information provided to the

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66 Decided by the Punjab State Information Commission on dated: 25.08.2011 in, Complaint Case No. 481 of 2010.
complainant. Observing such callous attitude on the part of the respondent PIO, show cause notice was issued to him to explain why penalty should not be imposed upon him under Section 20(1) of the RTI Act for failure to provide the information within the stipulated period. The respondent failed to give any convincing reply or cogent reason for the delay in providing the information.

**Facts in Issue**

PIO was directed to show cause why penalty should not be imposed upon him under Section 20(1) of the RTI Act for failure to provide information to the complainant within the stipulated period.

**Analysis of the decision**

From the facts explained above, it is clear that despite affording adequate and sufficient opportunity to the respondent PIO, he failed to provide the information to the complainant even after more than 6 months. It is found that the PIO has ignored to attend the hearings deliberately and has shown disregard to the orders of the Commission, and also to the provisions of the RTI Act, which is mandated for bringing transparency in the system. In this view of the matter, the PIO deserves to be penalized for such carelessness on his part. Accordingly, a penalty of Rs.20,000/- was imposed on him, which should be recovered from his salary and deposited in the State Treasury under the relevant Head.
7.12.7 Any papers which are to be supplied to the complainant or are placed on the record of the Commission need to be attested to prove their authenticity.

Case Title

Sh. Resham Singh v. PIO, O/O. XEN, Punjab State Tubewell Corporation, Bathinda

Facts of the Case

This case was considered by the Commission twice before and both times, detailed orders were passed and directions given to the respondent for compliance. However, the complainant states that he has not received any further information despite the passing of these Orders by the Commission. The respondent APIO stated that despite best efforts, the original file of Water Users Association containing their application for approval of works/request for funds to the authorities has not been located (which form basis of the sanctioned funds under the scheme for repair of damaged water courses). He has not disclosed what action has been taken on the directions of the Commission requiring the respondent to locate the said files and/or to consider the necessity of registration of FIR, if necessary for the missing files. The respondent APIO also stated that with best efforts, he has been able to get list of villages of Pacca Kalan constituency containing 27 pages, containing the abstract/details of villages, which at that time had applied for funds under the scheme. In this, the data is available village-wise, water user wise and details of damaged water courses of Pacca Kalan constituency, approximate cost, etc.

Facts in Issue

Failure of the PIO to comply with the Order of the Commission?

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Analysis of the decision

There was no covering letter with the list given by the PIO and it has not been authenticated by the office. Since it was a photocopy, original must be available with the office. Any papers, which are to be supplied to the complainant or are placed on the record of the Commission, need to be attested to prove their authenticity. However, the signatures of the Divisional Engineer are in ink. These papers, however, do not meet the requirements of the RTI application, which can only come from the original files on which the amounts were sanctioned and on the basis of which, the cheques were issued by the Competent Authority. All these papers should be available on the file of the Pathrala village. The PIO as thus, directed to make all out search for the said file and in case no such file is available, a certificate should be given to that effect after duly checking up the matter from the Divisional Engineer and the persons who have dealt with the matter earlier. In case such a certificate is given, then armed with that information, the complaint can make further moves as may be advised.

7.12.8 Even if the respondent has overlooked that whether a Public Authority is working in a fiduciary capacity or not, it has no bearing on the question whether information can be provided by it.

Title of the Case

Sh. Sachin Saggar v. Public Information Officer O/o Secretary Punjab Public Service Commission Patiala. 68

Facts of the Case

The complainant sought from the respondent information concerning the criteria followed by the respondent (PPSC) in selecting the candidates who were called for the interview for the post of Drug Inspector; the number of candidates called for the interview who possessed the M. Pharmacy Degree; weightage, if any, given to the higher educational qualification of M. Pharmacy or Ph.D. over and above the minimum required qualification of B. Pharmacy; and the number of candidates who possess the minimum experience prescribed under the Drug Act, 1940 for being qualified for inspecting the manufacturing units.

Facts in Issue

1. Whether PPSC is serving in a fiduciary capacity for the Government of Punjab, and therefore, any information sought is exempted u/s 8(i)(e) of the RTI Act, 2005?
2. Whether the present complaint should be disallowed since the complainant has not availed the remedy of a first appeal provided under Section 19 of the RTI Act?
3. Whether the application made by the complainant is a proper application under the RTI Act?

Analysis of the decision

In response to the first issue, the objection of the respondent was overruled. The decision of the Hon’ble Punjab and High Court on whether the PPSC is serving in a fiduciary capacity to the Government or not is still pending. Moreover, the respondent seems to have overlooked that whether a Public Authority is working in a fiduciary capacity or not has no bearing on the question whether information can be provided by it. The misconception of its obligation under the
RTI Act on the part of the respondent is revealed by the respondent himself in his letter sent to the complainant, in which he stated that “any information sought for is exempted...”. In fact, under Section 8(i)(e) of the RTI Act, information which is being sought and which is required to be given has to be held by an individual in his fiduciary relationship, or in other words, in confidence on behalf of the individual or organization with whom it has the fiduciary relationship, before a claim of exemption can be made. By no stretch of the imagination can the information sought for be described as being held by the respondent or any individual working in the PPSC in any kind of fiduciary capacity on behalf of the Government.

Responding to the second issue, the objection of the respondent was overruled, since the respondent stated that the present complaint should be disallowed because the complainant has not availed the remedy of a first appeal provided under Section 19 of the RTI Act. However, it was observed by the Commission that in the framework of the RTI Act, there is an option available to the citizen either to make a first appeal or to make a complaint to the Commission under Section 18 of the Act in the first instance itself.

Regarding the third issue, the respondent stated that the application made by the complainant is not a proper application under the RTI Act, but is a representation. This objection was overruled and the Commission found that substantially, the application of the complainant seeks information pure and simple, and cannot, in any manner, be described as a representation.
7.12.9 Personal information relating to the third party, as the information sought is related with the intellectual property of the objector/third party. Disclosure of this information would be exempt under Section 8 (1) (d) and (j) RTI Act, 2005, unless the appellant can show that the demand made by him would subserve any public interest.

