Like all freedom of information legislations, the Right to Information Act, 2005 also curtails the right of the public to certain kinds of information under Section 8(1) of the Act. It is mandatory for the decision makers such as public information officers, appellate authorities and information commissioners to know provisions of this section and to develop a clear understanding of it, so that any denial of requested information clearly falls within its scope. The decision makers must also know that mere quoting of a clause of Section 8(1) is not sufficient and it should be backed by reasonable justification. It will also be useful for public authorities, researchers, activists, and citizens to be aware of these provisions and judgements relating to these aspects.

In this context, it is worth noting that the Report of the National Sub-Committee of Chief information Commissioners of nine states and a central information commissioner (July 2008) stated that in fulfilling their role as adjudicators and regulators, they face considerable handicap. First, the suppliers of information, public authorities, and public information officers are not properly trained and secondly, the seeker of information, the common citizen is yet not fully aware of his empowerment and the procedure for securing access of information. The sub-committee concluded that many matters need not have been brought up for adjudication at all if well-informed public information officers and information seekers had resolved the issue at the outset. The sub-committee recommended the need for the appropriate mechanism to bring uniformity and clarity in interpretation of the Right to Information Act by exchange of information on case law interpretation.

In this chapter, we will be examining each of the exemptions from disclosure in the light of case law. A fairly detailed case discussion is given to capture the rationale of the judgments.

3.1 Specific exemptions and underlying public interest

Central to any Right to Information regime is the existence of exemptions. The exemptions recognised in the Right to Information Act do relate to legitimate public interests.
The main exemptions are set out in Section 8 of the Right to Information Act, which provides for a comprehensive regime of protection for various public and private secrecy interests.

There is clearly a public interest in access to government information per se. 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, in order to promote transparency and accountability in the working of every public authority, ... and for matters connected therewith or incidental thereto, to provide for furnishing certain information to citizens who desire to have it, the Right to Information Act, 2005, has been passed. The advantages of transparency are far too many. Public interest in transparency will override the relative discomfort of the public authority against disclosure. It is this outweighing public interest that has persuaded media opinion, public opinion, and even parliamentary opinion to scoring in favour of greater transparency.

The Act is an effectuation of the right to freedom of speech and expression. In an increasingly knowledge based society, information and access to information holds the key to resources, benefits, and distribution of power. Information, more than any other element, is of critical importance in a participatory democracy. By one fell stroke, under the Act, the maze of procedures and official barriers that had previously impeded information, have been swept aside. The citizen and information seekers have, subject to a few exemptions, an overriding right to be given information on matters in the possession of the state and public agencies that are covered by the Act. As is reflected in its preambular paragraphs, the enactment seeks to promote transparency, arrest corruption and to hold the government and its instrumentalities accountable to the governed. This spirit of the Act must be borne in mind while construing the provisions contained therein. Access to information, under Section 3 of the Act, is the rule and exemptions under Section 8, the exemption thereto. Section 8, being a restriction on this fundamental right, is therefore, is to be strictly construed. It should not be interpreted in a manner as to shadow the very right itself.2

3.1.1 EXEMPTION 1: Disclosure would affect security, economic interests, and relationship with foreign state;

Section 8(1) (a) provides as under:

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2 Bhagat Singh v. Chief Information Commissioner and Others, WP(C) 3114/2007
“Notwithstanding anything contained in this Act, there shall be no obligation to give any citizen, information, disclosure of which would prejudicially affect the sovereignty and integrity of India, the security, strategic, scientific or economic interests of the State, relation with foreign State or lead to incitement of an offence;”

This is an exemption based on prejudice test to protect the public interest matters narrated above i.e. sovereignty and integrity of India, the security, strategic, scientific or economic interests of the State, relation with foreign State. There is also public interest in maintaining law and order accordingly public interest in prevention and suppression of crimes or illegal activities. If disclosure of information leads to incitement of an offence then the same has also been exempted under this section.

All information relating to the sovereignty and integrity of India, the security, strategic, scientific or economic interests of the State, relation with foreign State is not exempted per se as a class but only such information which would prejudicially affect the sovereignty and integrity of India, the security, strategic, scientific or economic interests of the State, relation with foreign State is exempted. That too is further subject to public interest override test as provided in Section 8(2).

A public authority may allow access to information, if public interest in disclosure outweighs the harm to the protected interests. As per Section 8(2) notwithstanding anything in the Official Secrets Act, 1923 (19 of 1923) nor any of the exemptions permissible in accordance with sub-section (1), a public authority may allow access to information, if public interest in disclosure outweighs the harm to the protected interests. Hence, because of the provisions contained in Section 8(2) the disclosure of information or access to information requested may be allowed by public authority if disclosure outweighs harm to the protected interests as covered in exemptions above.

The information covered under this sub-section is also protected from disclosure even after 20 years.

The full bench of CIC in *Nusli Wadia, Mumbai v. Ministry of External Affairs, New Delhi* made significant observations Section 8(1) (a) of the Act. The Right to Information Act is a law ensuring transparency in governance and a citizen has the right to know whatever is available with a public authority unless the disclosure of any information either under any of the provisions of the Right to Information Act or any other special law is specifically
exempted under Section 8 or 9. The Commission held that since there is no definite finding from the Committee that the disclosure of information sought at would lead to an adverse impact on India’s relations with a foreign State, the non-disclosure of the same is not justified.\(^3\)

(i) The sovereignty and integrity of India

Sovereignty is held as ‘the exclusive right to have control over an area of governance, people, or oneself’. A sovereign is the supreme law making authority, and a decision made by a sovereign entity cannot be overruled by any authority. From the primitive stage with no organized rule of law, human evolution has witnessed many forms of rule, democracy being the dominant form today. Integrity means - ‘the state of being whole, entire, or undiminished: to preserve the integrity of the country’. There is strong public interest in safeguarding the sovereignty and integrity of India.

This provision is made to guard from the right to information being used to assail the territorial integrity and sovereignty of the India. There is absolute public interest in maintaining sovereignty and integrity of India. Thus, it will be legitimate for parliament under this clause to protect this public interest by providing exemptions and restricting the right to information if it may be used for secession of any part of India from the Union. It is to be noted here that the exemption is applicable in respect of information which would prejudicially affect the territorial integrity of India and not in respect of information which would prejudicially affect the territorial integrity of the constituent States. The Constitution itself contemplates changes of the territorial limits of the constituent States.\(^4\) Hence, the information disclosure of which may prejudicially affect the sovereignty and integrity of India may be refused by public authority.

There is a tendency on the part of the public authority to describe anything remotely connected with the intelligence agency as exempted under Section 8(1) (a). An appellant sought information about the Volume/Mass/Design of the Anveshak software used by R&AW, storage media used for transport and the vendor’s role and responsibility. The Commission observed that ‘none of the aforementioned queries make any reference to any confidential data information stored within the software by R&AW, disclosure of which can prejudicially affect the sovereignty and integrity of the nation, or could adversely affect the

\(^3\) Nusli Wadia, Mumbai v. Ministry of External Affairs, New Delhi, CIC/OK/A/2008/00245.

\(^4\) Article 3 of the Constitution.
national security or the strategic, economic or scientific interests of the country. From the above discussion, it is amply clear that what qualifies for exemption from disclosure is the confidential data collected and stored by R&AW within the Anveshak software subsequently.5

(ii) Security of State

This exemption protects legitimate public interest in the security of the State and disclosure of specific types of information prejudicially affecting the security of India is exempted such as information prejudicially affecting the detection, prevention or suppression of subversive or hostile activities. The security includes the efforts of India and of foreign states towards the detection, prevention or suppression of activities of any foreign State directed toward actual or potential attack or other acts of aggression against India.

The expression ‘security of the State’ refers to serious and aggravated forms of public disorder such as rebellion, waging war against the State, insurrection.6 Thus, the security of the State may be endangered by crimes of violence intended to overthrow the government, waging of war and rebellion against the government, external aggression or war etc.7 Information advocating a change in the system of government cannot be said to involve a threat to the security of the State so long as the change advocated is not unconstitutional.8 While, speeches or expressions on the part of the individual which incite to or encourage the commission of violent crimes, such as murder would endanger the security of the State.9 The expression ‘security of the State’ in this clause does not merely mean danger to the security of the entire country. Endangering the security of a part of the State would involve a threat to the security of the State.10 Subversive or hostile activities may include: espionage against India; sabotage; activities directed toward the commission of terrorist acts, including hijacking, in or against India or foreign states; activities directed towards accomplishing government change within India or foreign states by the use of or encouragement of the use of force, violence or any criminal means; activities directed towards gathering information used for intelligence purposes that relates to India or any State allied or associated with India;

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and activities directed toward threatening the safety of Indians, employees of the government of India or property of the government of India outside India.

It is pertinent to note that ‘security of India’... is understood in general terms. The scope does not, therefore, limit the types of information relating to security which may qualify for the exemption. The exemption may only be invoked for the specific information disclosure of which would have adverse specific bearing on security of India or prejudicially affecting security of India, which is a specific public interest. Information relating to other security or intelligence activities such as security screening, immigration and citizenship vetting, domestic vital points and security inspections may only be exempted under this provision where it relates to one of the activities which prejudicially affect the security of the country. Without restricting the generality of the term security any such information which may prejudicially affect the security of India such as: any such information relating to military tactics or strategy, or relating to military exercises or operations undertaken in preparation for hostilities or in connection with the detection, prevention or suppression of subversive or hostile activities. This type of information deals with a range of military plans encompassing both strategy (e.g. plans for intercontinental war) and tactics (e.g. plans for theatre operations) and with the implementation of those plans in exercises or real operations. This information may also relate to military exercises or operations undertaken for national security purposes (i.e. ‘in connection with the detection, prevention or suppression of subversive or hostile activities’).

In *S.P. Singh v. Ministry of Home Affairs*, the appellant whose telephones were intercepted asked for copy of the report on the basis of which the Union Home Secretary had issued orders for interception of his phones and also asked for copies of the note sheets where the report was processed and decisions taken. Section 5(2) of the Indian Telegraph Act, 1885 authorizes designated central and state government officials to order interception of messages in the interest of sovereignty and integrity of India, security of the State, etc. The Union Home Secretary, the officer authorized to exercise powers under this section, had issued the necessary instructions to intercept the telephone of the appellant on the basis of the information which was available to him. The Commission held that the information as sought by the appellant relates to security and strategic interest of the State, and must therefore be held to be exempted from disclosure under Section 8(1) (a). But this contention of

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Commission without refusing that disclosure of the information would prejudice the security of state and strategic interest of the state is not tenable as all information relating to security of India is not exempted as a class.

(iii) Strategic, Scientific or economic interests of the State

There would be a series of exemptions aimed at protecting strategic, scientific and economic information belonging to the government; research work of government institutions; the economic interests of the government of India and even the information relating to the government’s deliberations to manage the economy of India.

This exemption may also be discretionary and is also based upon an injury test. This exemption is qualified exemption subject to prejudice test and once the disclosure of information leads to injury or prejudicially affects strategic, scientific or economic interest of the State this exemption becomes applicable. The permissive aspect of this sub-section is intended to temper the class approach to permit the disclosure of records, the release of which would cause no injury or harm, i.e. disclosure of which would prejudicially not affect the strategic, scientific or economic interest of the State.

This sub-section of the Act may be interpreted that a public authority may refuse to disclose any record that contains information the disclosure of which could reasonably be expected to be materially injurious to the economic interests of the State or the ability of the State to manage the economy of India. The economic interest of the state may include commercial interests of the government of India, such as, government’s economic position, its ability to collect taxes and revenues and to protect its own interests in transactions with third parties or other governments; and government’s strategy to manage the economy whether by means of tax, monetary or fiscal policies and may include activities to combat inflation or unemployment, regional development, credit, balance of payments, fixing the bank rate or the price of commodities or resources.

In Kamal Anand v. Central Board of Direct Taxes, the full bench heard the matter in this case. On behalf of the public authority it was stated that every year a large number of income tax returns are filed by taxpayers. These returns are required to be checked by assessing officers. Only a small percentage of them are taken up for scrutiny. The Income Tax Department issues guidelines for selection of cases for scrutiny for the use of the

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assessing officers of the department. If the guidelines for selection of cases are made public, these are liable to be misused by some unscrupulous taxpayers to evade tax at will. Once the various parameters are known, the returned income may be adjusted by any unscrupulous taxpayers in a manner, which would allow them to stay out of the scrutiny basket and avoid detailed examination by the department. Further, the department was of the view that disclosure of scrutiny guidelines would not serve any public interest and will rather affect adversely the economic interests of the State by facilitating the offence of tax evasion. It was also stated that the above contentions were being submitted after the approval of the Union Finance Minister.

The Commission held that it is certainly within the domain of the concerned public authority, to decide and determine whether disclosure would adversely affect the economic interest of the State or not. The Commission can only look into whether the determination by the department about the probable effect of a particular policy disclosure is based on objective criteria or whether the department has arrived at a particular conclusion in a reasoned or in a mechanical or arbitrary manner. The Commission noted that in this case, the public authority at the highest level had analysed the whole issue at their behest and had given its considered opinion about the possible effect of the disclosure on the economic interest of the State. The Commission concluded that as the implications of disclosure have been closely scrutinized, it cannot enter into the adequacy or otherwise of the criteria taken into account by the concerned public authority. The Commission stated that it cannot surpass an objective consideration and place its own subjective consideration thereon. When a denial is covered by an exemption clause under Section 8 of the Right to Information Act, so long as such application of exemption is based on objective criteria and is not arrived at in a mechanical or arbitrary manner, the Commission does not intend to interfere in such cases. As such, the Commission held the denial under Section 8(1) (a) to be justified.13

(iv) Information prejudicially affecting the relations with foreign State

The State can impose reasonable restrictions on the right to information in the interest of friendly relation with foreign State. The justification is obvious as unrestrained malicious propaganda against a foreign friendly State may jeopardize the maintenance of good relations between India and the foreign State. It may be pointed out that it is a recognized principle of

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international law that States in their relation with other States are responsible for acts committed by persons within their jurisdiction.

Under this category following information may be covered which could be denied to any citizens subject to injury test i.e. if disclosure would prejudicially affect the interest specified in the exemption i.e. relations with foreign State. Prejudice in this context means having a detrimental effect. Any such information obtained or prepared for the purpose of intelligence respecting foreign states, international organizations of states or citizens of foreign states used by the Government of India in the process of deliberation and consultation or in the conduct of international affairs are covered under this clause. This type of information may include intelligence concerning international relations. Again, information ‘obtained or prepared for the purpose of intelligence’ encompasses both the raw data collected and the refined product or analysis.

Any such information that constitutes diplomatic correspondence exchanged with foreign states or international organizations of states or official correspondence exchanged with Indian diplomatic missions or consular posts abroad can only be exempted under this clause once it is objectively decided by the public authority that disclosure of this information, would prejudicially affect India’s relations with foreign state. This may cover information such as, correspondence between states or governments or official exchanges between Indian diplomatic and consular posts and Ministry of External Affairs or any other public authority. The latter category is intended to cover political, military or economic reporting not directly associated with the production of intelligence if injury could reasonably be expected to result from disclosure. Since an injury test is involved, much official correspondence will likely not qualify for exemption. This is particularly true of correspondence relating to internal administration of posts, ministerial visits or cultural and public information programs.

In Venkatesh Nayak v. Ministry of External Affairs,

“the respondents maintained before the CIC that disclosure of information regarding the issue of voting for membership of UN Human Rights Council is likely to affect the country’s relationship with foreign countries and hence they took recourse to Section 8(1) (a) of the Right to Information Act to deny the information. The Commission accepted their submission. However, the appellant also wanted to know the names and contact details of experts whose
opinion was sought in deciding India’s candidate. The Commission directed the respondents to disclose the categories of persons they consult for the purpose but without disclosing the particular names involved. 14

The committee has not explicitly stated that the disclosure of the opinion would have some impact on India’s relations with a foreign country. What has been stated by the committee in their report is that the disclosure may affect sensitivity of the government and to the people of Pakistan. This argument is less than convincing so as to bring such disclosure within the ambit of Section 8(1) (a) of the Right to Information Act, 2005. 15

(v) Lead to incitement of an offence:

There is also public interest in maintaining law and order. Accordingly, there is public interest in prevention and suppression of crimes or illegal activities. If disclosure of information leads to incitement of an offence then the same has also been exempted under this clause. Incitement is the act of persuading, encouraging, instigating, pressuring, or threatening so as to cause another to commit a crime. Incitement is done before the crime is actually committed and the actual harm happens. The knowledge regarding incitement of an offence permits an agency to intervene at an earlier time and avert a potential harm. The incitement can be in the form of words or deeds. Incitement may be implied as well as expressed and may be directed to a particular person or group or to the public at large.