Title of the Case

Rajinder Kumar v. Public Information officer, O/o Municipal Corporation, Patiala

Facts of the Case

The complainant sought information from the respondent about some properties in Ajit Nagar, Patiala. Information, as had been demanded, was provided, except the copy of building plan as sanctioned by Municipal Corporation with respect to building on a couple of plots in Ajit Nagar, Patiala.

Facts in Issue

Whether the information demanded falls under the purview of exemptions under provisions of Section 8(1)(d) and (j) of the Right to Information Act, 2005?

Analysis of the decision

During the hearing, the Complainant was unable to justify larger public interest involved in obtaining information. The Respondent took the view that the information could not be supplied to the complainant because they had sought a copy of building plan as sanctioned by Municipal Corporation with respect to a couple of plots in Ajit Nagar, Patiala, which indisputably belong to the third party.

Thus, this information could not be supplied to them, as disclosure of this information is exempt under Section 8(1)(d) and (j), RTI Act, 2005. Thus, the Commission directed that the provision of requested information will not be supplied, being commercial, confidential and personal in nature for which the complainant has not justified larger public interest in obtaining the same.

7.12.10  **Section 8(3) of the Right to Information Act, 2005 does not debar supply of record which is older than 20 years.**

**Title of the Case**

*Shri Harish Kumar v. The Public Information Officer, o/o The Sub Divisional Magistrate, Jagraon, Distt. Ludhiana and other*

**Facts of the Case**

The complainant, in three different cases, sought the same information from Sub Divisional Magistrate, Jagraon, Sub Divisional Magistrate, Payal and Sub Divisional Magistrate-cum-PIO, Ludhiana (East). All these were clubbed together for hearing.

The Sub Divisional Magistrate, Payal submitted that Payal Sub Division was created in the year 1992, whereas the information being sought pertains to January, 1979. Her plea was that record prior to the date of creation of the Sub Division is not maintained by the PIO/Sub Divisional Magistrate, Payal. The appellant agreed with this fact and conceded that this case may be closed.

The Sub Divisional Magistrate-cum-PIO, Ludhiana (East) submitted that the record pertains to the year 1979, and is nearly 32 years old. The information seeker was informed that the information could not be supplied under Section 8(3) of the Right to Information

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70 Decided by the Punjab State Information Commission, on dated August 9, 2011, in appeal case no. 645, 646 & 647 of 2011.
Act, 2005 on the ground that it was personal information of a third party. In any case, the information was not available in the office record, and therefore, cannot be furnished.

The Sub Divisional Magistrate, Jagraon also intimated to the appellant that the record pertaining to the information being sought is not available.

Facts in Issue

1. Whether Section 8(3) of the Right to Information Act, 2005 debars supply of record, which is older than 20 years?

2. Whether Section 8(1)(j) of the Right to Information Act, 2005 automatically debars the disclosure of personal information?

Analysis of the decision

The Punjab State Information Commission held that Section 8(3) of the Right to Information Act, 2005 does not debar supply of record, which is older than 20 years. In fact, Section 8(3) throws open all records more than 20 years old, which were earlier not in public domain. The plea of Section 8(1)(j) that the record being personal information of a third party would also not automatically debar the appellant from accessing the information. Section 11 lays down the procedure to be followed in all cases where third party information is involved. A Scheduled Caste Certificate issued by a Government authority is a public document and the beneficiary of this certificate is entitled to reservation in various public bodies including educational institutions. Disclosure of such a certificate, therefore, would be in public interest. The respondent may issue a notice to the beneficiary of the certificate under Section 11 of the RTI Act, and thereafter,
decide the case on merits, following the procedure laid down by the Act.

As regards non-availability of record, a fresh earnest effort shall be made by both the respondents, i.e., Sub Divisional Magistrate, Ludhiana (East) and Sub Divisional Magistrate, Jagraon to trace it out.

**7.12.11** RTI Act is an independent legislation enacted by Parliament to confer a right on citizens to seek information from Public Authority and existence of an alternative route is no bar to access information under RTI.

**Title of the Case**

*Sh. Jagdish Lal and Sh. Rakesh Kumar Singla, v. Public Information Officer, O/o Deputy Commissioner, Ludhiana and Public Information Officer, O/o The Tehsildar, Lehra Gaga, Distt. Sangrur*

**Facts of the Case**

In all the three cases, the information was denied by the concerned PIOs and the first appeals also failed. The appellants, thus, moved the State Information Commission under Section 19 of the RTI Act.

Of the many reasons for denial of information by the PIOs, one of the grounds was that a well defined procedure, with a fee structure, already exists for obtaining copies of the documents sought by the appellants. Since an alternative route to get copies of documents is in position, the appellants should have gone through that route rather than apply for the information under the RTI Act. The rationale given is that appellants could access the copies of documents sought by them under an existing procedure, which is older in time than the RTI and

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- 483 -
for which the Government of Punjab has laid down complete infrastructure, prescribed proformas, designated officials, laid down schedule of fee and specified time caps for supply of copies for documents, etc. Since this route for supply of copies of documents is in existence, recourse to RTI Act should not be resorted to or may be used only as an option of second resort. The appellants pleaded that RTI Act is an independent legislation enacted by the Parliament to confer a right on citizens to seek information from Public Authority and existence of an alternative route is no bar to access information under RTI.

Facts in Issue

Whether the existence of an alternative route under different Act, for seeking information imposes any bar to access information under RTI?

Analysis of the decision

It was held by the Commission that the intent of the Legislature is to be seen from the legislation itself. The substantive provisions of the Act speak for themselves. There is nothing in the RTI Act, 2005 to even vaguely suggest that the Act may not be accessed by a citizen where legal documents/information could be available on payment basis by recourse to another route/an already existing procedure. The right to access information is conferred on citizens by Section 3 of the RTI Act. Section 3 reads:

“Subject to the provisions of this Act, all citizens shall have the right to information”.