This is also a ground on which information can be refused. There is obviously public interest in prevention and suppression of crimes. The right to information cannot confer a license to incite people to commit offence. If the information requested for is of such nature that its disclosure would lead to incitement of an offence then public authority at its own discretion may withhold such information. In State of Bihar v. Shailabala Devi, 16 the Supreme Court held that incitement to murder or other violent crimes would generally endanger the security of the State; hence a restriction against such incitement would be a ground under this clause. Under this clause a public authority may refuse to disclose any record or information that could reasonably be expected to lead to incitement of an offence and includes information which may facilitate the commission of an offence.

15 Re Nusli Wadia, CIC/OK/A/2008/00245.
This is a discretionary exemption that provides specific protection for information the disclosure of which could reasonably be expected to incite the commission of an offence. A public authority must have a reasonable expectation that the release of the specific information requested would facilitate the commission of an offence.

The Right to Information application seeking inspection of the entire file regarding the visit of Mr Vivek Katju, Special Secretary in the MEA and his team to attend the Durban Racism Conference...The Commission duly examined the concerned file/s and document/s produced by the public authority and observed that some of the contents of the same included classified telegrams exchanged with Indian Missions in various countries, cabinet papers including reports prepared by R&AW officials as also file nothings of MEA officials expressing their opinions about the current scenario and prevalent situations in various locations which in the opinion of the Commission were indeed confidential and sensitive in nature from the point of international relations of the country as also of incitement of an offence within the country. In fact, disclosure of the said information and/or distortion, misuse/abuse of the same will not serve any public interest. Hence, the information specified hereinabove is denied to the appellant under Section 8(1) (a)...not all the information contained in the file/s was of such sensitive nature.17

3.1.2 EXEMPTION 2: Disclosure forbidden by court/tribunal

Section 8(1) (b) provides as under:

“Notwithstanding anything contained in this Act, there shall be no obligation to give any citizen, information which has been expressly forbidden to be published by any court of law or tribunal or the disclosure of which may constitute contempt of court.”

Under this clause, the information can also be refused by public authority where information has been expressly forbidden to be published by any court of law or tribunal or the information disclosure of which may constitute contempt of court. Free and fair judiciary is vital for democracy and there is a public interest in ensuring free and fair functioning of administration of justice system. Accordingly, this exemption provides for protection of public interest in giving effects to the orders of the court where the court or tribunal has expressly forbidden the publication of information. Similarly, there is strong public interest in

maintaining dignity of the courts and to prevent undue interference having adverse bearing in discharging their functions and responsibilities. If the disclosure of information constitutes the contempt of court then public authority is under no obligation to disclose the information requested. This contempt of court may be civil contempt or criminal contempt.

There is clear public interest to ensure compliance of the orders of the court and also there is public interest in punishing for willful disobedience to any judgment, decree, direction, order, writ or other process of a court or willful breach of an undertaking given to a court. 18

Similarly, there is strong public interest in punishing those who scandalize or tend to scandalize or lower or tend to lower the authority of any court or prejudices or interfere or tend to interfere with the due course of any judicial proceedings or interfere or tend to interfere with, or obstruct or tend to obstruct the administration of justice in any other manner either by means of publication of any matter or the doing of any other act whatsoever. 19

Judges have no general immunity from criticism of their judicial conduct, provided that it is made in good faith and does not impute any private motive to those taking part in the administration of justice; it must be genuine criticism and not malicious or attempt to impair the administration of justice. ‘Justice is not a cloistered virtue,’ said the Privy Council in Ambard v. Attorney-General for Trinidad and Tobago: 20

“She must be allowed to suffer the scrutiny and respectful, though outspoken, comments of ordinary men.”

a) Decisions regarding information about sub-judice matters

Merely because a case is pending before the tribunal the information cannot be denied. 21 A matter being sub-judice does not attract the provisions of Section 8(1) (b) as it applies to cases wherein there is a specific order from a court that the information should not be disclosed or disclosure would amount to contempt of court, being in violation of any direction given by it. 22 The Commission was informed by the respondents that the only reason for non-disclosure of the information was the fact that the case was sub judice. As per the notings of their legal advisor, the information could not be supplied under Section 8(1) (b) of

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18 See definition of Section 2a of the Contempt of Courts Act, 1971
19 See definition of Section 2b of the Contempt of Courts Act, 1971
20 Ambard v. Attorney-General for Trinidad and Tobago, 1946 AC 323.
22 N.B.S Manian v. Department of Post, Tamilnadu Circle, VBA/06/318.
the Act as the case was in the court. The Commission commented that the legal advisor has not only failed to take into consideration either the spirit or the letter of the Right to Information Act but has also shown ignorance of many of the decisions passed by the Commission earlier in such cases. The Commission recommended that the performance of the legal advisor should be reassessed by the department. A matter being sub judice cannot be used as a reason for denying information. Disclosing information on matters which are sub judice cannot constitute contempt of court, unless there is a specific order forbidding its disclosure. There are no provisions under the Act to deny the information merely on the ground that the matter is disputed in any court of law. While the CPIO has invoked Section 8(1) (b) of the Act for withholding the information, he has not provided the specific evidence to show that the court has forbidden the disclosure of any part of the information asked for by the appellant.

There are two parts to Section 8(1) (b) of the Act: information that has been expressly forbidden to be published by any court of Law or Tribunal or the disclosure of which may constitute contempt of court. It is a disjunctive ‘or’ after the word ‘tribunal’. It is trite that an act may not be expressly forbidden by a court and yet its commission would amount to contempt of court. In the first limb of the clause, the expression ‘expressly forbidden’ operates on the word ‘information’. It necessarily implies that, that what is sought by way of a request has to be a matter that is expressly forbidden to be made available. The judicial embargo has to be explicit and a general observation may not be cited as a bar. An express prohibition has to be specific.

b) Decisions where information held as per court orders

In cases where certain samples or documents are held as per the court orders, such information can be sought only from the respective court. In a criminal case pending before the court for adjudication, if an examination of documents is conducted on the basis of the materials supplied by the court, the disclosure should not be done without the approval of the concerned court. Since one sample was received from a judicial magistrate, the CPIO has correctly declined to furnish the information as disclosure would require permission from the

24 Ashwani Kumar Goel v. R.N. Sharma, Joint Secretary (Home) & PIO, Govt. of NCT of Delhi, CIC/WB/A/2008/00838/SG/1777.
26 S.T. Merchandani v. Office of the Salt Commissioner, 3744/IC(A)/2009
27 Asma Anjum v. Aligarh Muslim University (AMU), CIC/OK/C/2008/00759.
court.”28 What has been stayed is only the reconsideration of the matter of promotion of some official. Simply because the stay has been directed in a matter concerning Mazumdar does not mean that disclosure of any information regarding his promotion is also stayed.29 Since the records are being held by the orders of the Calcutta High Court, the CPIO should allow the appellant or his representative to inspect the title deeds only after seeking the prior permission of the Calcutta High Court.30

c) Decisions where information needed to defend oneself

An applicant may file an application seeking information to defend oneself in a court of law. A public authority may also plead that its interests would be irrevocably damaged by disclosure of information related to a sub-judice case.

If the process of investigation is complete and over and the matter is already before the court for proper direction in the matter, the information available to the prosecutor should also be available to the alleged offender to enable him to prove his innocence. In order to ensure natural justice to the parties, there is no justification for withholding the information asked for, as revealing of truth cannot be misused.31

Respondents have persuasively argued that under Section 11(1) of the Act, there are compelling grounds for them to hold confidential information relating to how they wished to defend their legal position in litigation or a threatened litigation. Their reference to the violation of the norms of equity in allowing the very person, who seeks to drag the public authority to court, all information about how the public authority wishes to defend itself is also quite convincing. A public authority is duty-bound to defend its officers’ bona-fide interest as well as its own interest in any litigation with the opposite party, and if it is forced to submit to that opposite party’s demand for all information about, what decision was taken to defend the government’s interest; what evidence was marshaled and how the evidence was collected and the decision made, would irretrievably damage the public authority’s interest as litigant and compromise its ability to carry out its mandate of defending the public authority though its actions.32

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28 Abhay Kumar Chaturvedi v. Central Drugs Laboratory Dr. M.F.A. Beg. CPIO, PBC/07/798.
32 Milap Choraria v. Central Board of Direct Taxes Department of Revenue, CIC/AT/C/2008/00025.
When a matter is under prosecution before a court, the documents relied upon by that court are considered to be the property of the court even if they may be physically in the possession of the prosecuting agency. In this case, therefore, although, there may be some questions as to whether photocopy or the original copies of the sought documents have been submitted to the court the information can be deemed under Section 2(j) to be held only by the court. The right course for the central public information officer to have followed in the instant case was, therefore, to have proceeded under Section 6(3) (i) of the Right to Information Act which he will now do. The PIO in the court will now dispose of this case treating it as a fresh application in accordance with Section (i) of Section 7 of the Right to Information Act.33

The appellant had sought various details about the margin money charged by the bank in connection with a certain bank guarantee. He happens to be both the managing director of the company which had borrowed the money and also the guarantor. Therefore, he has every right to get this information. Merely because the case is pending before a court, the information cannot be denied.34

An information which should be available to the prosecutor should also be available to the alleged offender. There is, therefore, no justification for withholding any information which forms the basis for resolution of disputes. Moreover, there are no provisions under the Act for denial of any information merely because the matter is pending before the court for providing legal relief to the parties.35

d) Decisions where view was taken that applicant should approach the court for information

In many sub-judice cases, the CIC has taken the view that the applicant should approach the court for seeking information instead of asking the public authority. The public authority has been directed to transfer the application under Section 6(3) to the Registrar of the concerned court. It appears that the department has filed certain documents in the Special court at Raipur in a sealed cover and in so far as these documents are concerned, the only recourse for applicant can be to approach the court to provide him copies of the documents which have been filed by the prosecuting agency with the court and if the court directs, he may obtain copies thereof. Insofar as other documents are concerned, CPIO will allow

34 Dhiraj Mani! Thakkar v. CPIO, Central Bank of India, CIC/SM/A12009/001690.
inspection of the relevant files so as to enable the applicant to specify the documents he wants to have copies of.  

The matter is sub-judice. The appellate authority of the Bank has correctly advised that information in question could be obtained through the court, which is examining the matter. The appellant is directed to move an application before the court for the documents which he needs to defend his case.  

The CPIO will examine whether the information sought for are directly connected with the matter before the court and furnish such of the information that are not directly connected with the matter in the court. The CPIO can decline that information which is directly connected with the matter in the court. This Commission has consistently taken a view that if the information sought relates to a pending proceeding before a competent court/tribunal and then the said information should be obtained only through court/tribunal and not under the provisions of the Right to Information Act.  

Once a trial court has taken cognizance of a case and charge sheet filed, documents of the case become the property of the court and therefore, deemed to be held by it, even if they may be in the physical possession of the prosecuting agency. For this reason, appellant is advised that should he wish to inspect documents contained in the files of CBI which pertain to the present case, but which he suspects have not been submitted to the court, he is free to move an application accordingly before the court. Besides, the trial court itself is subject to the provisions of the Right to Information Act. 

Since this matter is before a trial court, the trial court is free to decide which document to rely upon. The accused in the case can always request the trial court to call for any record that they think is relevant to the case and that court can decide whether to summon any such record or not. For the reasons stated above, we do not think that the disclosure of this information is desirable at this stage. 

In *K. N. Surendran v. Ministry of Defence* CIC observed that we also agree to their contention that the Hon’ble High Court may summon and peruse the relevant files of the

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41 Jagjit Kaur v. CPIO. Central Bureau of Investigation. CIC/WB/A/2010/000571 SM.  
Naval Headquarters as well as that of the Central government while considering the case. Compelling the respondents to part with the information from this confidential file at this stage, even if we may hold that file notes are not held in any fiduciary relationship and are made by officials in discharge of their duty, might compromise their case before the Hon’ble High Court.

The complainant herein has sought information in regard to a matter which is sub-judice before the Hon’ble National Consumer Disputes Redressal Commission and if the complainant seeks authorization of Hon’ble NCDRC under Section 195(B) (1) of IPC and revocation of stay in the concerned revision petition, he is required to move the NCDRC as per the provisions of the Consumer Protection Act, 1986, and the rules and regulations framed thereunder...the fact remains that the matter is sub-judice before the NCDRC, which is headed by no less a person than a retired judge of the Hon’ble Supreme Court of India and functions under the Consumer Protection Act and the rules framed there under. Hence, it is open to the complainant to move the NCDRC as per its rules and procedures and seek relief. Hence, the contention of CPIO appears to have force that this matter does not fall under the Right to Information Act particularly when alternate remedy is available to the complainant.43

e) Decisions regarding information about judicial proceedings

A full bench of the CIC considered the question whether it is permissible under the Right to Information Act to access information held by another public authority which acts in a judicial capacity (like Tribunals), especially when the information pertains to its orders in that judicial proceeding and actions related thereto. The appellant argued that all proceedings of the Income Tax Appellate Tribunal (ITAT) are open, their judgments and orders are published and, therefore, proceedings which are open cannot be said to be confidential and so denied. The Commission observed that every court or tribunal or even a commission or authority exercising statutory powers is a ‘public authority’ within the meaning of Section 2(h) and any information held by or under the control of such public authority is legally accessible to a citizen under Section 2(j) unless exempted. Regarding disclosure of judicial proceedings, the Commission ruled that a judicial authority must function with total independence and freedom. The Commission held that it will not authorize the use of the Right to Information Act for any disclosure under the Right to Information Act if it impinges upon the authority of that judicial body. Section 8(1) (b) gives a total discretion to the court

or the tribunal to decide as to what should be published. An information seeker should, therefore, approach the concerned court or the tribunal if he intends to have some information concerning a judicial proceeding and it is for the concerned court or the tribunal to take a decision in the matter as to whether the information requested is concerning judicial proceedings either pending before it or decided by it, can be given or not. The guidelines for disclosure are as under:

(i) Section 4(1) (d) does not apply to a judicial proceedings conducted by a court or a tribunal as it refers only to administrative and quasi-judicial decisions of public authorities.

(ii) The non-obstante clause in Section 22 of the Right to Information Act does not, repeal or substitute any pre-existing law including the provisions of the Income Tax Act concerning dissemination of information.

(iii) The appellant cannot take recourse to the Right to Information Act to challenge a judicial decision regarding disclosure of a given set of information, which properly belonged to the jurisdiction of that judicial authority. If the appellant is aggrieved with the decision of the ITAT, the remedy lies elsewhere.

(iv) The Right to Information Act is not intended to come into conflict with a judicial decision regarding disclosure of information. Section 8(1) (b) of the Act makes it very clear that the information which has been expressly forbidden to be published by any court of law or tribunal cannot be disclosed as any such disclosure is also within the exemption clause.

According to the Supreme Court, even the draft judgments, often signed and exchanged, are not to be considered as final judgments but only tentative views liable to change, the jottings and notes made by the judges while hearing a case can never, and by no stretch of imagination, be treated as final views expressed by them on the case. Such noting cannot, therefore, be held to be part of a record ‘held’ by the public authority.

Since the High Court rules of procedure expressly forbid the publication of information of the manner sought by appellant and has specifically mentioned this prohibition

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45 Ibid.
also in the Right to Information Rules of the Hon’ble High Court, such information falls clearly under exemption provided under Section 8(1) (b).  

Applications are frequently filed seeking clarification regarding judicial verdicts. A judge speaks through his judgments or orders passed by him. If any party feels aggrieved by the order/judgment passed by a judge, the remedy available to such a party is either to challenge the same by way of appeal or by revision or any other legally permissible mode. No litigant can be allowed to seek information as to why and for what reasons the judge had come to a particular decision or conclusion. A judge is not bound to explain later on for what reasons he had come to such a conclusion.  

The Hon’ble Supreme Court of India in order dated 04.04.2007 directed that ‘no court shall here after pass any order or decree in respect of the matters which form subject matter of the proceedings before this court and any such order or decree passed in any proceedings till today shall not be given effect to or executed’...In view of the Hon’ble Supreme Court of India’s order dated 04.04.2007 cited above, the information sought by complainant is exempt from disclosure under Section 8(1) (b).  

Accountability of the judiciary cannot be seen in isolation. It must be viewed in the context of a general trend to render governors answerable to the people in ways that are transparent, accessible and effective. Behind this notion is a concept that the wielders of power - legislature, executive and judiciary - are entrusted to perform their functions on condition that they account for their stewardship to the people who authorize them to exercise such power. Well defined and publicly known standards and procedures complement, rather than diminish, the notion of judicial independence.  

The following additional information should be provided since these have nothing to do with the alleged settlement reached in the Lok Adalat: (i) the name and the designation of the authority who had decided to institute criminal proceedings against the borrowers; (ii) the copy of the valuation report given by the approved valuer of the Bank in the said loan

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46 Maj. (Retd) P.M. Ravindran v. High Court of Delhi, CIC/WB/A/2007/00218.  
47 Khanapuram Gandash v. Administrative Officer & Others, SLP No. 34668/09.  
49 Full Bench of the High Court of Delhi in Secretary General, Supreme Court of India v. Subhash Chandra Agrawal & Another LPA No. 501/2009.
accounts; (iii) the copies of the search report, legal opinion of the Bank’s lawyer(s) and non-encumbrance certificates prior to grant of Banking facilities to these borrowers.50

To invoke the exemption under Section 8(1) (b) of the Act, either the information should be expressly forbidden by the court or its disclosure would amount to contempt of the court.

3.1.3 EXEMPTION 3: Disclosure would cause breach of privilege of parliament /state legislature

Section 8(1) (c) provides as under:

“Notwithstanding anything contained in this Act, there shall be no obligation to give any citizen, information, the disclosure of which would cause a breach of privilege of parliament or the State Legislature”;

Parliamentary privileges or the legislative privileges connote ‘certain rights accruing to each House of Parliament collectively and also to members individually without which it would not be possible to maintain either independence of action or the dignity and efficiency of a sovereign legislature. This exemption protects the public interest in maintaining independence of action or the dignity and efficiency of a sovereign legislature.

“The sum of the peculiar rights enjoyed by each House collectively as a constituent part of the parliament, and by members of each House individually, without which they could not discharge their functions and which exceed those possessed by other bodies or individuals.”51 Accordingly, parliamentary or legislative privilege is a public interest for proper discharge of function by legislative bodies.

Articles 105 and 194 of the Constitution of India relate to the privileges, powers and immunities of parliament and its members and the state legislatures and their members, respectively. Both Articles are analogous in content. Article 105 and 194 expressly mention two privileges, namely, freedom of speech and freedom of publication of proceedings. Clause (1) of Article 105 declares that ‘there shall be freedom of speech in parliament. “Clause (2) of Article 105 further provides that ‘no member of parliament shall be liable to any proceedings in any court in respect of anything said or any vote given by him in parliament or any committee thereof.” What is guaranteed is that speech and action are free from external

50 Om Prakash Aggarwal v. CPIO, Oriental Bank of Commerce, CIC/SM/A/2010/000741
51 Defined by Sir Thomas Erskine in Constitutional & Administrative Law By Hilaire Barnett at page no. 459.
interference. It is of the essence of parliamentary system of government that peoples’ representatives should be free to express themselves without fear of legal consequences.52

The freedom of speech under Articles 105(1) is not subject to Article 19. The former provision makes it plain that the freedom of the members of a House is literally absolute and unfettered. Clause (2) of Article 105 (Article 194 also) makes it clear by declaring that no member shall be liable to any proceedings in any court in respect of anything said or any vote given by him in the legislature. The freedom of speech conferred under this Article cannot, therefore, be restricted under clause (2) of Article 19.53

Clause (2) of Article 105 as well as Article 194 expressly declare that ‘no person shall be liable in respect of the publication by or under the authority of either House of parliament of any report, paper, voted, or proceedings.’ Clause (2) of Article 105 provided immunity in respect of such publication as was done by or under the authority of the House. Therefore, this protection did not extend to publication made by a private person without the authority of the House.54 It has been said that it would be of paramount public and national importance that parliamentary proceedings should be communicated to the public, which had the deepest interest in knowing what passed in parliament.55 It was with this object that the parliamentary proceedings (Protection of Publication) Act, 1956, was enacted. The Act provided that ‘no person shall be liable to any proceedings, civil or criminal, in any court in respect of the publication of a substantially true report of the proceedings of either House of parliament, unless it is proved that the publication has been made with malice.’ The Act was repealed during 1975 Emergency. However, the Constitution (Forty-Fourth Amendment) Act, 1978 has put the immunity for publication on a very sound footing. It has added Article 361-A to the Constitution incorporating the provisions of the above Act. Article 361-A is titled as ‘Protection of publication of proceedings of Parliament and State Legislatures.’ It provides: ‘No person shall be liable to any proceedings, civil or criminal, in any court in respect of the publication in newspaper of a substantially true report of any proceedings of either House of Parliament or the Legislative Assembly, or, as the case may be, either House of the Legislature of a State, unless the publication is proved to have been made with malice.’ However, the publication of any report of the proceedings of a secret sitting of a House is not

53 P.V. Narasimha Rao v. State, AIR 1998 SC 2120; (JMM Bribery case)
protected under Article 361-A (1). Clause (2) of Article 361-A protects not only the publication in a newspaper but also broadcast by means of wireless telegraphy.

In Priya Pal Bhante v. Rajya Sabha Secretariat, the appellant asked for a printed copy of the 105th Report of the Rajya Sabha Committee on Petitions along with action taken report (ATR) thereon. The report contained the matter of the Chakma Tribal population of Arunachal Pradesh and Mizoram States. While the 105th Report of Committee on Petitions was agreed to be provided on payment of requisite charges, the ATR was denied under Section 8(1) (c) of the Act stating that all documents submitted to the committee are treated as confidential unless they are laid down on the Table of the House or a report thereon is presented to the House.

The Commission in its decision notice stated that Section 8(1) (c) which reads as, ‘information, the disclosure of which would cause a breach of privilege of Parliament or the State Legislature’ is qualified by the proviso to Section 8, which reads: ‘Provided that the information which cannot be denied to the Parliament or a State Legislature shall not be denied to any person.’ The Commission noted that the information in this case is the information available to a select committee of parliament. ‘Proceedings of a Select Committee/Joint Committee are to be treated as confidential and not to be mentioned in the House’. Thus, proceedings of the Select Committee or Joint Committee cannot be disclosed even in the House. This only means that information sought by an appellant can be disclosed if the committee decides to place this before the parliament. In view of this, the Commission decided that the information sought by the appellant has been withheld in accordance with the law.

The question of code of conduct was discussed in the committee of Ethics regarding which some information was sought. Under proviso to Section 8(1) (j) any ‘information which cannot be denied to the parliament, shall not be denied to any person’. However, Section 8(1) (c) exempts ‘information, the disclosure of which can cause a breach of privilege of parliament’. The Commission held that a committee of parliament cannot be held to be the
parliament and the information disclosed to a MP as member of a committee does not imply that the information can be deemed to have been placed before parliament.60

All submissions made before a parliamentary standing committee by the departments of the government are treated as confidential as per parliamentary practice. Documents and other submissions handed over to the committee become property of the parliament. It is not open to a department to disclose any information in respect of those submissions unless authorized by the committee... In so far as supply of this information to the appellant can potentially cause a breach of the privilege of parliament, it is held that it attracts the bar of Section 8(1) (c) of the Right to Information Act and is not liable to be disclosed by the PIO to the appellant.61

A copy of the T.N.R. Rao Committee set up to investigate the Bombay High North (BHN) oil rig fire when it was hit by an MSV Samudra Suraksha was denied under Section 8(1) (c) of Right to Information Act claiming that the parliament was assured by the Hon’ble Minister (Petroleum & Natural Gas) that the report would be presented before the parliament for a discussion in the matter. The appellant desired that if any such parliamentary assurance has been given not to reveal the report, a copy of such assurance too may be provided. The Commission had directed the CPIO to provide the information after the conclusion of the debate in the parliament. The Commission noted that more than two years have lapsed when the report in question was submitted by the Rao Committee to the government. Therefore, the proof of assurance given to the parliament by the Hon’ble Minister of Petroleum and Natural Gas should be disclosed to allay the scepticism of the appellant that the CPIO has given misleading information to him.62

In Manohar Parrikar & Others v. Accountant General, Goa & Others along with other two petitions, it was concluded by the commission that all evidences and depositions before the parliamentary committees are no doubt held secret as well as all proceedings before it. However, it cannot be stretched to mean that every single item of information, held anywhere, that may, now or in future, become part of the proceeding before the parliamentary committee, or may be required to be produced as evidence before it, should also come under the exemption from disclosure...while the actual material in a proceeding before a parliamentary committee is prohibited from disclosure, such prohibition would not apply to

60 Ashok Kumar v. Lok Sabha Secr. Prime Minister’s Office & President’s. CIC/WB/C/2006/00255 & 258.
such material, which is not yet part of an ongoing proceeding. The audit notes, marginal notes, etc. come decidedly in the latter category. As has been rightly suggested by the Secretary General, Lok Sabha, it was not possible that disclosure of audit notes, audit para, marginal notes, etc. could be said to constitute a breach of privilege of the House.63

The Commission observed that every statement made and every undertaking given in the House by a Minister is a solemn pledge which, if broken, will put the authority and dignity of the parliament to disrepute and hence, may amount to contempt. In respect of inventory of private properties of Ex-Maharaja of Udaipur, Rajasthan, the then Minister of Home Affairs had stated in the Lok Sabha in reply to the Unstarred Q. No. 655 dated 15.11.67: ‘Government have been of the view that the details of the property recognized as the private property of the Rulers should not be a matter for public discourse.’ Hence, disclosure would entail a breach of privilege of the parliament and would attract provisions of Section 8(1) (c) of the Act. The Commission held that “…it does not have the jurisdiction and would not choose to pass a verdict as to whether it will actually amount to either breach of privilege or contempt of the parliament because it is for the parliament to decide and determine. The Commission can only see and examine whether the concerned public authority denying the information has a prima facie apprehension as to whether disclosure of information in the given case may amount to commission of contempt or breach of privilege and if a prima facie case is so made out, the Commission has to uphold the same”. The Commission made a reference to the Speaker of the Lok Sabha to consider the matter in the light of the provisions of the Right to Information Act and decide whether it would be a breach of privilege if the information which was refused to the parliament by the executive at one point of time, is now disclosed. Subsequently, the Commission received the following remarks issued with the approval of the Speaker “…the property, regarding which information has been sought by the applicant, is a state property. The information sought through USO No. 655 in 1967 pertained to private properties that remained with rulers at the time of accession”. Hence, the principle of breach of privilege does not arise. Further, the applicant has categorically stated that if it is not possible for the government to disclose the information to him, it may be made available directly to the court in which his case is pending. In the event of the government acceding to the said request made by the applicant vide his letter dated 9th March, 2007, there would be no ‘public disclosure’. From the above, the

Commission held that the disclosure of information is not exempted under Section 8(1) (c) and directed to disclose the same after issue of notice to the third party.\textsuperscript{64}

During the hearing, it emerged that at the instance of the appellant, three MPs through identical letters recommended to the Hon’ble Minister of Petroleum to revive a retail outlet, which has been closed on the ground of violation of agreements between the concerned parties. In this context, the appellant had sought to have access to the copies of the replies given by the respondent (IOCL)...The copies of correspondence asked for relate to the responses given by the respondent in respect of the recommendations made by the MPs. The letters in question are available to the parties and, therefore, any matter related to them cannot be considered as confidential. Though the letters of recommendations have been written by the MPs, the matter do not relate to transaction of business in the parliament. Therefore, denial of information under Section 8(1) (c) of the Act is untenable.\textsuperscript{65}

The PIO of the National Commission for Scheduled Caste was asked certain information about the two volumes of National Commission for Religious and Linguistic Minorities Report (NCRLM) from Ministry of Social Justice and Empowerment...regarding the extension of reservations to Dalit Muslims and Dalit Christians... It was submitted before the Commission that the information asked for in these appeals also relates to the disclosure of: (i) Report of the NCRLM by Justice Ranganathan Mishra; (ii) Decisions of the Cabinet on the recommendations of Sachar Committee and the NCRLM it was also contended before the commission that the decision of the Cabinet on the recommendation by Sachar Committee and the NCRLM Report are exempted from disclosure under Section 8(1) (c) of the Right to Information Act...The Ministry of Minority Affairs who were also present at the time submitted that NCRLM Report has not even been disclosed to the parliament and as such its disclosure is exempt under Section 8(1) (c) of the Right to Information Act, 2005...The Ministry could not explain as to who are the people with whom copies of the NCRLM Report are available and as to why copies of the NCRLM Report have not been collected after the concerned officers/office bearers retired or left the Commission. In view of this, the claim of the Ministry that the report has not been disclosed and that it continues to be a privileged one cannot be accepted...If the government does not place any material or report before the


\textsuperscript{65} Rahul Vibhushan v. I.O.C.L.. 2900/IC(A)/2008

151
parliament or the Legislature; it cannot claim exemption from giving it to citizens exercising their fundamental Right to Information.66

3.1.4 EXEMPTION 4: Disclosure would harm competitive position of third party

Section 8(1) (d) provides as under:

“Notwithstanding anything contained in this Act, there shall be no obligation to give any citizen, information including commercial confidence, trade secrets or intellectual property, the disclosure of which would harm the competitive position of a third party, unless the competent authority is satisfied that larger public interest warrants the disclosure of such information.”

Information including commercial confidence, trade secrets or intellectual property is exempted, if the disclosure of such information would harm the competitive position of third party. However, such information can be given on the request made by any person if competent authority is satisfied that larger public interest warrants the disclosure of such information. This exemption protects the public interest by not disclosing the information that could harm the competitive position of a third party. Such information apart from other may include commercial confidence, trade secrets or intellectual property.

It is clarified that this sub Section 8(1) (d) of the Right to Information Act deals with information disclosure of which would harm the competitive position of the third party. This information may or may not be supplied or related to third party. The information supplied by third party or related to third party and treated as confidential by that third party are dealt keeping in view the provisions of Section 11 of the Right to Information Act. If this information is also harming competitive position of any third party then both sub Section 8(1) (d) and Section 11 would apply. As defined in Section 2 (n) ‘third party’ means, a person other than the citizen making a request for information and includes a public authority. Accordingly, in respect of a request for access to a record under the Act, ‘third party may be any person, group of persons or organization other than the citizen that made the request or a public authority’. The definition of third party, therefore, encompasses corporations and other government organizations, private bodies and public authority etc. Procedures respecting the

notification of third parties where confidential information about them or supplied by them and which may affect their interests is to be disclosed are set out in Section 11 of the Act.

There is public interest in sanctioned protection of such type of information from public disclosure and it is viewed as an important legal aspect by which a society protects its overall economic vitality. A company typically invests time and energy into generating information regarding refinements of process and operation. If competitors had access to the same knowledge, the first company’s ability to survive or maintain its market dominance would be impaired. Where trade secrets are recognised, the creator of property regarded as a ‘trade secret’ is entitled to regard such ‘special knowledge’ as intellectual property. A trade secret is a formula, practice, process, design, instrument, pattern, or compilation of information used by a business to obtain an advantage over competitors within the same industry or profession. In some jurisdictions, such secrets are referred to as ‘confidential information’; while in others they are a subset or example of confidential information.