While recognizing the right of citizens, this Section subjects the right to the “provisions of this Act” alone. Therefore, any restrictions or exceptions to the right have to come from within the Act, not from outside. And these restrictions have been laid down in Sections 8, 9
and 24 of the Act. Unless the respondents can justify denial of information under any one of these Sections of the RTI Act, information cannot be withheld from the appellants on the plea that an alternative route is available to them. It is the privilege of the citizen to choose the route he wants to, and not for the respondents to dictate the same. To interpret the RTI Act in any other way would amount to introducing new exemptions to the right to information. Moreover, if Parliament wanted to restrict the right, it would have stated so in the RTI Act. Nobody else has the authority to constrain or constrict the right of the citizens.

Further, the Right to Information Act, 2005 was enacted by the Parliament with the primary objective to provide for setting out the practical regime of right to information for citizens to secure access to information under the control of Public Authorities. It is also important to note that Hon'ble Supreme court in number of judgments given even prior to the enactment of RTI Act in 2005 has held that right to information is a Fundamental Right. Its roots lie in Articles 19 and 21 of the Constitution of India. The implication of these judgments of the Hon'ble Supreme Court is that the Right to Information Act, 2005 has not created a new right; it has merely codified it and formalized the procedures and processes through which this right could be actualized. And the fundamental rights are on a much higher edifice than any other facility to obtain documents under an old existing procedure; the fundamental rights are intrinsic part of the basic structure of the democratic polity, which cannot be altered or denied.

The existing alternative route to obtain copies of registered documents, much relied upon and emphasized by the respondents, has been prescribed by Punjab Government under the Registration Manual, 1929 and various instructions/notifications issued from time to time under the Registration Act, 1908, which is a pre-independence Act and
empowers the State government to formulate fee structure for supply of copies. Similarly, the Punjab Land Revenue Act and notifications issued thereunder, from time to time, had provided the fee/procedure to obtain copies of revenue record. These procedures and fee structure to obtain copies of documents/information under subsisting legislations are valid and legitimate. However, mere existence of such procedures does not empower the respondent government officials to tell the citizens which route to follow.

The RTI law is later in time than the Registration Act, 1908 and the Punjab Land Revenue Act. The provision of supply of copies of documents under these legislations was not conceived as a Fundamental Right conferred on citizens; it was more in the nature of a service provided to the stake holders on payment basis. In any case, there is no specific bar either in the Registration Act or the Land Revenue Act that copies of documents under these laws cannot be supplied, except under the procedure duly notified under these Acts or the Rules framed thereunder. There is no contradiction between the provision of accessing information under Right to Information Act and Registration Act, 1908 or Punjab Land Revenue Act. For the sake of argument, even if there was any contradiction or inconsistency, the RTI Act shall prevail over other laws or instruments in force by virtue of Section 22 of the Act, which gives it an overriding effect over any other law or any instrument having effect by virtue of any law other than the RTI Act for the time being in force.

In response to the argument regarding loss of revenue, it was observed by the Commission that Section 27 of the Right to Information Act confers the power to make Rules on the appropriate Government and such Rules may provide for fee payable under Section 6 or Section 7 and the cost of medium or print cost price of the materials to be disseminated under Section 4(4) of the Act. The power to prescribe the fee structure under all the three laws, i.e., The
Registration Act, The Punjab Land Revenue Act and the RTI Act, vests in the State Government. If the State Government has chosen to provide differential fee structure for obtaining copies of the same document under different laws, it does not take away right of the citizen to choose the route to obtain copies of documents. If the State Government is concerned about the loss of revenue, it may amend the Rules formulated under Right to Information Act and bring the rates at par, with those prescribed under the other routes, at least for those documents which may be available under alternative routes.

Thus, it was held that the right of a citizen to choose the route, processes or procedures available under different laws/Rules to obtain information or copies of any documents is not in any way restricted, constrained or constricted, least of all on the ground that he has alternative routes available to him.

Coming specifically to the entitlement of the appellants to obtain copies of the documents under the RTI Act, it was found by keeping in view the nature of these documents, that the information sought by the appellant is clearly of a personal nature and pertains to third party. The information would fall within the exemption for disclosure granted by Section 8(1)(j) of the Act, which reads thus:

“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 CPIO and the SPIO or the Appellate authority, as the case may be, is satisfied that the larger public interest justifies the disclosure of such information”.

The expression, “which would cause unwarranted invasion of the privacy of the individual” in the above Section 8(1)(j) makes it clear that personal information contemplated in this Section need not be personal to the information seeker; it would cover personal
information pertaining to other persons or a third party. The appellants are seeking copies of Power of Attorney executed by third persons. A Power of Attorney is an act of unstinted trust between two individuals and nothing could be more private or personal than this. Similarly, copies of the sale-deeds executed by persons other than the appellants and copies of the revenue record belonging to a third party, are essentially private affairs. Supply of copies of these documents would certainly amount to an invasion of privacy of the individuals concerned, unless a larger public interest is shown, which would depend on the facts and merits of each case.

In the present cases, the only lame excuse given by the appellants for seeking copies of these documents was that they want to discover if there is any evasion of stamp duty, and therefore, they pleaded that the request to obtain copies of registered documents etc. is in larger public interest. No matter how altruistic the stated objective of the appellant may sound or even without suspecting their motive in seeking the documents, the Commission could not allow them to conduct a wholesale search of all the documents, and thus, rampage the privacy of others. The appellants are not the Auditor General of India, but ordinary individuals. This Commission reasoned that it would not be a party in empowering them to usurp the role of auditors by infringing on the privacy of others. The right to privacy is as sacrosanct as the right to access information. Had the appellants suspected one or two transactions, given cogent reasons for their suspicion and thereafter sought the copies of the documents, the request could be considered. But to allow them the copies of all the third party transactions over a period of 9 months would amount to turning the right to information upside down, heel over head!

The documents sought by the appellants are not allowable for other reasons also. When an individual executes a Power of Attorney or a sale deed, these are transactions conducted between individuals
concerned in fiduciary relationship. Unless it is alleged that some mischief or fraud has been committed in any particular transaction or it is shown that some larger public interest is involved, the information sought by the appellant would be hit by the provisions of Section 8(1)(e) of the Act. Sale-purchase of property etc. is essentially commercial in nature and the information could also be withheld for reasons of exemption granted under Section 8(1)(d) of the Act, depending on the facts of each case.