A company can protect its confidential information through non-compete non-disclosure contracts with its employees. The law of protection of confidential information effectively allows a perpetual monopoly in secret information - it does not expire as would a patent or trademark. The lack of formal protection, however, means that a third party is not prevented from independently duplicating and using the secret information once it is discovered.

The precise language by which a trade secret is defined varies by jurisdiction as do the particular types of information that are subject to trade secret protection. However, there are three factors that though subject to differing interpretations are common to all such definitions: a trade secret is some sort of information that is not generally known to the relevant portion of the public; confers some sort of economic benefit on its holder; and is the subject of reasonable efforts to maintain its secrecy. Trade secrets are not protected by law in the same manner as trademarks or patents. Probably one of the most significant differences is that a trade secret is protected without disclosure of the secret.

Trade secrets are by definition not disclosed to the world at large. Instead, owners of trade secrets seek to keep their special knowledge out of the hands of competitors through a variety of civil and commercial means, not the least of which is the employment of non-disclosure agreements (NDA) and non-compete clauses. In exchange for the opportunity to be employed by the holder of secrets, a worker will sign an agreement not to reveal his
prospective employer’s proprietary information. Often, he will also sign over rights to the ownership of his own intellectual production during the course of his employment. Violation of the agreement generally carries stiff financial penalties, agreed to in writing by the worker and designed to operate as a disincentive to going back on his word. Similar agreements are often signed by representatives of other companies with whom the trade secret holder is engaged, e.g. in licensing talks or other business negotiations.

Trade secret protection can, in principle, extend indefinitely and in this respect offers an advantage over patent protection which lasts only for a specifically limited period - currently twenty years in the India. One company that has no patent for its formula and has been very effective in protecting it for many more years than a patent would have is Coca Cola. However, the ‘down side’ of such protection is that it is comparatively easy to lose for example, to reverse engineering, which a patent will withstand but a trade secret will not and comes equipped with no minimum guaranteed period of years.

Intellectual property is an umbrella term used to refer to the object of a variety of laws, including patent law, copyright law, trademark law, trade secret law, industrial design law, and potentially others. These laws provide exclusive rights to certain parties and many of them implement government-granted monopolies. Copyrights, for example, generally allow only one party to make copies of a work. Copyrights apply to creative and artistic works e.g. books, movies, music, paintings, photographs, and software and give the copyright holder the exclusive right to control reproduction and modification of such works for a certain period of time. Patents are granted for new, useful, and non-obvious inventions and give the holder an exclusive right to commercially exploit the invention for a certain period of time (typically 20 years from the filing date of a patent application). Trademarks are distinctive signs which distinguish the products and services of different businesses and give the trademark holder the right to prevent other people from selling works which appear to be made by them. Industrial design rights provide for the exclusive production of a form of appearance, style or design of an industrial object e.g. spare parts, furniture, or textiles. Trade secrets are secret, non-public information concerning the commercial practices or proprietary knowledge of a business and their public disclosure is sometimes illegal. Patents, trademarks, and designs rights are often referred to more specifically as industrial property.

To qualify for this exemption, the information contained in it will have to satisfy the fact that disclosure of this information would harm the competitive position of the third party.
This exemption is further subject to larger public interest test. Research data or abstract ideas not capable of being used industrially or commercially cannot qualify for an exemption as a trade secret, but may qualify for exemption under Section 11 or other clauses of sub Section 8(1).

This is an exemption, based on harm test or an injury test. The sub-section applies to the disclosure of information which could reasonably be expected to affect any third party in the ways set out in the sub-section. In order to exempt the information, the law requires that the public authority has a reasonable expectation of harm to the competitive position of a third party. None of the terms ‘harm’ or ‘competitive position’ is defined in the Act. In order to consider exemption under this section the public authority has a reasonable expectation of financial loss to a third party.

Here, as in clause 8(1) (d), the number of third parties potentially affected by any one disclosure of information could be large. The information in the record itself should be the basis to determine which the third parties are likely to be directly affected by the disclosure and this sub-section should be construed only to apply to them.

The following are some examples of types of information which might qualify for an exemption i.e. under this section if the injuries specified in the exemption could reasonably be expected to result in harm to the competitive position of the third party: information relating to the resource potential of a particular corporation; confidential economic evaluations of a corporation such as those which are filed with regulatory bodies; reports required to be filed with the government by manufacturers, for example, those relating to design problems leading to recall of product.

A public authority shall refuse to disclose any record requested under the Act that contains information the disclosure of which could reasonably be expected to interfere with contractual or other negotiations of a third party. This is an exemption, based on an injury test, applied to any third party who could reasonably be expected to be prejudiced by the disclosure. The nature of the injury is self-explanatory. In applying the injury test, public authority must determine whether disclosure of the record(s) requested could reasonably be expected to impair the ability of any third party likely to be directly affected by the disclosure to negotiate in a non-prejudicial environment whether or not the party is the submitter of the information.
The term ‘intellectual property’ refers to a category of intangible rights protecting commercially valuable products of human intellect comprising primarily, trade mark, copyright and patent right, as also trade secret rights, publicity rights, moral rights and rights against unfair competition. Question papers, instructions regarding evaluation and solutions to questions or model answers which are furnished to the examiners and moderators in connection with evaluation of answer scripts, are literary works which are products of human intellect and therefore subject to a copyright. The paper setters and authors thereof other than the employees of ICAI, who are the first owners thereof, are required to assign their copyright in regard to the question papers/solutions in favour of ICAI. Consequently, the question papers, solutions to questions and instructions are the intellectual properties of ICAI.

Information can be sought under the Right to Information Act at different stages or different points of time. What is exempted from disclosure at one point of time may cease to be exempted at a later point of time, depending upon the nature of exemption. Information relating to the intellectual property, that is, the question papers, solutions/model answers and instructions, in regard to any particular examination conducted by the appellant cannot be disclosed before the examination is held, as it would harm the competitive position of innumerable third parties who are taking the said examination. Therefore it is obvious that the appellant examining body is not liable to give to any citizen any information relating to question papers, solutions/model answers and instructions relating to a particular examination before the date of such examination. But the position will be different once the examination is held. Disclosure of the question papers, model answers and instructions in regard to any particular examination, would not harm the competitive position of any third party once the examination is held.

In fact, the question papers are disclosed to everyone at the time of examination. The appellant voluntarily publishes the ‘suggested answers’ in regard to the question papers in the form of a book for sale every year, after the examination. Therefore Section 8(1) (d) of the Right to Information Act does not bar or prohibit the disclosure of question papers, model answers (solutions to questions) and instructions, if any, given to the examiners and

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67 Black’s Law Dictionary, 7th Edn., page 813
68 The Institute of Chartered Accountants of India v. Shaunak H. Satya & Others, (2011) 8 SCC 781 (Paras 11 and 12)
moderators after the examination and after the evaluation of answer scripts is completed, as at that stage they will not harm the competitive position of any third party.70

In N Anbarasan v. National Informatics Center (NIC),71 the appellant sought for certified copies of files/documents and records relating to the website/web-based applications/software developed by NIC for the Karnataka government. The CPIO, NIC informed the appellant that under Section 8(1) (d) of the Act, the development of website/web-based applications are considered as software covered under intellectual property rights (IPR) which cannot be disclosed specially because the appellant himself is a software developer. The appellant appealed to the CIC that the documents sought for cannot carry any IPR as these cannot be patented since they could not be considered as inventions. National Informatics Centre argued that all software development done in NIC is IPR work of NIC and cannot be shared with any vendor who is its competitor. It put forth the MOU with the Karnataka government under which NIC had undertaken to respect information propriety of various state departments. The Commission upheld the application of Section 8(1) (d) to decline the sought-for information by the appellant.

In N. Anbarasan v. Indian Overseas Bank, Chennai,72 the appellant sought information relating to purchase of language software and computers in terms of technical and commercial bids submitted by various vendors and orders passed to make the payment. The CPIO denied the information on the ground that under Section 8(1) (d), it falls under ‘commercial confidence’ and ‘trade secrets’ which would harm the competitive position of the third parties and the larger public interest does not warrant such disclosure. The appellate authority upheld the decision. The Commission held that the information sought related to public action with regard to the processes that have been followed in purchase of computers and other accessories. Such actions clearly fall under the public domain and therefore exemption claimed under Section 8(1) (d) is not justified.

In S.K. Maheshwari v. Telecommunications Consultants India Ltd,73 the appellant inter alia sought for documents relating to agreement executed between Mukhtar Ibrahim Saddi and TCIL, which was denied on the ground that there is a confidentiality clause, and in terms of Section 11 of the Right to Information Act (third party information), the second

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signatory to the agreement had not agreed for disclosure. As such exemption under Section 8(1) (d) was applied. The appellant appealed to the appellate authority that since there was no confidentiality provision in the agreement, Section 8(1) (d) could not be applied. The appellate authority conceded that Section 8(1) (d) could not be applied but reiterated application of Section 11. The Commission in its decision held that the decision of the CPIO and the AA, in regard to furnishing a copy of the agreement invoking the provisions of Section 11, is not sustainable. The Commission held that any commercial agreement between a public authority and a third party is a public document available for access to a citizen. No party to an agreement with a public authority could raise any objection for supplying a copy of the agreement, except on the grounds of commercial confidentiality and the like which is specifically exempted in Section 8(1) (d).

In *Anil Kumar v. ITI, Bangalore,*74 the appellant sought for certain information in relation to ITI’s collaboration with Alcatel. The information was in relation to OCB283 switching technology and order for supply of 220 DLC Systems (of Alcatel make) to MTNL. The information was denied invoking Section 8(1) (d) of the Right to Information Act. Further, it was stated that this information was governed by legal cooperation norms with the company’s collaborator, which prohibit disclosure to a third party.

The Commission noted that so far as OCB283 technology switches were concerned, the collaboration agreement with Alcatel had a confidentiality clause by which ITI had agreed not to disclose any technical knowhow received under the agreement. The information sought by the appellant, if furnished, would be in breach of the said confidentiality clause and as such the CIC had upheld the decline of information. In so far as information regarding supply of DLC systems to MTNL, details like number of DLC systems ordered by MTNL, and the total value, the CIC ordered for its disclosure.

In *A.S. Lall v. Police Headquarters, New Delhi,*75 the appellant sought details of licences issued by the police authority to certain eating houses/restaurants. The information asked for related to the period of validity of the licences, photocopies of the reports of local police on the basis of which the licence was issued, date of inspection of the premises, etc. The information was denied by the CPIO and AA under Section 8(1) (d), (e), and (j) of the Right to Information Act.

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74 *Anil Kumar v. ITI, Bangalore,* 25/WPB/2006.
75 *A.S. Lall v. Police Headquarters, New Delhi,* CIC/AT/N2006/00075.
The Commission noted that the information sought was about a licensed activity; that is, setting up and running restaurants and eating houses. The question is whether a private business requiring licence from various public authorities qualifies to be a public activity? In this particular case, the business activity licensed to be carried out involves the public, both as clients and as common citizens, whose rights, convenience, and welfare may be impacted by such business activity. Licensing is, therefore, not just a matter between a licensor and a licensee, but is an activity meant to subserv public good. The information sought here may pertain to a private person, who might be the owner of a restaurant/eating place, yet the activity undertaken by him has a strong public face. A citizen is entitled to know whether the letter of law is followed by the licensing authority in authorising such a business activity. As such, there is no merit in the argument that a restaurant-business is a private matter or it is a matter between the police as the licensing authority and the restaurant-owner, in which no citizen can have any interest. The Commission expressed surprise that the appellate authority characterized the relationship between the licensor and a licensee as falling within the definition of commercial confidence, trade secret, or IPR, which would attract Section 8(1) (d) of the Right to Information Act. The Commission stated that the police, as the licensing authority were neither required to keep the commercial confidence or maintain trade secrets or to defend the intellectual property right of the licensee. Also, the information sought did not relate to personal information and Section 8(1) (j) was not attracted. The Commission further ruled that given the nature of the information, it would be stretching the point to say that the information was held by the licensing authority; that is, the police, in a fiduciary relationship attracting the exemptions of Section 8(1) (e). The Commission directed the CPIO to furnish information to the appellant.

Besides, Shiv Shambu & Others and Sanjeev Kumar & Others v. UPSC\textsuperscript{76} and UPSC v. CIC and Others (pages 137-8),\textsuperscript{77} in another case, Rajnish Singh Chaudhary v. UPSC,\textsuperscript{78} the Commission held that that total marks secured by the appellant in written papers as well as the interview should be disclosed and the procedure and the technique that are followed to determine the cut-off point to draw the line between successful candidates and others should also be disclosed for each category of aspirants. Further, the composition of the selection committee should also be disclosed.

\textsuperscript{76} Shiv Shambu & Others and Sanjeev Kumar & Others v. UPSC. CIC/MA/A/2006/00793.
\textsuperscript{77} UPSC v. CIC and Others WP(C) No. 17583/2006.
\textsuperscript{78} Rajnish Singh Chaudhary v. UPSC. 450/IC(A)/2006 & 231/IC(A)/2006.
The UPSC filed a petition for review of the decision on the ground that it had not been heard before the decision being passed and prayed for a review of the said decision by the full bench of the Commission. The Commission reheard the matter on 13 December 2006 and upheld its earlier decision.

Further, in Prof Rajeev Kumar v. IIT Kharagpur,79 regarding providing cut-off marks in the IIT JEE 2006, the appellant offered that if he was provided with the entire list together with subjects and marks received by each candidate, he would himself compile the data in the required format. The Commission directed IIT Kharagpur to provide this data through a soft copy while being mindful of Section 10 of the Right to Information Act, that is, the severability clause and thereby delete the names and personal details of the candidates.

In M.D.N. Panickar v. Steel Authority of India,80 the log books of motorcycles were refused under Section 8(1) (d) of the Right to Information Act on the ground that the information asked for would divulge the details relating to the confidential services provided by the motorist staff. The Commission in its decision held that the log books maintained by the respondent in respect of the movement of official vehicles should be put in the public domain to check the possible misuse of government vehicles. In view of this, denial of information under Section 8(1) (d) of the Act is untenable.

In Subhash Chandra Agrawal v. Ministry of Petroleum & Natural Gas, HPCL and BPCL,81 the appellant sought to know the details of the basis for providing incentives to the consumers for buying oil through credit cards. The Commission in its decision stated that the oil companies are commercial and service organizations. For convenience, some companies have arrangement with banks for selling petrol through credit cards, which entitles the consumers to specific discounts. The oil companies are free to determine the extent of incentives/concessions that may be given to the consumers in the interest of promotion of business. Therefore, there is no justification for disclosing the details of basis for providing incentives to the consumers that are critical for promotion of business.

In another case, Shyamlal Yadav v. Air India,82 the appellant sought to know the details of concessions/free travel availed by 78 ministers under the scheme of frequent fliers. The information was denied under Section 8(1) (d) of the Act on the ground that the

80 M.D.N. Panickar v. Steel Authority of India, 2951/IC(A)/2008.
information is in the nature of commercial confidence. During the hearing before the Commission, the appellant stated that the ministers’ travel at the cost of public funds and the incentives earned under the scheme are availed of for private purposes. The Commission in its decision stated that almost all the airlines have been offering incentives to the passengers irrespective of their official status. The disclosure of selective information in respect of the identified ministers could be misused for humiliation and harassment of any passenger. Almost every commercial entity offers certain incentives to promote its business and the respondent is no exemption. In view of this, the denial of information on the ground of commercial confidence under Section 8(1) (d) of the Act is justified. However, it is felt that details of such incentives should be in public domain and the argument that disclosure of selective information could be misused is not a valid ground under Section 8(1).

In Rakesh Sanghi v. International Advanced Research Centre for Powder Metallurgy and New Materials (ARCI), Department of Science & Technology, Hyderabad,83 regarding obligations cast by Section 4 of the Right to Information Act, the Commission stated that it does not lead to an inference that information which is admittedly commercial confidence, trade secret, or IPR, must be disclosed. The appellant’s right to disclosure of information is conditioned by the respondents’ right to invoke exemptions, wherever such exemptions are applicable. No canon of transparency or public interest would justify that research and technological institutions part with their research data or vital information without expecting to benefit-tangibly or intangibly-from such exchange/disclosure.

In Divya Raghunandan v. Department of Biotechnology,84 regarding the argument of disclosure in public interest under Section 8(2) of the Act, the Commission recommended that the competent authority as defined in Section 2(e) (iv) should satisfy itself whether larger public interest would be best served by disclosing such information. This was recommended on the ground that they were not experts in this particular area and decision in this regard should be taken based on expert opinion, which is best done at the level of the government.

3.1.5 EXEMPTION 5: Information available in fiduciary relationship

Section 8(1) (e) provides as under:

83 Rakesh Sanghi v. International Advanced Research Centre for Powder Metallurgy and New Materials (ARCI), Department of Science & Technology, Hyderabad, CIC/AT/N2007/01363.
84 Divya Raghunandan v. Department of Biotechnology, CIC/WB/N2006/00548.
“Notwithstanding anything contained in this Act, there shall be no obligation to give any citizen information available to a person in his fiduciary relationship, unless the competent authority is satisfied that the larger public interest warrants the disclosure of such information;”

Information which is available with a person in his fiduciary relationship is exempted from disclosure. However, such information can be given on the request made by any person if the competent authority is satisfied that the larger public interest warrants the disclosure of such information. If larger public interest does not warrant disclosure of information and in spite of the fact that the information is exempted under this clause, even then it could be disclosed if public interest outweighs the harm to the protected interests i.e. after applying public interest override test under the provision of sub Section 8(2) of this Act.

The fiduciary relationship is wherein one person has an obligation to act for another’s benefit. A fiduciary relationship encompasses the idea of faith and confidence and is generally established only when the confidence given by one person is actually accepted by the other person. Mere respect for another individual’s judgment or general trust in his or her character is ordinarily insufficient for the creation of a fiduciary relationship. The duties of a fiduciary include loyalty and reasonable care of the assets within custody. All of the fiduciary’s actions are performed for the advantage of the beneficiary. Courts have neither defined the particular circumstances of fiduciary relationships nor set any limitations on circumstances from which such an alliance may arise. Certain relationships are, however, universally regarded as fiduciary.

Blood relation alone does not automatically bring about a fiduciary relationship. A fiduciary relationship does not necessarily arise between parents and children or brothers and sisters. The courts stringently examine transactions between people involved in fiduciary relationships toward one another. Particular scrutiny is placed upon any transaction by which a dominant individual obtains any advantage or profit at the expense of the party under his or her influence. Such transaction, in which undue influence of the fiduciary can be established, is void.

Fiduciary in law, is a relationship in which a person who is obliged to discharge faithfully a responsibility of trust toward another. Among the common fiduciary relationships are guardian to ward, parent to child, lawyer to client, corporate director to corporation, trustee to trust, and business partner to business partner. In discharging a trust, the fiduciary
must be absolutely open and fair. Certain business methods that would be acceptable between independent parties dealing with one another ‘at an arm’s length’ may expose a fiduciary to liability for having abused a position of trust. Thus, in an ordinary business transaction the prospective purchaser of land need not inform the seller of an imminent rise in realty values, but one buying land from a partner must disclose such information. In many cases, courts will treat an unexplained profit derived from a fiduciary relationship as an instance of constructive fraud.

The most common circumstance where a fiduciary duty will arise is between a trustee and a beneficiary. A trustee is the legal i.e. common law owner of all the trust’s property. The beneficiary, at law, has no legal title to the trust; however, the trustee is bound by equity to suppress his own interests and serve only the beneficiary. In this way, the beneficiary obtains the use of property without being its technical owner. Relationships which routinely attract a fiduciary duty are: Trustee/beneficiary, Director/company, Lawyer/client, Partner/partner, Agent/principal, Stockbroker/client, Senior employee/company, Doctor/patient, Parent/child.

Joint ventures, as opposed to business partnerships, are not presumed to carry a fiduciary duty; however, this is a matter of degree. If a joint venture is conducted at commercial arm’s length and both parties are on an equal footing then the courts will be reluctant to find a fiduciary duty, but if the joint venture is carried out more in the manner of partnership then fiduciary relationships can and often will arise. Husbands and wives are not presumed to be in a fiduciary relationship; however, this may be easily established. Similarly, ordinary commercial transactions in themselves are not presumed to but can give rise to fiduciary duties, should the appropriate circumstances arise. These are usually circumstances where the contract specifies a degree of trust and loyalty or it can be inferred by the court.

The terms ‘fiduciary’ and ‘fiduciary relationship’ refer to different capacities and relationship, involving a common duty or obligation. ‘Fiduciary’ is one whose intention is to

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88 Fraser Edmiston Pvt. Ltd. v. AGT (Qld) Pvt. Ltd., [1998] 1711 FCA.
95 Attorney General (Hong Kong) v. Reid [1993] 3 WLR 1143
act for the benefit of another as to matters relevant to the relation between them. The term ‘fiduciary’ refers to a person having a duty to act for the benefit of another, showing good faith and conduct, where such other person reposes trust and special confidence in the person owing or discharging the duty. The term ‘fiduciary relationship’ is used to describe a situation or transaction where one person (beneficiary) places complete confidence in another person (fiduciary) in regard to his affairs, business or transaction(s). If the beneficiary has entrusted anything to the fiduciary, to hold the thing in trust or to execute certain acts in regard to or with reference to the entrusted thing, the fiduciary has to act in confidence and is expected not to disclose the thing or information to any third party. There are also certain relationships where both the parties have to act in a fiduciary capacity treating the other as the beneficiary. Examples of these are: a partner vis-a-vis another partner and an employer vis-a-vis employee.

Answer books not being information available to an examining body in its fiduciary relationship, the exemption under Section 8(1) (e) is not available to the examining bodies. As no other exemption under Section 8 is available in respect of the evaluated answer books, the examining bodies will have to permit inspection sought by the examinees.

In a philosophical and very wide sense, examining bodies can be said to act in a fiduciary capacity with reference to the students who participate in an examination, as a government does while governing its citizens or as the present generation does with reference to the future generation while preserving the environment. But the words ‘information available to a person in his fiduciary relationship’ are used in Section 8(1) (e) of the Right to Information Act in its normal and well-recognised sense, that is, to refer to persons who act in a fiduciary capacity, with reference to a specific beneficiary or beneficiaries who are to be expected to be protected or benefited by the actions of the fiduciary. There is no fiduciary relationship between the examining body and the examinee, with reference to the evaluated answer books, that come into the custody of the examining body.

The duty of examining bodies is to subject the candidates to a process of verification/examination/testing of their knowledge, ability or skill, or to ascertain whether

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96 CBSE and another v. Aditya Bandopadhayay and Others, (2011) 8 SCC 497 (Para 38 and 38.2).
98 CBSE and another v. Aditya Bandopadhayay and Others (2011) 8 SCC 497 (Para 40).
99 CBSE and another v. Aditya Bandopadhayay and Others (2011) 8 SCC 497 (Para 51).
100 CBSE and another v. Aditya Bandopadhayay and Others (2011) 8 SCC 497 (Para 41 and 43)
they can be said to have successfully completed or passed the course of study or training or to find out whether such person is suitable for a particular post, job or assignment. An examining body, if it is a public authority entrusted with public functions, is required to act fairly, reasonably, uniformly and consistently for public good and in public interest.101

One of the duties of the fiduciary is to make thorough disclosure of all the relevant facts of all transactions between them to the beneficiary, in a fiduciary relationship. Therefore, even if a relationship of fiduciary and beneficiary is assumed between the examining body and the examinee with reference to the answer book, Section 8(1) (e) would operate as an exemption to prevent access to any third party and will not operate as a bar for the very person who wrote the answer book, seeking inspection or disclosure of it.102

When an examinee seeks ‘information’ by inspection/certified copies of his answer books, he knows the contents thereof being the author thereof. Therefore, in furnishing the copy of an answer book, there is no question of breach of confidentiality, privacy, secrecy or trust.103

There is no merit in the contention that even if fiduciary relationship does not exist between the examining body and the examinee; it exists with reference to the examiner who evaluates the answer books. The examining body is the ‘principal’ and the examiner is the ‘agent’ entrusted with the work, that is, the evaluation of answer books. Therefore, the examining body is not in the position of a fiduciary with reference to the examiner. On the other hand, the examiner is in the position of a fiduciary with reference to the examining body and he is barred from disclosing the contents of the answer book or the result of evaluation of the answer book to anyone other than the examining body. Once the examiner has evaluated the answer books, he ceases to have any interest in the evaluation done by him. He does not have any copyright or proprietary right, or confidentiality right in regard to the evaluation. Therefore, it cannot be said that the examining body holds the evaluated answer books in a fiduciary relationship, qua the examiner, either.104

The instructions and ‘solutions to questions’ issued to the examiners and moderators in connection with evaluation of answer scripts, is the intellectual property of ICAI. The examiners and moderators are required to maintain absolute secrecy and cannot disclose the

102 CBSE and another v. Aditya Bandopadhayay and Others. (2011) 8 SCC 497 (Paras 45 and 44).
103 Ibid (Paras 46 and 47).
104 Ibid (Paras 48 to 50).
answer scripts, the evaluation of answer scripts, the instructions of ICAI and the solutions to questions made available by ICAI, to anyone. The examiners and moderators are in the position of agents and ICAI is in the position of principal in regard to such information which ICAI gives to the examiners and moderators to achieve uniformity, consistency and exactness of evaluation of the answer scripts. When anything is given and taken in trust or in confidence, requiring or expecting secrecy and confidentiality to be maintained in that behalf, it is held by the recipient in a fiduciary relationship. 105

Section 8(1) (e) uses the words ‘information available to a person in his fiduciary relationship’. Significantly Section 8(1) (e) does not use the words ‘information available to a public authority in its fiduciary relationship’. The use of the word ‘person’ shows that the holder of the information in a fiduciary relationship need not only be a ‘public authority’ as the word ‘person’ is of much wider import than the words ‘public authority’. Therefore the exemption under Section 8(1) (e) is available not only in regard to information that is held by a public authority (in this case the examining body) in a fiduciary capacity, but also to any information that is given or made available by a public authority to anyone else for being held in a fiduciary relationship. In other words, anything given and taken in confidence expecting confidentiality to be maintained will be information available to a person in fiduciary relationship. As a consequence, it has to be held that the instructions and solutions to questions communicated by the examining body to the examiners, head examiners and moderators, are information available to such persons in their fiduciary relationship and therefore exempted from disclosure under Section 8(1) (e) of the Right to Information Act. 106

The Supreme Court of India has delivered an important judgment regarding ACRs in Dev Dutt v. Union of India and Others. 107 The Supreme Court held that non-communication of an entry in the ACR of a public servant is arbitrary because it deprives the employee concerned from making a representation against it and praying for its up-gradation. Hence, such non-communication is violative of Article 14 of the Constitution. The court further stated that the rules of natural justice are not codified nor are they unvarying in all situations, rather they are flexible. The State must be a model employer, and must act fairly towards its employees. Only then would good governance be possible.

106 Ibid (Para 22).
We, however, make it clear that the above directions will not apply to military officers because the position for them is different as clarified by this court in Union of India v. Major Bahadur Singh.\textsuperscript{108} But they will apply to employees of statutory authorities, public sector corporations and other instrumentalities of the State (in addition to government servants). It may be noted that before this judgment of the Apex court, the Commission had taken a consistent view that ACRs are not disclosable.

In Col. H. C. Goswami (Retd) v. Army HQ, Ministry of Defence,\textsuperscript{109} the Commission in its decision stated that it had earlier consistently taken the stand that ACRs would fall under the mischief of Official Secrets Act and, therefore, would remain exempt under Section 8(2) unless the public authority concerned decided that ‘the public interest in disclosure outweighs the harm to the protected interests.’ However, the Supreme Court in Dev Dutt v. Union of India\textsuperscript{110} had put a different perspective on such a decision. The Commission extensively quoted from the judgment which held that ACRs should be disclosable except for the defence officials. The Commission noted that in the case under consideration, the appellant had now retired and was requesting for extracts of ACRs considered for his promotion to the rank of Brigadier. It was understandable that in the case of serving personnel, the disclosure of such information could seriously compromise discipline. However, in the case of a retired officer, the only effect of such disclosure could be to either confirm or rectify a promotion made in case of an error or oversight and, therefore at best could only lead to readjustment of pension benefits to applicant. The Commission therefore recommended disclosure of the overall profile of the appellant in considering his promotion which included the relevant extracts of the ACR.

Subsequently in P.K Sarin v. Directorate General of Works, Central Public Works Department (CPWD), New Delhi,\textsuperscript{111} in view of the decision of the Hon’ble Supreme Court in Dev Dutt v. Union of India & Others, the Commission decided to refer the matter to the Chief Information Commissioner for constitution of a full bench of the Commission to hear and decide the issue of disclosure of ACRs in view of the changed circumstances.

The Commission stated that the aforesaid Supreme Court decision related to communication of entries made in the ACRs, more particularly, the grade assigned to an

\textsuperscript{110} Dev Dutt v. Union of India, (2008) 8 SCC 725.
\textsuperscript{111} P.K Sarin v. Directorate General of Works, Central Public Works Department (CPWD), New Delhi, CIC/WB/N2007/00422.
employee (whether poor, fair, average, good or very good). This still left undecided the issue as to whether copies of the ACRs (whether photostat or certified) could be issued to an employee under the Right to Information Act. The Hon’ble Apex court had stated that the communication of entries to a public servant must enable him to make a representation against the entry to the concerned authority. The Commission observed that mere communication of an assigned grade will naturally not enable him to exercise his right of making a representation in an effective manner. However, this does not imply that it will necessarily be desirable to provide either a photocopy or a certified copy of the ACRs to a public servant. The Commission accordingly directed the public authority to communicate the entries in the ACRs to the appellant for the period asked for by him in his Right to Information application.

Subsequent to the judgment of the Supreme court in Dev Dutt v. Union India, on 12 May 2008, the Government of India, Department of Personnel issued an Office Memorandum on 14 May 2009 that Annual Confidential Report will be modified as Annual Performance Assessment Report (APAR) and the full APAR including the overall grade and assessment of integrity shall be communicated to the concerned officer after the report is complete with the remarks of the reviewing officer and the accepting authority wherever such system is in vogue. The Section entrusted with the maintenance of APARs shall disclose the same to the officer reported upon. The concerned officer shall be given the opportunity to make any representation against the entries and the final grading given in the report within a period of 15 days from the date of receipt of the entries in the APAR. The competent authority for considering adverse remarks under the existing instructions may consider the representation, if necessary, in consultation with the reporting and/or reviewing officer and shall decide the matter objectively based on the material placed before him within a period of 30 days from the date of receipt of the representation. The decision of the competent authority and the final grading shall be communicated to the officer reported upon within 15 days of receipt of the decision of the competent authority by the concerned APAR section. This new system of communicating the entries in the APAR was to be made applicable prospectively, only with effect from the reporting period 2008-9, which was to be initiated after April 2009.

It may be noted that prior to this instruction of DOP&T issued on 14 May 2009, the instruction was that ‘the public authority is not under obligation to disclose ACRs of any

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employee to the employee himself or to any other person in as much as disclosure of ACRs is protected by clause (j) of sub-section (1) of Section 8 of the Right to Information Act; and an ACR is a confidential document, disclosure of which is protected by the Official Secrets Act, 1923. However, the public authority has discretion to disclose the annual confidential reports of an employee to the employee himself or to any other person, if the public authority is satisfied that the public interest in disclosure outweighs the harm to the protected interests. If it is felt that public interest in disclosure of ACR of any employee outweighs the protected interests, decision to disclose the ACRs should be taken with the approval of the competent authority.\textsuperscript{114}

DOP&T issued the instruction for giving full annual performance assessment report (APAR) to the concerned officer after a year of the Apex court decision, but it made it applicable from the performance reports of the year 2008-9 which had been initiated after 1 April 2009. This leaves the question about non-communication of adverse entries or grading in the previous years. It would be of interest to see what would be the view of the Apex court regarding disclosure of ACRs in respect of previous years.