It may also not be irrelevant to note that under RTI Act, certified copies of documents are supplied to an information seeker. It needs no great imagination to visualize the consequences of allowing certified copies of thousands of sale-deeds, power of attorneys, mutations floating in the open market and these falling in the hands of unscrupulous wheel-dealers! This apprehension is not hypothetical; it has actually happened in the past. Unscrupulous property agents have misused the certified copies obtained under RTI Act.

**7.12.12** PIO directed to deposit the total amount of penalty of Rs. 25,000/- in the State Treasury on the grounds of being defiant and callous towards the RTI Act 2005.

**Title of the Case**

*Sh. Karan Jesbir Singh v. Public Information Officer O/o Tehsildar, Kharar*72

**Facts of the Case**

The complainant sought from the respondent information concerning the copy of two mutations of Village Dasumajra, Kharar. Since no information was received by him even after a lapse of 5 months from the date of his application, he made the complaint to the

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Commission requesting that necessary action be taken. A notice of hearing was sent but respondent did not appear before the Commission. Since the respondent chose to ignore the summons of the Commission, the conduct of the respondent was held to be sufficient for the court to conclude that information in this case is not being provided to the complainant without sufficient cause; therefore, a show cause notice was issued to him.

**Facts in Issue**

Why the penalty of Rs. 250/- per day for each day till the required information was not supplied after the expiry of 30 days from the date of the application should not be imposed on respondent him u/s 20 of the RTI Act?

**Analysis of the decision**

The CIC found this as a fit case for the imposition of the prescribed penalty. The application in this case was made on 21.12.2008 and sent to the PIO by post. Allowing four days for delivery, the delay in this case may be taken to have occurred from 25.12.08 (i.e. after a lapse of 30 days from 21.12.2008). A delay, therefore, of a total of more than 8 months has occurred in this case so far. Since, however, maximum penalty, which can be imposed under the RTI Act, is limited to Rs. 25,000/-, the Commission imposed a penalty of Rs. 25000/- for the delay of the first 100 days on the respondent PIO. Further, the Commission directed that the pay of respondent PIO, O/o Tehsildar, Kharar, will, henceforth, not be disbursed to him till such time as the penalty being imposed has been recovered from him.

In addition to the above, in exercise of the powers conferred under Section 20(2) of the RTI Act, 2005, the Commission also recommended to the concerned disciplinary authority that disciplinary
action should be taken against the respondent under the service rules applicable to him for having denied the information to the complainant without reasonable cause.

7.12.13 The equality of opportunity should not only be observed, but it should be seen to have been observed.

Title of the Case

Shri Yash Pal Garg v. The Public Information Officer, o/o the MILKFED, Punjab

Facts of the Case

The appellant sought information from the respondent on 12 issues primarily relating to recruitment of General Manager (P & HRD) by Milkfed in the year 2001. The PIO furnished the information on all the points, except those relating to the queries at Sr. Nos. 4 & 5 of the application for information. The appellant also pleaded that the information pertaining to his query at Sr. No.11, which was furnished to him by the PIO, is not relevant to his query and therefore, this issue also remains unanswered. The three queries of the information-seeker in dispute were:

(a) Copy of the resume of Sh. T.P.S. Walia alongwith details of his qualification, experience and other documents attached with his application.

(b) Copy of the qualification added by Sh. T.P.S. Walia during the last 10 years of service of Milkfed, such as Diploma/Degree etc.

(c) Copy of the Service Rules under which the post of G.M. filled by Head Office.

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73 Decided by the Punjab State Information Commission, on dated 04.11.2011 in AC No. 923 of 2011.
Facts in Issue

Can information relating to the basic qualifications/experience of a person appointed to a public post be categorized as personal information?

Analysis of the decision

Taking up the issue relating to query (C), the copy of the Service Rules was furnished to the information-seeker. The appellant, however, pleaded that the appointment of Manager (P & HRD) was not made in accordance with these rules and therefore, he should be given a copy of those Rules under which this appointment had been made. It may or may not be true that the appointment was not made in accordance with the duly notified Rules, but this issue did not fall within the jurisdiction of the Commission. The Commission had no powers to go into the issue of legitimacy of the appointment or whether the appointment was not made by observing the duly notified Rules. If the appointment was not in accordance with the Rules, the remedy open to the appellant was to approach an appropriate judicial forum and agitate the matter there. For the purpose of the Right to Information Act, 2005, since a copy of the Rules has been furnished, the query of the appellant stands duly answered by the respondents.

Coming to the issues which relate to seeking copies of the resume of Shri T.P.S. Walia along with details of his qualifications, experience, testimonials and other documents attached with his application seeking appointment with Milkfed. The appellant also sought copy of the qualifications acquired by Shri T.P.S. Walia during the last 10 years of service with Milkfed, such as Diploma/Degree etc. The information in question related to recruitment to a public office in a public organization, which is also a Public Authority within the meaning of Section 2(h) of the RTI, Act 2005. Appointments to public offices are not a private or personal affair of the individual concerned,
but are matters of public importance and public interest. To deny access to such information would amount to pushing public appointments into allays of darkness. If the plea of the respondent was to be accepted, it would negate the right to equality of opportunity for public offices enshrined in the Constitution. The equality of opportunity should not only be observed but it should be seen to have been observed. The keenness of the respondent Public Authority to seek secrecy in the matters of public appointments is a negation of transparency principles and a blatant violation of the RTI Act. The objective of the RTI Act is provide and secure access to information under the control of public authorities so as to promote accountability in the working of every public institution. The imperatives of good governance mandate every Public Authority to be transparent so that Public Authorities could be held accountable to the citizens.