In \textit{Pritam Roaj v. University of Calcutta and Others,}\textsuperscript{115} the CIC in a full bench decision\textsuperscript{116} held that for examinations conducted by public authorities, the main function of which is not conducting examinations, the disclosure of evaluated answer sheets shall be the general rule. The court observed that the Act provides a right to receive information and the consequence of the making over of such information is immaterial in the matter of construction of its provisions. As to whether an examinee would use the information received on inspection of his answer script to undo the finality of the process of examination is not an argument that can be considered to curb the operation of the statute. The Act begins with the citizen’s right to obtain information and ends with the information being made available to him or his request being justly rejected on the grounds recognized by the Act; what happens before and what may be the consequence of the information being made available or rightfully denied is a matter beyond the operation of the Act.

Notwithstanding the principle of severability contained in Section 10 of the said Act, the answered paper with or without an examiner’s etchings thereon is not information exempted under any of the limbs of Section 8. Justice Banerjee further stated that much as an

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\textsuperscript{115} Pritam Roaj v. University of Calcutta and Others, AIR 2008 Cal 118.
\textsuperscript{116} Rakesh Kumar Singh v. Lok Sabha Secretariat, CIC/WB/C/2006/00223.
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examining body may owe an obligation to its set of examiners, it owed a greater fiduciary
duty to its examinees. The examinees were at the heart of a system and the examining body
and its examiners must cater to them. If a voter has a right to see the curriculum vitae of the
candidates who seek his insignificant vote, the right of the examinee to seek inspection of his
answer script is equally valid. If inspection of answer scripts is denied to the examinee, the
spirit of the constitutional right to expression and information may be lost. For a system to
foster meaningful proliferation of knowledge, it must itself be crystal clear to its core. In light
of this judgment, disclosure of answer sheets has to be done.

The CIC observed that they had decided in a number of earlier cases that fiduciary
relationship between the examiner and the authority conducting examination exists and, the
disclosure of the information is exempt under Section 8(1) (e). In Treesa Irish v. Kerala
Postal Circle, it was held that when answer papers are evaluated, the authority conducting
the examination and the examiners evaluating the answer sheets stand in a fiduciary
relationship with each other. Such a relationship warrants maintenance of confidentiality in
terms of the manner and method of evaluation. That is why while mark sheets are made
available, copies of the evaluated answer papers are not made available to the candidates. The
aforesaid decision was cited with approval in another case, J. Shabbudeen v. Director of
Postal Services. The exemption under Section 8(1) (j) had also been applied by the
Commission in case of disclosure of evaluated answer sheets in Archana S. Gawada v.
Employees State Insurance Corporation and Others. However, a different view was taken
in Rhudevi v. North Central Railway, Jhansi, where the appellant had some doubt as to
whether the paper examined was actually the paper that she had submitted. The Commission
had ordered that the complainant be shown the answer sheets which she had written in the
said examination.

The Commission noted the plea of the respondents that disclosure of the evaluated
answer sheets is exempted under Section 8(1) (g) as disclosure of the identity of the examiner
may endanger the life and physical safety of the examiner. The appellants, however,
submitted that they had requested for inspection/copies of the evaluated answer sheets and
they were not interested in knowing the identity of the examiners. The Commission then
examined the word ‘fiduciary’ put in Clause Section 8(1) (e) of the Act.

119 Archana S. Gawada v. Employees State Insurance Corporation and Others, PBA/06/103.
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The fiduciary relationship between the examiner and the authority conducting the examination is personal and it can extend only in so far as the disclosure of the identity of the examiner is concerned, but it cannot be stretched beyond that point and as such neither Section 8(1) (e) nor Section 8(1) (j) exempts disclosure of the evaluated answer sheets if the authority concerned ensures that the name and identity of the examiners, invigilators, scrutiniizers, and any other person involved with the process is kept confidential.121

As for the application of Section 8(1) (j) to deny disclosure of personal information that has no public interest, the Commission held that ‘personal information’ does not mean information relating to the information seeker, but about a third party That is why, the section, deals with ‘unwarranted invasion of the privacy of the individual’. If one were to seek information about himself or his own case, the question of invasion of privacy of one’s own self would not arise. Therefore, when a citizen seeks information about his own case and as long as the information sought is not exempt in terms of other provisions of Section 8 of Right to Information Act, this section cannot be applied to deny the information. Thus, applying the provisions of Section 8(1) (j) is not sustainable denial for inspection/verification of his own answer sheets by a citizen.

The Commission then examined the matter from another perspective, that is, ‘larger public interest’. The Commission noted that the Supreme Court has examined the issue of public interest in the matter of allowing candidates to inspect their answer books or the revaluation of the answer papers in the presence of the candidates, in Maharashtra State Board of Secondary and Higher Education v. Paritosh Bhupesh Kumar Sheth & Others.122 In that case, the rules framed by the said Board provided: No candidate shall claim or be entitled to revaluation of his answers or disclosure or inspection of the answer books or other documents as these are treated by the Divisional Board as most confidential. The constitutional validity of the above rule was challenged as being in violation of the principles of natural justice. The Supreme Court held that the principles of natural justice cannot be extended beyond reasonable and rational limits and cannot be carried to such absurd lengths as to make it necessary that candidates who have taken a public examination should be allowed to participate in the process of evaluation of their performances or to verify the correctness of the evaluation made by the examiners by themselves conducting an inspection

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of the answer books and determining whether there has been a proper and fair valuation of the answers by the examiners.

The Supreme Court has again affirmed the said decision in the President, Board of Secondary Education, Orissa v. D. Suvankar, stating that it is in the public interest that the results of public examinations, when published should have some finality attached to them. If inspection, verification in the presence of candidates and revaluation is to be allowed as a matter of right, it may lead to gross and indefinite uncertainty, particularly in regard to the relative ranking etc. of the candidates, besides leading to utter confusion on account of enormity of the labour and time involved in the process. The court should be extremely reluctant to substitute its own views as to what is wise, prudent and proper in relation to academic matters in preference to those formulated by professional men possessing technical expertise and rich experience of actual day-to-day working of education institutions and the departments controlling them.

Later, in Manoj Kumar Pathak v. CBSE, the appellant sought information from CBSE, Allahabad to intimate details of question-wise marks in the Chemistry paper of class XII in the year 2006 for certain roll Nos. The CPIO, CBSE replied that such information was exempted under Section 8(1) (e). The first appellate authority, while upholding the decision of the public information officer held that as per the examination byelaws and the CIC full bench decision, no candidate had a right to obtain question-wise marks from CBSE. The Information Commissioner, in his decision, stated that the matter had to be decided, on the basis of the Right to Information Act only. The onus of proving that the denial was justified was on the PIO and as the PIO was unable to advance a justifiable reason for denying the information, the CBSE should provide question-wise marks to the appellant before 30 December 2008.

In Mukesh Chaturvedi v. North Western Railway, Jaipur, the appellant sought information/documents regarding the question-wise and sub-question wise marks secured by him for the examination held for the post of Assistant Personnel Officers in 2007. The appellant also wanted to inspect answer-sheets of the other candidates who had qualified in the examination. In its decision, the Commission directed the respondents to provide the question-wise and sub-question wise marks to the appellant. Further, the appellant was to be

172
shown the answer-sheets of the candidates that he wanted but without providing him a copy of the same. In case he wanted a copy of his own answer-sheets, this was to be provided to him.

If the rules and regulations of the examining body provide for re-evaluation, inspection or disclosure of the answer books, then none of the principles in *Maharashtra State Board case* or other decisions following it will apply or be relevant.126

If an examination is governed only by the rules and regulations of the examining body which bar inspection, disclosure or re-evaluation, the examinee will be entitled only for re-totaling by checking whether all the answers have been evaluated and further checking whether there is no mistake in the totaling of marks for each question and marks have been transferred correctly to the title (abstract) page. The position may however be different, if there is a superior statutory right entitling the examinee, as a citizen to seek access to the answer books, as information.127

Re-evaluation of answer books is not a relief available under the Right to Information Act. Therefore, the question whether re-evaluation should be permitted or not, does not arise. In the case of CBSE, the provisions barring re-evaluation and inspection contained in bye-law 61.128

However, in view of Section 22, Right to Information Act, the provisions of the Right to Information Act will prevail over the provisions of the bye-laws/rules of the examining bodies in regard to examinations. As a result, unless the examining body is able to demonstrate that the answer books fall under the exempted category of information described in Section 8 (1) (e), Right to Information Act, the examining body will be bound to provide access to an examinee to inspect and take copies of his evaluated answer books, even if such inspection or taking copies is barred under the rules/bye-laws of the examining body governing the examinations. Therefore, the decision in *Maharashtra State Board case* and the

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127 CBSE and another v. Aditya Bandopadhyay and Others (2011) 8 SCC 497 (Para 34).

128 CBSE and another v. Aditya Bandopadhyay and Others (2011) 8 SCC 497 (Para 35 and 34).

In *Rakesh Kumar Singh & Others v. Lok Sabha Secretariat & Others*,\footnote{Rakesh Kumar Singh & Others v. Lok Sabha Secretariat & Others, CIC/WB/C/2006/00223, CIC/WB/A/2006/00394.} the full bench of the Commission held that the proceedings of the departmental promotion committees or its minutes are not covered by any of the exemptions provided for under Section 8(1) and, therefore, such proceedings and minutes are to be disclosed. Disclosure of proceedings of departmental promotion committee (DPC) and selection committee meetings was also affirmed by the Commission in *Sharda P. Meshram v. DOP&T*,\footnote{Sharda P. Meshram v. DOP&T, CIC/WB/A/2006/00959 & 1078.} *Jyoti Legha v. UPSC*,\footnote{Jyoti Legha v. UPSC, CIC/WB/A/2007/00145.} and *N.M Chavda v. UPSC*.\footnote{N.M Chavda v. UPSC, CIC/WB/A/2007/00311.}

In *Bijendra Singh v. Civil Aviation Department*,\footnote{Bijendra Singh v. Civil Aviation Department, 1149/IC(A)/2007.} the issue was disclosure of question papers for Pilot License Examination conducted by DGCA. The question bank in such examination is very limited, about 500 questions for 5 to 6 papers. These questions are frequently repeated, to the extent of 80 per cent. The public authority argued that disclosure of question papers for such examinations along with model answers would totally disturb and jeopardize the selection process, as it would be easy for commercial organizations to disseminate the questions and answers to make it easier for candidates to qualify the examination without having acquired the requisite knowledge and skills for discharging professional duties and responsibilities. Lack of adequate knowledge and competence of pilots would endanger the life and safety of people and would result in huge loss of resources. The Commission in its decision upheld the denial of information as the conduct of selection process, including examinations in such a specialized area as recruitment of pilots and crew operators is to be handled with utmost care and responsibility.

In *P.S. Bedi v. AIIMS*,\footnote{P.S. Bedi v. AIIMS, 646/ICPB/2007.} the appellant inter-alia sought his son’s answer sheet and answer key for the MBBS entrance examination conducted by AIIMS. The same was refused under Section 8(1) (d) and 8(1) (e) of the Right to Information Act. The AIIMS informed the Commission that it had constituted a committee that consisted of reputed academicians of
AIIMS, IIT, and CBSE to decide on this issue. The committee was of the view that providing the answer key and evaluated answer sheet/OMR sheet of the applicant could damage the entire examination process. Further, the questions and answers prepared and edited by AIIMS was ‘intellectual property’ of the institution as these questions constituted part of question bank likely to be used again, and the disclosure of key would be against larger public interest.

The Commission, while quoting the full bench decision of the Commission in Complaint No. CIC/WB/C 2006/00223 dated 23 April 2007, stated that the said decision was applicable in the case under consideration also. In that case, the disclosure of the answer key was not an issue but the same ratio was applicable to the disclosure of the key as far as AIIMS was concerned, especially in view of the reasoned decision taken by the committee constituted by AIIMS. As such the decision of AIIMS to decline furnishing of copies of answer sheet and key was upheld.

Further, In B.L. Goel v. AIIMS, the appellant sought copy of the entrance examination question paper for MD/MS (containing 300 questions), copy of correct answer-sheet to the 300 questions, and mark sheet with rank of the candidate who appeared in the exam. The CPIO and the appellate authority of AIIMS denied the question paper and the correct answer sheet on the basis of recommendation of the committee constituted for the purpose. It was also stated that disclosure of all the questions/answers to the candidates will deplete the question bank which with time may exhaust all the options, especially when the number of questions which can be asked in any specific area of medical science is limited. Regarding the candidate’s marks sheet/rank, AIIMS averred that as per examination prospectus, the Institute does not issue or supply or intimate the marks/ranks to unsuccessful candidates.

The Commission noted that AIIMS conducts various entrance examinations for admission into the MBBS and post graduate courses. The Commission stated that in normal circumstances, there should not be any objection to hand over the question paper as well as answer keys to the candidates. However, in one of its decisions, the Commission had decided that answer sheets could not be given to candidates. Regarding the answer key and the question booklet, after going through the AIIMS Committee report and the submissions made by the CPIO and AA during the hearing, the Commission concluded that the AIIMS was taking all precautions in conducting examinations in a most satisfactory manner and they had

also evolved a foolproof system with in-built checks. Considering all these aspects, the CIC upheld the AIIMS decision.

Later, in *Mangla Ram Jat v. Banaras Hindu University*, the Commission overruled the *B.L. Goel v. AIIMS* decision. The appellant sought complete text of MD/MS Examination-2008 question paper along with the standard answer key. The Commission in its decision stated that any refusal of information had to be only on one or more grounds mentioned in Section 8(1) or Section 9. The Act gave no scope to the adjudicating authorities to decide on new exemptions other than those that have been provided under the Act and thereby deny information. Further, a similar question relating to revealing information regarding exam details came up for consideration under the Act before the Hon’ble High Court of Calcutta in the matter of *Pritam Rooj v. University of Calcutta and Others*. This judgment, which was pronounced on 28 March 2008, after the orders of the Commission which have been relied upon by the respondent (*B.L. Goel v. AIIMS*) states that the penumbra of exemptions must be kept confined to the specific provisions in that regard and no penumbra of a further body of exemptions may be conjured up by any strained devise of construction. The Commission therefore disagreed with the view taken by the Commission in *B.L. Goel v. AIIMS*. However, it is felt that if Banaras Hindu University has a limited question bank for the MD/MS examination and revelation of the same can compromise the future selection of candidates, there is a need to take a relook into the matter. Further, in view of different rulings on the same subject by the same Commission, it is recommended that a mechanism is evolved to resolve such cases.

In *Milap Choraria v. President’s Secretariat*, the Commission held that the fiduciary relationship was a relationship of trust. The word ‘fiduciary relationship’ in Section 8(1) (e) had to be read keeping in mind the objectives of the Act and must be interpreted taking into account what had been spelt out in the preamble of the Act. Sensitivity of the information and necessity to preserve confidentiality need to be, therefore, treated as the determining factors for determining the ambit and scope of the Section 8(1) (e). This would justify exemption from disclosure claimed by the CPIO in the case, if read in the context of the preamble of the Act. The Commission held that communication between the President of India and a leader of a political party and the correspondence between them concerning

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176

139 Milap Choraria v. President’s Secretariat, CIC/WB/A/2006/01003.
formation of a government was information exchanged in confidence and was politically sensitive in nature.

Further, regarding public interest, the Commission noted that the provisions of Section 8(1) (e) make it clear that it is for the competent authority to satisfy itself as to what the larger public interest warrants. In the case under consideration, the concerned public authority that was also the competent authority as defined under Section 2(e) (iv) of the Act had taken a conscious decision that the larger public interest did not warrant disclosure of the information which had been held by them to be confidential and sensitive. The Commission held that it did not intend to interfere with this decision of the competent authority unless such satisfaction was shown to be arbitrary.

In *Mukesh Kumar v. Registrar, Supreme Court of India and Department of Justice,* the appellant *inter-alia* sought a copy of recommendation/consultation (any one during past 10 years) submitted to the President of India under Article 124(2) of the Constitution on the appointment of judges of various ranks in the Supreme Court and High Courts. The same was denied. The Commission held that the type of information which was provided by the persons contending to be judges, as well as the information collected from various other sources by the Hon’ble Supreme Court in order to equip the Apex court to discharge its constitutionally ordained role of advising the President of India regarding who to appoint as judges, was in the nature of personal information provided by a third party and thus attracted Section 11(1) of the Right to Information Act, 2005. It also attracted exemptions under Section 8(1) (e), being information given to the charge of the Chief Justice of India by those under consideration for selection as judges, in trust and in confidence. It created a fiduciary relationship between the Apex court and those submitting personal information to its charge. Disclosing any such information would be violative of fiduciary relationship as well as the confidence and trust between the candidates and the Supreme Court. As such, it was decided that this entire process of consultation between the President and the Supreme Court was exempted from disclosure.

However, later in *Subhash Chandra Agarwal v. President’s Secretariat and Department of Justice,* the appellant had asked for a copy of the complete file ‘including file notings and opinion of the Supreme Court Collegium of the Hon’ble judges confirming

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140 *Mukesh Kumar v. Registrar, Supreme Court of India and Department of Justice,* CIC/AT/A/2006/00113.
141 *Section 8(1) (e) of Right to Information Act, 2005.*
142 *Subhash Chandra Agarwal v. President’s Secretariat and Department of Justice,* CIC/WB/A/2006/00460.
the appointment of Justice Vijender Jain as regular Chief Justice of Punjab & Haryana High Court. He also wanted copies of correspondence between the President, the Prime Minister, and the Chief Justice of the Punjab & Haryana High Court. The appellant submitted that relationship between the judges and the Chief Justice; all functioning in their official capacity cannot be construed to be fiduciary as claimed by the CPIO in the Department of Justice. In support of this argument, the decision of the Hon’ble Apex court in S.P. Gupta v. Union of India which dealt extensively with the disclosure of correspondence between the Law Minister, Chief Justice of the Delhi High Court, and the Chief Justice of India was quoted. The Commission took note of the observations of the Hon’ble Justice Bhagwati and held that the correspondence between the Chief Justice of the Supreme Court and the Law Minister on the recommendations for appointment of Hon’ble judges cannot be excluded. The Commission held that the disclosure was not covered by any of the exclusion clauses specified in Section 8(1) of the Right to Information Act.

The Commission was shown in confidence the letter containing the decision of the collegium which was conveyed to the Law Minister by the Hon’ble Chief Justice which contained a reference to a number of persons who were not a party to the proceedings and accordingly they were held to be third party. The Commission accordingly decided that before disclosing the information, the PIO would invite the third parties to make submissions in writing or orally regarding whether the information with respect to them should be disclosed. In case there was valid ground for disclosure, the information sought would be supplied to the exclusion of the exact objectionable portion as prescribed under the principle of severability. The Union of India preferred a writ petition in Delhi High Court against this decision of the CIC.

In another case, S.C. Agrawal v. Supreme Court of India (SCI), the appellant sought the correspondence exchanged between concerned constitutional authorities regarding the appointment of certain judges superseding a number of senior judges. On being denied the same, he appealed to the CIC. The Commission in its decision held that the recommendation of appointment of judges is decidedly a public activity conducted in the overriding public interest. Hence, the plea of seeking exemption under the definition of fiduciary relationship cannot stand, and even if accepted in technical terms, will not withstand the test of public

144 Section 10 of the Right to Information Act, 2005.
interest. The Commission directed that the information be provided to the appellant. However, on 1 December 2009, the Supreme Court moved before itself a petition challenging the order of the CIC which had directed it to divulge information relating to appointment of judges, and on 4 December 2009 stayed the CIC direction. It has been reported that the Chief Justice of India has made a request to the Prime Minister to bring a change in the Right to Information Act as chronic litigants about the judiciary could erode its independence.147

3.1.6 EXEMPTION 6-Information received in confidence from foreign government

Section 8(1) (f) provides as under:

“Notwithstanding anything contained in this Act, there shall be no obligation to give any citizen, information received in confidence from foreign Government”

The information which is received from the foreign government and is confidential is exempted from the disclosure.

As per Section 8(1) (f) of the Right to Information Act a public authority shall refuse to disclose any record that contains information that was obtained ‘in confidence’ from the government of a foreign state. Although the word ‘foreign government’ has been used in this section but it can be safely presumed that it also includes any public authority of foreign government also. This is a grey area which would settle in due course either through courts or by a legislative measure. It should be noted that it is doubtful whether the exemption does include information received from constituent parts of foreign States (e.g. state governments in the United States).

The information received from an international organization of States or a public authority thereof may also be treated as exempted under this section. Here again, there are many international organizations, such as, UNO and its various organs which supply information to various states in confidence and such organizations are treated at par with foreign governments.

Where the status of information provided to a public authority prior to the proclamation of the Act is in doubt, the public authority which originally obtained the

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147 The Times of India, New Delhi, 7 December 2009, p.1.
information should consult the other government or international organization which provided the information, at the time an access request is received, to determine whether or not it considers that the information was provided ‘in confidence’ and retains that status. Copies of information received ‘in confidence’ by one public authority are often in the files of several other public authorities. Because of the nature of this exemption, it is important that all copies of such information be protected from disclosure. To ensure such protection, public authority receiving information ‘in confidence’ from other governments or international organizations should ensure that the information is marked as having been obtained ‘in confidence’ and the source indicated before copying for distribution to other public authorities. Further, public authority should not disclose information marked in any way as being received ‘in confidence’ that was provided to them by another public authority without first consulting with the public authority having provided the information to verify whether or not the ‘in confidence’ status still applies to the information requested.

Where public authorities are in receipt of documents which are clearly misclassified (such as thank you notes marked confidential), the supplying government or organization should be contacted and asked to agree to declassification of the document. If declassified, all parties with whom the document has been shared should be so notified. The point to bear in mind in such situations is that the content, not the classification of a document, is the determinative factor when considering disclosure.

It seems in order if the head of a public authority disclose information obtained ‘in confidence’ from another government or an international organization if the government or organization from which the information was obtained consents to the disclosure; or makes the information public.

In *Arun Jaitely v. CBI*, the appellant sought information regarding correspondence exchanged between the Crown Prosecution Service of the United Kingdom, Interpol, and the CBI, advices received from expert counsels on various issues relating to the freezing and defreezing of the bank accounts of Ottavio Quattrocchi and other on-going investigations. The same was denied on the ground that the matter was *sub judice* and that disclosure of information would impede the process of investigation and prosecution of offenders. The CBI also claimed exemption on the ground that the communications with other external agencies

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which were cooperating on the matter were ‘privileged communications’ and hence, exempt from disclosure under Section 8(1) (f) and 8(1) (e).

The Commission upheld the decision of the CBI but observed that the CBI had been investigating the case for nearly 16 years without much success. Though the CBI had claimed exemptions from disclosure of information on valid grounds, these exemptions would not be available after the expiry of 20 years. The CBI was, therefore, directed to expedite the investigations.

3.1.7 EXEMPTION 7-Disclosure which would endanger life/physical safety

Section 8(1) (g) provides as under:

“Notwithstanding anything contained in this Act, there shall be no obligation to give any citizen, information, the disclosure of which would endanger the life or physical safety of any person or identify the source of information or assistance given in confidence for law enforcement or security purposes.”

Such information, the disclosure of which would endanger the life or the physical safety of any person is exempted. The identification of the source of information or the assistance given in confidence for law enforcement or security purposes is not accessible. This section of the Right to Information Act provides that a public authority may refuse to disclose any record that contains information the disclosure of which could reasonably be expected to threaten the safety of individuals.

For invoking exemption under this section, it is incumbent to show that the information relates to assistance given for law enforcement and security purpose; the information was given in confidence and the disclosure would cause a risk to the life or physical safety of an informer, witness, government official or anyone else. While disclosing information it is to be supported by a speaking order as to how the disclosure is likely to endanger the life or physical safety of a person.

This is a discretionary exemption subject to the injury test which permits a public authority to refuse access to information if it has reasonable grounds to expect that disclosure of the information could threaten the safety of an individual. This exemption will normally apply to information supplied by or about informers i.e. individuals who provide information concerning criminal, subversive, or hostile activities but need not be exclusively so applied. It could also, for example, apply to information such as the floor plans of selected government
buildings. Before disclosing information supplied by another public authority which could affect the safety of individuals, the policy requires that public authority consult with the supplying public authority to ensure that the disclosure will not physically endanger the individuals involved. An informer is a person who provides information in respect of violations of penal laws usually for a financial reward. He may be a member of a criminal gang or any other group who provides the authorities information about his own group and its members or rivals. Informers play a significant role in solving important cases and ensuring the safety of their informers is primarily the responsibility of the law enforcing agency and there is a public interest involved in it.

All nations indulge in espionage activity of varying degrees to defend its interests. Espionage or spying involves obtaining information that is considered secret or confidential without the permission of the holder of the information in a clandestine manner. The law enforcing agencies including the revenue service come across applications from such informers asking for information related to search and seizure, reward, arrest, progress of investigation etc.

Exemption may be claimed in respect of disclosure of the names of the officials who gave their evidence in the disciplinary proceedings against any employee. The authorities engaged in law enforcement are not required to disclose the source of their information or the assistance received by them for law enforcement. However, in all such cases, information may be disclosed by severing from it the portion which would identify the persons or source of information.

A whistle blower is a person who tells the public or someone in authority about alleged corrupt or illegal activities occurring in a government department, a public or private organization, or a company. The whistle blowers frequently face reprisal at the hands of the organization they have accused and sometimes under law. Demand for an Act for their protection has intensified after the Manjunath\textsuperscript{149} and Satyendra Dubey\textsuperscript{150} episodes. The wikileaks has further brought the debate on the issue to the forefront. As the disclosure of the identity of person can cause a risk to his physical safety a PIO should exercise caution in such

\textsuperscript{149} Shanmugam Manjunath (1978 - 2005) was a marketing manager (grade A officer) for the Indian Oil Corporation (IOC) who was murdered for sealing a corrupt petrol station in UP. This incident inspired several students at IIM, IIT and other institutes. (Form Wikipedia)

\textsuperscript{150} Satyendra Kumar Dubey (1973 - 27 November 2003) was a project director at the National Highways Authority of India (NHAI). He was murdered in Gaya, Bihar after fighting corruption in the Golden Quadrilateral highway construction project. (Form Wikipedia)
cases. If the identity of the person is already known, the disclosure of the same would cause little effect to threat to the life or physical safety.

This exemption protects public interest by not disclosing the identity of source of information or assistance given in confidence either for law enforcement or for security purposes. This exemption further defends the public interest by not disclosing information which would endanger the life or physical safety of any person.

A public authority may refuse to disclose a record that contains information the disclosure of which could reasonably be expected to be injurious to the security of a penal public authority. This is a discretionary exemption based on an injury test designed to protect information relating to the security of penal public authorities, such as that which could be useful in an escape attempt or which relates to the location of arms storage facilities in a public authority. If the PIO is of the considered opinion that the disclosure of the information may endanger the life or physical safety of any witness or officer, he may sever such names from the desired information by applying the severability clause under Section 10 of the Right to Information Act, 2005.151

It is not understandable why the appellant wishes to access the names of the officers who provide information to the public authority which leads to unearthing seizure of narcotics and arrest and prosecution of the traffickers. There is no merit in the respondents’ argument that these officers performed a confidential duty and disclosure of their names has had the potentiality to expose them to risk at the hands of those criminals whom they brought into book. The fact that their names were disclosed anyway during court proceedings is not sufficient reason for that disclosure under the Right to Information Act, which specifically bars such disclosures under Section 8(1) (g).152

The third party has produced no evidence which would lead the Commission into believing that of the appellant is likely to endanger the physical safety of Mahendra Kumar Sharma. It has been only claimed that of the appellant is a habitual complainant and the mere allegation of this nature does not establish any ground to believe that the appellant can endanger the physical safety of Mahendra Kumar Sharma.153 There is no reference whatever

131 Devender Singh v. Vigilance, Police Bhawan, New Delhi, CIC/SS/C/2010/000054.
183
to sources of information or assistance given in confidence for law enforcement or security purposes. The plea of exemption on his ground is totally untenable.\textsuperscript{154}

The Commission comes to the conclusion that the threat perception claimed by the respondents does not appear to be serious and credible. In view of this the Commission comes to a conclusion that the statements of the witnesses as well as file notings must be released to the appellant. However, the Commission recognizes that the witnesses who are third parties may have some objections in releasing their statements. In view of this the Commission directs the PIO to write to all the witnesses whose statements have been recorded and asked them if they have any objections in release of their statements to the appellant.\textsuperscript{155}

In Harishchandra Joma Mhatre, Mumbai v. Central Vigilance Commission, the complainant asked whether his name being ‘whistle blower’ was forwarded to Hon’ble Supreme Court or not? If yes, please supply the list. If not, please state the reasons if possible....The only issue here appears to be the question of whether appellant is on the whistle blower list and if so, disclosure of the list. Clearly the stand taken by the CVC in not disclosing the list is fully in conformity with Section 8(1) (g).\textsuperscript{156}

The appellant is already aware of the identity of the person who had sought information about him and against whom he had filed an FIR for sending criminals to attack him, the Commission holds that the information need not any longer be held back under the exemption clause, 8(1) (g).\textsuperscript{157}

If the reason for non-disclosure of this information is a potential threat, its disclosure can pose for a person, such reasoning loses all steam since the information has reached the requester already from another source. Disclosure now will not endanger a person’s physical safety any more than it already has.\textsuperscript{158}

The information asked for, mainly the investigation report is an important document on the basis of which the appellant’s services have been terminated. Now, since the investigation process is complete and over and that disciplinary action has already been

\textsuperscript{154} Rajendra Sikhsena v. Central Vigilance Commission (CVC), CIC/WB/A/2007/00350.
\textsuperscript{156} Harishchandra Joma Mhatre, Mumbai v. Central Vigilance Commission (CVC)/CIC/WB/A/2008/01579
\textsuperscript{157} Dr. Surendra Kumar Yadav v. NIH&FW, CIC/AD/A/2009/001331
\textsuperscript{158} P.M. Sharma v. The Commissioner of Central Excise & CPIO, Delhi-Delhi, Faridabad, CIC/AT/A/2007/00005
taken, there is no justification for denial of information under Section 8(1) (g) of the Act. If the investigations are over, the report can be disclosed by applying the severability clause of Section 10 to blank out the names of those who have provided the information in confidence.

The Commission is of the opinion that the said information cannot be divulged by merely using Section 10(1) of the Right to Information Act, 2005 since the noting in itself when read in their order reveals the position of the signatory. Consequently, the information about the notings may put the officers concerned at risk by establishing the identity of the officer/s who had given the said opinion merely in discharge of his official duty and had rendered assistance in confidence at various stages before or during seeking the prosecution sanction. The disclosure of ‘file notings’ on the issue of imposition of penalty would identify the officials who have given their opinions and analysis in the case, the revealing of which might endanger their life. File-notings in confidential files are not to be disclosed.

The exemption in Section 8(1) (g), sub-serves the cause of good governance, i.e. the requirement that a public authority must find right people for right jobs and, when it acts against some of its employees, it does so based on credible information. Discreet enquiries are the tools to generate such actionable information. There is scope for misuse, but this is exceptional, and like all exemptions, this one too proves the rule disclosing names of enquiry Officers (EO) and those assisting in the enquiry by providing evidence is barred by the exemption under Section 8(1) (g) of the Act as, not only no enquiry would remain discreet, they would be exposed to wholly avoidable pressures and might even come to harm.