The respondent relied on the provisions of Section 8(1)(e) to deny information on the grounds that the information furnished by Shri T.P.S. Walia is held in a fiduciary relationship by the respondents. When candidates compete with each other for public posts, disclosure of their credentials/testimonials/qualifications or their merit in the entrance test/interview cannot be denied under the garb of fiduciary relationship. No such fiduciary relationship exists in the present case. Black’s Law Dictionary (7th Edition, Page 640) defines ‘fiduciary relationship’ thus:

A relationship in which one person is under duty to act for the benefit of the other, on matters within the scope of the relationship. Fiduciary relationship, such as trustee-beneficiary, guardian-ward, agent-principal, and attorney-client, require the highest duty of care. A public body recruiting officials for a public post does not act for the benefit of the employee; it acts for the benefit of the public or its shareholders. The public benefit lies in disclosure. As the Preamble to the RTI Act says, “Whereas the Constitution of India has established
democratic Republic; And Whereas democracy requires an informed citizenry and transparency of information which are vital to its functioning and also to contain corruption and to hold government and their instrumentalities accountable to the governed;” how would the accountability be enforced, if the basic information on public appointments is brushed under the carpet?

In any case, Section 8(1)(e) provides that even if there is a fiduciary relationship, information is to be disclosed, if a larger public interest warrants the disclosure of such information. Appointments to a public body are matters of public interest. The public has a stake to know who and how and with what qualifications and on what criteria, a person has been appointed to public post. There is a larger public purpose and public interest in disclosure of such information. Therefore, exemptions under Section 8(1)(e) or 8(1)(j) would be of little help to the respondent.

7.12.14 The fact that the valuable land upon which the Club has been constructed belongs to the Government and no rent/lease is paid by the Club to the Government shows that there is substantial financial assistance by the State to the respondent.

Title of the Case

Shri S.S. Chana v. The Public Information Officer o/o the General Secretary, The Sutlej Club (Regd.),Rakh Bagh, Ludhiana74

Facts of the Case

The complainant alleged that the respondent refused to supply the information pertaining to the establishment, organizational structure and accounts etc. of the Club. The stand taken by the

74 Decided by the Punjab State Information Commission, on dated: 08.07.2010 in Complaint Case No. 475 of 2010.
respondent is that it is purely a private body and is not a ‘Public Authority’ within the meaning of Section 2(h) of the Right to Information Act, 2005. According to the respondent, the Sutlej Club is a self financed institution through the application fee and subscription charges collected by it from its members. It was further stated that the Club is neither owned nor controlled by the State Government nor is it substantially financed by the State Government.

**Facts in Issue**

Whether the Sutlej Club, Ludhiana is a Public Authority within the meaning of Section 2(h) of the Right to Information Act, 2005?

**Analysis of the decision**

It emerged through inspection of revenue records that the land on which the Club stands is owned by the Provincial Government. It also came on record that certain funds were provided for the initial construction of the Club by the State. These facts were sufficient to conclude that there is substantial financial assistance by the State Government to the respondent Club. The fact that the valuable land upon which the Club has been constructed belongs to the Government and no rent/lease is paid by the Club to the Government shows that there is substantial financial assistance by the State to the respondent. Funding may be direct or indirect. It may consist of contribution to revenue expenditure or providing the infrastructural facilities. In fact, the cost of providing prime land for the Club, as has been done in the case of the respondent, would be much more than its normal revenue expenditure. Apart from providing the land free of cost for construction of the Club building, the Government also incurred a part of expenditure on the construction the Club. This militates strongly against the respondent Club being a purely private body. In addition, as per Rule 24 of the Constitution and Bye-laws of the Club, “The Deputy Commissioner of Ludhiana shall always be the President in his

- 495 -
ex-officio capacity". As the ex-officio President, the Deputy Commissioner, a Public Authority within the meaning of Section 2(h) of the Right to Information Act “can” access any information about the affairs of the Club. Therefore, information pertaining to the Club is accessible under Section 2(f) of the Right to Information Act.

Thus, it was held that the respondent Club is a Public Authority within the meaning of Section 2(h) of the Right to Information Act, 2005. Accordingly, the requisite information will be provided to the complainant.

7.12.15 RTI Act should not be converted into a tool of oppression or intimidation of honest officials striving to do their duty.

Title of the Case

Dr. Sandeep Kumar Gupta v. The Public Information Officer, o/o the Punjab Heritage and Tourism Promotion Board

Facts of the Case

The appellant sought information from the respondent raising 28 queries. Some of these queries contained sub-Sections, e.g., one query had 12 sub-queries. Some of the queries were not specific, e.g., one query stated “supply of certified, legible copy of all the decisions taken/policies formulated by your office or your subordinate offices since the enactment of the Right to Information Act, 2005, which affect the public in any manner”. The respondent replied to the information-seeker that the information is voluminous and consists of approximately 12,000 pages, and he may deposit Rs. 24,000/- @ Rs. 2/- per page before his request could be considered. The appellant did not comply with this and filed First Appeal, which was rejected by the

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First Appellate Authority. The appellant did not appear before the First Appellate Authority despite the notices; and therefore; *ex parte* decision was taken by the First Appellate Authority. Hence, this Second Appeal.

**Facts in Issue**

Whether the information furnished to the appellant is complete information or not?

**Analysis of the decision**

The Commission observed that the appellant chose not to comply with its earlier directions giving him an opportunity to inspect the record and thereafter, identify the documents of which he needs certified copies. Despite that, respondent furnished him 1,500 pages free of cost.

The reliance of the respondent on the recent judgment of the Hon’ble Supreme Court of India, *Central Board of Secondary Education v. Adityabandopadhaye* wherein the Apex Court had held that the RTI Act should not be converted into a tool of oppression or intimidation of honest officials striving to do their duty. The Court observed that the nation does not want a scenario where 75% of the staff of Public Authorities spends 75% of their time in collecting and furnishing of the information to applicants instead of discharging their regular duties. Indiscriminate and impractical demands or directions for disclosure of all the sundry information would be counterproductive as it affects the efficiency of the administration and may result in the Executive getting bogged down with the non-productive work of collecting and furnishing of the information. Appellant may be a public spirited man but the public spirit should be used in a manner, which furthers the public cause rather than derail

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56 2011(3)RCR (Civil).
the very working of the Public Authorities by diverting their man-
powers and resources.

7.12.16 Schools and institutions discharge public functions; hence, cannot be regarded as private individual to limit the powers of the Court in issuance of the directions including prerogative writs.

Title of the Case

Shri Kuldip Singh v. The Public Information Officer, o/o the Principal, Ch. Balbir Singh Sen. Secondary School, Hoshiarpur

Facts of the Case

Respondent stated that Chaudhary Balbir Singh Senior Secondary Public School, Hoshiarpur does not receive any grant or aid from the Government, and as such, Right to Information Act, 2005 is not applicable on this Institution. On the other hand, the complainant submitted a copy of order passed by the Hon’ble Punjab and Haryana High Court in CWP No.2626 of 2008, wherein it was held that DAV College, Sector 10, Chandigarh and M.C.M. DAV College, Sector 36, Chandigarh were earlier receiving 95% grant, which was later on reduced to 45%. The complainant has relied on the judgment of Ravneet Kaur v. CMC, Ludhiana where it was held that “schools and institutions discharge public functions and cannot be regarded as private individual limiting the powers of the Court in issuance of the directions, including prerogative writs. It further held that imparting of education is a public function irrespective of any financial aid. Once the institutions, like petitioners, are performing public functions affecting the life of a huge segment of the society and in addition, are

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78 AIR 1998 P & H.
receiving substantial grant-in-aid, it cannot be argued that it is not a public authority”.

Facts in Issue

Whether Chaudhary Balbir Singh Senior Secondary Public School, Hoshiarpur is a Public Authority or not?

Analysis of the decision

Keeping in view the ruling of the Hon’ble Punjab and Haryana High Court in the abovementioned case, the State Commission decided that RTI applied to the school.

7.12.17 Computers should be installed at all the public counters of the offices.

Title of the Case

Sh. Surinder Pal v. Public Information Officer O/o District Transport Officer, Ludhiana

Facts of the Case

In an earlier order, a show cause notice was issued to the PIO for delay in providing the information. Information was consequently provided to the complainant to his satisfaction. However, this complainant is regarding complainant’s query which states: “A copy of the order(s) and notification(s) or any other document, currently in force, under the authority of which the Dak Receipt clerks/diary clerks in the office of DTO Ludhiana require that the document/complaint/dak be got marked/approved from the DTO or any other superior officer before filing and assigning it the diary number”. According to the complainant, the marking system in any DTO’s office should be dispensed with since it is a harassment to the public, e.g.,

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complainant or a common man/applicant submits an application to the DTO office, in this case, the clerk of the office, he is told by the clerk that it should be got marked from the DTO and DTO is busy in field work and is not available with the result that the common man is harassed and matters are delayed.

Facts in Issue

Whether the Public Information Officer (PIO) is responsible for the delay in providing the information?

Analysis of the decision

The respondent was in agreement with this contention and has undertaken that he will issue instructions for abolition of this system in his office. Copy of a letter addressed to Sh. D.S. Jaspal, Principal Secretary Transport, Punjab, was presented by the DTO, Ludhiana, which states: “In this connection, it is submitted that computers have been installed at all the public counters of this office. The work of networking and the programming has also been accomplished. The software of Sarathi and Vahan is going to be downloaded. It is pertinent to mention here that although my office is experiencing acute shortage of the required staff, yet keeping in view the importance of the project, the existing staff has been got trained from the National Informatics Centre, Ludhiana. But they may be able to computerize the work relating to their seats only on day-to-day basis. However, in order to computerize the old record of this office, this office shall be requiring the services of at least 10 Data Entry Operators. You are, therefore, requested to kindly make arrangements for providing the same as early as possible so that the work of computerization of this office goes on unhindered”. Reply to the show cause notice was also provided. Hence, the Commission was satisfied that there was no malafide on the part of the respondent for the delay in providing the information.
According to the provisions of the Section 3 of the Right to Information Act, all citizens shall have right for information. However, the firm may legally be a ‘person’, but is not a ‘citizen’.

Title of the Case


Facts of the Case

As part of information, the complainant sought from the respondent requested for full noting portion of file of one industrial plot at Dhandari Kalan, Ludhiana. The respondent PIO presented a letter containing legal advice obtained from EO, advising that the said information be withheld for the reasons stated therein.

Facts in Issue

Whether the demanded information falls within the exemption of Section 8 of the Right to Information Act?

Analysis of the decision

Commission was not satisfied either with the reasoning or the rationale provided in the letter produced by the respondent. It does not appear to be applicable in this case at all, but on the basis of a separate advice given on a separate case where it is pending in the High Court. It is not even known whether the facts are the same or similar. The PIO is well aware that the exemption could be claimed only u/s 8 of the Act. Therefore, unless the PIO claims the exemptions covered under any of the specific provisions, with full justification

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thereto, he is directed to make available full noting of the file with covering letter, indexed page, marked and duly attested, where necessary.

7.12.19 The State Information Commission can only entertain complaints, where the PIO has not given the information to Complainants in accordance with the Right to Information Act, 2005 but cannot order him to make a seniority list and thereafter supply the copy of seniority list to the Complainant.

Title of the Case

Sh. Chanan Singh v. PIO, O/O PSEB (P & M), Organization-cum-SE(P&M), Ludhiana$^{1}$

Facts of the Case

The complainant sought information from the respondent asking for a copy of the seniority list of the test mechanics for the year 1994-95 as well as regarding his own number in that list. He also stated that he is working as test mechanic since 12.04.1994 but the Board has not made any seniority list despite his many representations.

Facts in Issue

Whether Commission is empowered to issue directions in the said case?

Analysis of the decision

It does not lie within the jurisdiction of the State Information Commission under the Right to Information Act to order any action to be taken by any of the authorities. Every citizen is entitled to information as per the provisions of the Act, where ‘information’,

‘record’ and ‘right to information’ have been defined under Section 2(f), Section 2(i) and Section 2(j) thereof. The State Information Commission can only entertain complaints, where the PIO has not given the information to complainants in accordance with the Right to Information Act, 2005, but cannot order him to make a seniority list and thereafter, supply the copy of seniority list to the complainant. For this, he is advised to approach the Competent Authority in the Executive and/or the courts as may be advised.

7.12.20 Giving legal interpretation of various terms used in Government Instructions/Notification/Schemes does not fall under the Right to Information Act, 2005 as per the definition of ‘information’ contained in Section 2(f) of the Act.

Title of the Case

Dr. Meenakshi Jain v. PIO, O/O, MD, PSIEC, 18 Himalaya Marg, Udyog Bhawan, Sector 17-A, Chandigarh

Facts of the Case

The appellant asked for information from the respondent on five points, viz.:

1. What does the term “REMIT” really stands for?
2. As per your office, what should be the remit date? The date on which payment reaches to your office or the date the applicants remit the amounts through various means like demand draft/bank orders.
3. As per various dictionaries, it is authenticated and crystal clear that ‘remit’ means “To send money by Post”. Do

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you follow and take the same meaning and spirit of the word REMIT in your letters or take a different meaning according to your own way.

4. Why all the letters sent by your office to various customers/clients even within Punjab are circulated/written in English script rather than Punjabi. Is Punjabi not an official and compulsory language in your office?

5. Why the letters written to various customers/clients are written in English and the words used therein are not taken in real sense /spirit?

The respondent stated “as already informed you on phone, the requisite information is not covered under the provision of the RTI Act and therefore, we are unable to supply the same”. Thereafter, the appellant filed an appeal with the First Appellate Authority/Managing Director, PSIEC, which failed to decide on the matter. Hence the Second Appeal.

Facts in Issue

Appellant seeking above mentioned information from the concerned Department by way of second appeal?

Analysis of the decision

Giving legal interpretation of various terms used in Government Instructions/Notification/Schemes does not fall under the Right to Information Act, 2005, as per the definition of ‘information’ contained in Section 2(f) of the Act. The appellant argued that the said definition 2(f) of the Act states that the information includes “opinions” and ‘advices’ and as such can be sought under and fall within the purview of the Act. It is observed that in the Right to Information Act, 2005,
‘opinions’ and ‘advices’ mentioned in Section 2(f) refer to ‘opinions’ and ‘advices’ received by the Department and available on the file, e.g. LR’s advice, legal opinion, Finance Department’s advice, Personnel Department’s advice, etc. Any such record which is available on the official file can be made available to the appellant. It does not mean that the applicant can seek ‘advice’ or seek ‘opinion’ of the present holders of the record, of whether their predecessors had correctly interpreted terms used in various instructions. It was, therefore, held that the information asked for by the appellant in her application does not fall within the definition of information as contained Section 2(f) of the Right to Information Act, 2005. The last two points of the RTI application are also by way of ‘Jawab Talbi’ of the authorities for sending communications in English, whereas the State language is Punjabi. The Right to Information Act, 2005, does not give leeway to the citizen to castigate or to demand explanations from the officials. However, in case she wishes to make a complaint about this matter, she is free to approach the competent authority in the Executive. The Right to Information Act, 2005, is not the forum for these complaints.

7.12.21 Where personal information can be denied to a Parliament/State Legislature, despite the possibility of the disclosure being in public interest, it would also be denied to the information seeker.

Title of the Case

Sh. Sudarshan Kumar Sharma v. Public Information Officer, O/o Joint Commissioner, Municipal Corporation, Ludhiana

Facts of the Case

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83 Decided by the Punjab State Information Commission on dated: 06.02.2007, in Complaint Case No. 531 & 532 of 2006.
The complainant sought information from the respondent regarding the service record of Sh. Labh Kumar, Inspector Vaccination, Health Branch, M.C., Ludhiana. The respondent claimed exemption under Section 8(1)(j) of the RTI Act, 2005, in respect of disclosure of information pertaining to the service record of these two colleagues of the complainant, stating that the information demanded is in the nature of ‘personal information’ and that the complainant had not adduced any material to show that larger public interest would justify the disclosure of information.

Facts in Issue

Whether the information relating to the service record of an employee falls within the exemption of Section 8(1)(j) of the RTI Act, 2005?

Analysis of the decision

The determination of the question whether the information demanded by the complainant is exempt from disclosure under Section 8(1)(j) would depend upon (a) the precise meaning ascribable to the word ‘personal’ appearing in the said clause and (b) the import and purport of the proviso appended to this clause.

It was, therefore, held that the information demanded by the complainant is personal information within the meaning of the said term appearing in clause (j) of Section 8(1). It, therefore, follows that unless the complainant can show that the larger public interest justifies the disclosure of such information, it would be exempt from disclosure. The proviso appended to clause (j) Section 8 of RTI Act, 2005 posits that ‘information, which cannot be denied to the Parliament or a State Legislature shall not be denied to any person.’ Relying on this proviso, the complainant contends that the exemption provided in clause (j) would not be available to a Public Authority
where the information in question cannot be denied to Parliament/State Legislature. The submission, if accepted, would completely nullify the main provision in clause (j). The subjects upon which the information could be denied to Parliament or a State Legislature would indeed be minuscule. It is difficult to comprehend cases relating to personal information (even where they have no connection with any larger public interest) in which, information could be denied to Parliament/State Legislature. It is settled law that the statutory provisions have to be interpreted harmoniously and due care is taken while undertaking an interpretative exercise to ensure that the objective behind the provision is not rendered illusory. Keeping these principles in mind, the only way in which the proviso in question can be interpreted is that where personal information can be denied to a Parliament/State Legislature, despite the possibility of the disclosure being in public interest, it would also be denied to the information seeker. To illustrate, the Constitution of India precludes any discussion on the conduct of a Supreme Court/High Court Judge in any of the House of the Legislature (except in the manner provided for in the Constitution). Thus, any information pertaining to the said conduct whereupon discussion is precluded in the legislature could be denied to the Parliament/State Legislature. Such information, therefore, would also be denied to an information seeker even if he could show that disclosure of such information might be in public interest viewed de hors the provisions of Articles 121 and 211 of the Constitution of India. The proviso appended to clause (j) of Section 8(1), therefore, is not attracted in the instant cases. The allegation that the information is being intentionally withheld to cover up the lapses and illegalities in the appointment of the officials regarding whom information is sought is not substantiated in any manner. It is also not acceptable that information to which a superior officer in the hierarchy has access cannot be treated as exempt from disclosure under Section 8. The submission based on the concept of a ‘privileged document’ under the
Indian Evidence Act, is also misconceived. The question regarding allowing/refusing access to information under the Right to Information Act, 2005, has to be decided with reference to the relevant provisions of the RTI Act, 2005, and not with reference to the other enactments. In view of the foregoing, the Commission held that the complainant is not entitled to the information pertaining to the service record of his two colleagues namely Sh. Labh Kumar, Inspector, Vaccination and Sh. Kulbhushan Malik, Vaccinator, the information sought being exempt from disclosure under Section 8 (1)(j) of the Right to Information Act, 2005.

7.12.22 Civil suits, which have been instituted in civil courts, are not covered by the above mentioned provision of the RTI Act.

Title of the Case

Sh. Gurpreet Singh v. Public Information Officer, O/o Managing Director, PUNSUP, SCO-36-40, Sector 34-A, Chandigarh

Facts of the Case

There are five applications for information of the complainant:

First application asked for inspection of the complete record of M/s Bansal Rice Mills, Moga, including files relating to the recovery suits filed by Punsup in Civil Court, Moga, from the year 1994 till today. Second application asking for the inspection of compete record of M/s Sidhu Rice Mills, Moga, pertaining to the procurement of paddy from the year 1994-95, till date including the record relating to legal and arbitration. In the third application, a vast amount of information was asked, which falls into two categories: firstly, the

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names and postings of certain officials and secondly, the details of Civil/Criminal, Arbitration cases etc. decided in favour of Punsup in the State of Punjab, pertaining to the year 1994-95 procurement season. Fourth application concerns inspection of records of sales and purchases of paddy pertaining to year 1994-95 concerning the whole of the State of Punjab. Fifth application asked for inspection of the file concerning M/s G.P. Sales, Moga, relating to custom milling of paddy.

However, the respondent sought to claim exemption from providing this information to the complainant u/s 8(1)(h) of the RTI Act, which states that it would not be necessary to give information to an applicant which would impede the process of investigation or apprehension or prosecution of offenders.

**Facts in Issue**

Whether the respondent can claim exemption from providing the information to the complainant u/s 8(1)(h) of the RTI Act, 2005?

**Analysis of the decision**

Commission held that the civil suits, which have been instituted in civil courts, are not covered under Section 8 of the Right to Information Act, and therefore, the exemption being claimed by the respondent is overruled. Similar opinion is expressed about the arbitration, which has been instituted in civil courts that it is not covered by the above mentioned provision of the RTI Act and therefore, the exemption being claimed by the respondent is overruled.
7.12.23 If, after the completion of the hearing by the First Appellate Authority and the receipt or otherwise of any additional or remaining information, the complainant is still not satisfied, he is at liberty to make a Second Appeal before the Commission under the provisions of the RTI Act, 2005.

Title of the Case

Sh. Des Raj v. Public Information Officer, O/o Managing Director, PUNSUP

Facts of the Case

There were 50 points in the application of the complainant on which he asked for information from the respondent. The respondent stated that the information on all the 50 points has been given to the complainant, while the complainant stated that except for the information asked for in 4 points, the information supplied in the other 46 points bears no relevance to the information asked for by him.

Facts in Issue

Complainant is not satisfied with the information supplied by Public Information Officer, O/o Managing Director, PUNSUP.

Analysis of the decision

The Commission remanded this case to the First Appellate Authority, with the directions that he should hear both the parties, call for the records of this case from the concerned quarters and record his findings on each of the 46 points regarding which, the complainant states that he has not got the information. The First Appellate Authority was further directed to ensure that full and complete information is provided.

\[85\text{ Decided by the Punjab State Information Commission on dated 04.01.2008, in Complain Case No. 2073 of 2007.}\]
information in respect of each of the 46 points be given to the complainant, in case he finds that this has not been done in respect of any or all the points. He was further directed to complete the compliance of these directions within two months from today. If, after the completion of the hearing by the First Appellate Authority, and the receipt or otherwise of any additional or remaining information, the complainant is still not satisfied, he is at liberty to make a Second Appeal before the Commission under the provisions of the RTI Act, 2005.

7.13 Procedure adopted by the Commission

From its very inspection, the Punjab State Information Commission took special steps in order to achieve the first and foremost object of the RTI Act, 2005, which is that the information required by an applicant should become available to him quickly, efficiently and completely, and at the same time, in a manner in which justice and fair play should be perceived to have been dispensed to the complainants/appellants as well as to the respondent Public Authorities.

The Punjab State Information Commission, accordingly, introduced systems and procedures that provide maximum convenience for members of the public. In this regard, certain unique practices were adopted in line with the mandate of the Act.

- Citizens are encouraged to pursue their cases on their own, rather than take recourse to professional lawyers;

- During the process of adjudication, all Benches of the Commission conduct prompt hearings and avoid adjournments.

- In a majority of cases, the benches announce and record decisions in open court.
• All cause lists of matters for hearing are placed on the website well in advance.

• All proceedings, including interim and final orders are promptly displayed on the website, www.infocommpunjab.com. Litigants can download all such orders conveniently.

• All litigants and even members of the public are invited to give to the Commission their feedback on their experience of implementation of RTI Act at all levels, and also to give any suggestions for improving the systems of delivery. The Commission reviews the feedback so received for initiating measures for improvement.

• Benches of the Commission frequently visit various district headquarters to conduct hearings in cases emanating from and involving Public Authorities in the geographical areas adjoining these district headquarters. This helps to bring justice under RTI Act closer to the doorsteps, and avoids travel by the information seekers as well as officials to the state headquarters.

• It was realized very early by the Commission that mere passing of an order requiring a Public Authority to give information to a litigant may not necessarily ensure that he will get it. Therefore, cases in the Commission are not finally disposed of unless the complainant/appellant confirms that the Commission’s orders have been complied with and that he has received the information that he requires, to his satisfaction. Although this sometimes necessitates the adjournment of a case for confirmation of compliance, it highlights the necessity
for following this procedure. The insistence on complete compliance of orders, over a period of time, has also greatly enhanced willing compliance by the Public Authorities with the Commission’s orders and the fulfillment by them of their duties under the RTI Act.

The public has generally welcomed the initiatives of the Commission to simplify procedures.\textsuperscript{86}