CIC has consistently held in past cases, that reports prepared by a public authority or its employees, on the basis of a citizen’s petition/complaint should be disclosed, albeit with the precaution of deleting from the body of such reports portions that would attract Section 8(1) (g). This logic can be further extended to cover cases in which the public authority

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159 5831/K/2/A/2010
160 Prakash Chandra v. D. Verma, Dy. Secretary (Vigilance) & PIO, Govt. of NCT of Delhi. CIC/SG/A/2009/000015/2695
161 S.R. Meena v. HQ Office, WCR, Jabalpur. CIC/AD/A/2010/000705
164 Somesh Tiwari v. C.S. Prasad, Addl. DG (Vig) & CPIO, Directorate General of Vigilance, Customs & Central Excise, CIC/AT/A/2006/00565
Moto or, through its employees, has a report prepared which has the effect of impacting a citizen in myriad ways.\textsuperscript{165}

The report which the appellant has sought to access forms the basis for the public authority to move for cancellation of the license of the appellant to practice as a Chartered Accountant (CA). Matters such as this should not be kept shrouded in secrecy. While the file in which the complaint against the appellant was dealt with, could be barred from disclosure under Section 8(1) (g), no such compulsion attaches to the report prepared at the end of an enquiry into the complaint. Such report must be disclosed after severing from its body material such as names of deponents, witnesses, etc., which would otherwise attract exemption under Section 8(1) (g) of the Act.\textsuperscript{166}

The complaint itself covers the details of raids conducted and the names of those accused. It is correct that appended to this complaint is a list of witnesses. It is also a fact that the complaint has now been registered for alleged violation of the Official Secrets Act. The complaint itself only mentions the particular documents, which should have been official secrets, were found in the possession of the accused. The contents of that information are attached as annexure together with a list of witnesses...We cannot see how the disclosure of this complaint, now a public document having been submitted in open court and the details of which have already been disclosed in parliament will in any way impede the process of investigation or prosecution. Since the complaint itself has been filed before the court it cannot be a subject protected under the Official Secrets Act, 1923 having already entered the public domain by the very Act of having been filed thus.\textsuperscript{167}

In matters of complaints filed by members of the public against a public servant or an employee of the public authority, if the complainant’s identity is disclosed, it can lead to endangering the life or physical safety of the complainant, besides leading to the identification of the public authority’s source of information. In that case, it would attract the exemption under Section 8(1) (g) of the Right to Information Act...if the confidentiality of the communication from the general public to a public authority in regard to the functioning of that public authority’s employee is allowed to be breached, it will dry up an important source of information which public authority receives from the general public about its employees. Its net impact will be promoting corruption and official apathy towards public grievances and

\textsuperscript{166} Ibid.
\textsuperscript{167} Naresh Dixit v. Central Bureau of Investigation. CIC/WB/A/2009/00040Q

186
concerns. Right to Information Act and its provisions cannot be interpreted to promote such a negative development as this.\footnote{N. Saini \textit{v.} Life Insurance Corporation of India, CIC/AT/A/2008/01580}

On the question of disclosing income tax records relating to entries of certain alleged benami transactions and a copy of alleged statement of the assessee before the income tax authorities in which the assessee had allegedly conceded to such benami transactions, the Commission observed that it may even be dangerous to the life and safety of property of an assessee and thereby attract the exemption under Section 8(1) (g) of the Act. The Commission has held in several decisions that income tax assessments should not be disclosed and, if a search and seizure operation was mounted, information gathered during such operations would also be, immune from disclosure.\footnote{Bhushan Kumar \textit{v.} L.R. Sapra, Asst. Commissioner of Income Tax & Others, CIC/AT/A/2007/00068}

The disclosure of the documents relating to search and seizure operation, mainly, the panchanama is not in public interest, as the process of investigation by the investigating agencies and tax assessing officers are in progress. Therefore, exemption claimed by the CPIO and appellate authority under Section 8(1) (g), (h) and (j) is justified.\footnote{Sudhir Madhav Joshi \textit{v.} Directorate of Income Tax(Inv.), Pune, 561/IC(A)/2007}

Information on the basis of which the public authority carries out its search and seizure operations is undoubtedly confidential information in so far as it involves sources of such information, the deposition of witnesses, and help rendered by informants. Disclosure of this variety of information will unduly expose all those who help the public authority in its law-enforcement functions to wholly avoidable risks and physical danger. The exemption spelt out in Section 8(1) (g) rightly bars disclosure of this variety of information.\footnote{CIC/AT/N 2007/00305}

The daily diaries maintained by the police stations and first information reports (F.I.R.s) cannot be disclosed on account of the exemptions under Section 8(1) (g) and Section 8(1) (h) of the Right to Information Act.\footnote{Ravinder Kumar \textit{v.} Atay Kumar, Deputy Commissioner of Police & CPIO, Special Cell, PHQ, Delhi Police & Another, CIC/AT/A/2006/00188} Since the appellant as an accused himself was entitled to receive the documents which he had mentioned in his Right to Information petition, it should be presumed that he already has access to these documents...The appellant could be provided not the full reports of the investigating officers, but the concluding parts of the report containing the investigating officer’s findings...details of the daily diary, which contained in it names and addresses of informants, witnesses and other contacts of the police

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authorities, could not be disclosed to the appellant under Section 8(1) (g) of the Right to
Information Act. 173

The key issue before us in this case is the release of the copy of the complaint
together with the statement of the complainant recorded before the PS Kotla Mubarakpur. On
being questioned whether the law debarred providing a copy of the FIR to a person other than
the complainant or the accused, respondent police officer referring to Sec 154 (2) conceded
that there was no such bar. The FIR is a public document and an accused is entitled to have
its certified copy. As held in Jayat Bhai Lalu Bhai Patel v. State of Gujarat, 174 the denial of a
copy will be against the principles of natural justice and violative of Article 21 of the
Constitution... A copy of the FIR indeed cannot be denied to a party to the case although
under Section 154 (2) of the Cr.P.C. a complainant himself/herself receives this free of cost.
Insofar as the copy of the recorded statement of complainant is concerned this could be
construed as compromising security under Section 8(1) (g) and therefore, exempt from
disclosure at this stage when the investigation still proceeding, in case the statements were to
be changed under any pressure it would undoubtedly impede the investigation and subsequent
prosecution. However, in so far as the complaint itself is concerned this information is
eminently disclosable under the Right to Information Act read with Cr. P.C. 175 It is trite that
FIR is a public document and falls in public domain. 176 On this question of disclosure of the
FIR, this Commission has already held in CIC/WB/A/2009/00023 announced on 9.3.09 that
an FIR is disclosable. This decision has been upheld by the High Court of Delhi in Union Of
India v. Bhabaranjan Ray & Another WP(C) No. 7930/2009. 177

The Hon’ble Delhi High Court in its judgment dated 13.11.2009 has already observed
that the copy of FIR minus the name of informant has to be disclosed. 178 In some cases, the
Commission has taken the view that F.I.R.s, being the key to all investigations and
prosecutions of offenders, are generally exempted from disclosure. The respondents state that
the FIR relates to development of unauthorized colonies of agricultural land. Hence,
disclosing the details of the complainant could endanger their life and physical safety. The
respondent also claims that if the details of FIR are disclosed the suspects are likely to obtain

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173 Prem Peyara v. The Deputy Commissioner of Police & PIO, South West District, Delhi Police, New Delhi, CIC/AT/A/2006/08354
175 Guninder Gill v. Central Bureau of Investigation (C.B) & Bank Securities & Fraud Cell (BS&FC), CIC/WBC/2010/000152.
176 Indrani Prakash v. N.H.R.C., CIC/LS/A/2010/000993
177 Guninder Gill v. Central Bureau of Investigation (C.B) & Bank Securities & Fraud Cell (BS&FC), CIC/WBC/2010/000152.
the original documents from the victims and thus investigation could be hampered. Accordingly, it was upheld by CIC.179

A police inspector conducted an initial enquiry into the matter and the findings of the same were forwarded to senior officer in the police deptt., which was not final as the same was found to be false, motivated and biased one, thus, it was not accepted. The enquiry conducted by vigilance branch, PHQ revealed that the report of police inspector was biased one, thus, his suspension was ordered alongwith departmental enquiry. Such an exemption cannot be applied to a report that has been rejected and is considered unjustified, leading to the suspension of the police inspector in question.180

In Batla House encounter the applicant asked for details-(1) when the bodies of the victims of the encounter were brought to the hospital; (2) the names of doctors who conducted the postmortems along with their designations; (3) who prepared the postmortem report; (4) certified copies of individual postmortem reports; and (5) whether the bodies were handed over to the relatives or to the police after the postmortem. The commission decided that information in respect of points 1 and 5 would be provided. The Commission denied disclosure in respect of points 2 and 3 under Section 8(1) (g) and 8(1) (b) of the Right to Information Act. The earlier CIC decision No CIC/WB/N 2009/0023 dated 9.3.09 on disclosure of postmortem reports has been stopped from operation. The CPIO was asked to provide the postmortem reports after applying Section 10(1) of the Right to Information Act to severe those parts of the reports which are exempted from disclosure under Section 8(1).181

In the case of the FIR, we find that the names of the investigating team led by SI Mohan Chand Sharma (now deceased), a victim of the encounter, have been described together with the team that visited Batla House at 11.00 a.m. on the day of encounter. The name of the person lodging the FIR has also been mentioned. Similarly, the post mortem reports detail the names of the doctors of the AIIMS who conducted the post mortem. We readily agree that disclosure of this information could expose all these persons to uncalled for pressure, which could act as a major impediment in the process of investigation. Besides, such information would also merit exemption under Section 8(1) (g).182

If the information about who visits a police officer, specially police officers dealing with crimes, is allowed to be disclosed, it will inevitably lead to serious consequences for crime prevention and law-and-order administration. While every visitor to a police officer dealing with crimes may not be carrying information or offering his assistance for law enforcement, it would be extremely difficult, even impossible, to isolate such persons from the long list of daily visitors to the police crime offices. If the visitor’s register of police officers dealing with crime is allowed to become openly accessible, the information therein may not only compromise the sources of information to the law enforcement officers, it may even lead to the ‘visitors’ life being endangered by criminal elements. Non-disclosure of the information about who visited whom as contained in the visitor’s register at the police office premises is, therefore, an imperative which is fully covered by the exemption under Section 8(1) (g).183

The appellant has sought a copy of the visitor’s register of SP, ACB- CBI (Kolkata) for a specific period. The purpose of a visitor’s register is to record the names of all persons entering the premises of an organisation. Typically, the very nature of a visitor’s register is such that details of persons who have already visited a premise and recorded in the register can be viewed by a subsequent visitor while filling in his details. The appellant has not sought information regarding a specific visitor(s) and therefore, the Commission does not understand how the exemption under Section 8(1) (g) of the Right to Information Act is attracted.184 The recorded statements of what the appellant calls ‘defence witness’, who were ostensibly mobilized for supporting the defence version of the case. These cannot be disclosed as they attract the exemption under Section 8(1) (g).185 With regard to the CBI report and recorded statements of witnesses, the Commission denies disclosure of statements under Section 8(1) (g) of the Right to Information Act and directs the CPIO to provide the CBI report after using the severability clause 10(1) to remove names and designations of witnesses, enquiry officer etc.186

The appellant has sought a copy of the complaint based on which was instituted an inquiry against him. The PIO has stated that there was no specific complaint but that in the course of deposition certain statements were treated as a complaint based on which the

184 Sujit Kumar Mazumder, Advocate v. S. R. Mazumder, PIO & Superintendent of Police, CBI- Anti Corruption Branch, CIC/SM/N2011/000318/SG/13429
185 H.R. Kausik, Advocate v. Ravinder Yadav, Deputy Commissioner of Police & CPIO. South West District. Delhi Police, CIC/AT/A/2006/00556
186 A.G. Pashupathy v. Deptt Of Posts, CIC/AD/A/2009/001082
inquiry was instituted. The PIO is directed to give a copy of this deposition after severing under Section-10 the names of witnesses The PIO has claimed exemption under Section 8(1) & (g) for severing the names of witnesses The appellant has also sought any evidences given in the deposition 2 The PIO is directed to provide the names of any evidences (any photographs) which may have been given after severing those which would disclose the identity of the witnesses. The PIO is also directed to give an attested copy of the list of witnesses suggested by the appellant and indicate which witnesses were called for the inquiry.187

The PIO was directed to supply to the appellant within two weeks from the date of the receipt of the order a copy of the enquiry officer’s report/reports in respect of the three petitions as mentioned. Before disclosing the reports to the appellant, the names of deponents, witnesses or any other persons who might have assisted in the enquiry proceedings may be deleted in a suitable manner.188 The statements made by witnesses in a criminal enquiry cannot be deemed fiduciary even though they can be accepted as confidential Section 8(1) (e) therefore, exemption will not apply However, insofar as application of Section 8(1) (g) is concerned, only such information is exempted from disclosure “which would endanger the life or physical safety of any person or identify the source of information or assistance given in confidence for law enforcement or security purposes”.189

Section 8(1) (g) is designed to give protection to those who have assisted the security agencies in maintaining law and order. It is not expected to give a blanket protection even to those under prosecution or investigation suspected of criminal activity.190 Copies of the documents containing CVC guidelines and opinion of the Government of India and the Vigilance Department on the subject of rotation/transfer of award staff and officers were denied under Section 8(1) (g)...It is difficult to imagine how disclosure of relevant guidelines of the CVC or any direction of the Government of India or the vigilance department of the bank guidelines would endanger the life or physical safety of any person or identify the source of any information. It is clear that the CPIO of the bank has declined to provide the information sought on completely wrong grounds.191

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187 Ganga Sahay Meena v. Jit Singh, Public Information Officer & Dy. Registrar, Jawaharlal Nehru University, CIC/SG/A/2010/000272/7222
188 Bhagat Singh v. Arvind Deep, Deputy Commissioner of Police & PIO, Central District, Delhi Police, Darya Ganj, Delhi, CIC/A/2006/00144
189 K. Lal v. Dy. Commissioner of Police (West), CIC/WB/A/2008/00971 & 972
190 Pratap Singh Gandes v. Dy. Commissioner of Police (DCP), South West, CIC/WB/A/2007/01445
There is no content in the CBI report that could give rise to apprehension of any such danger to the life or physical safety of any person concerned. It mentions no witnesses, only the accused, officials engaged in various transactions and enquiring officers. Moreover, the report which was prepared by the SP, CBI is decidedly a public document because it goes into the root of alleged corruption that was prevalent in the Solar Energy Centre. Disclosure of information on those responses for restitution of children who could have been victims of criminal action, if asked for in general terms will qualify for exemption under Section 8(1) (g).

The clause for prohibition of publication in the juvenile justice cannot be deemed as exemption under Section 8(1) (g). A general disclosure of children reunited with their families could infringe not only Section 8(1) (g) but also constitute invasion of a family’s privacy safeguarded by Section 8(1) (j). The recorded statements of what the appellant calls ‘defence witness’, which were ostensibly mobilized for supporting the defence version of the case. These cannot be disclosed as they attract the exemption under Section 8(1) (g) of the Act.

It contained information received from informants and other sources on whom the public authority depends for tip-offs regarding tax evasion and avoidance and, other such irregularities. In that sense, such information attracts the exemption provision of Section 8(1) (g) of the Act. For any company to claim that its employees are capable of physically harming its senior officers is an extremely poor reflection on the company. It appears that Section 8(1) (g) of the Right to Information Act has been claimed by the respondent evidently to refuse the information sought by the appellant. If an organization really believes that its employees are capable of ‘endangering the life or physical safety’ of its senior officers, it should take steps to remove such officers.

In Kuldeep Kumar v. Commissioner of Police, New Delhi, the appellant sought ‘date-wise details of each and every investigational step(s) undertaken by the police to

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192 Dr. G.D. Sootha v. Central Bureau of Investigation (CBI), CIC/WB/A/2007/01464
193 Vijendra Kumar Rai v. Dept of Social Welfare, GCWT Delhi, CIC/WB/A/2006/01019
194 Ibid.
195 H.R. Kasnik, Advocate v. Ravinder Yadav, Deputy Commissioner of Police & CPPO, South West District, Delhi Police, CIC/A/2006/00556
197 Rajesh Gouhari v. U.S. Gaikwad, Public Information Officer & Deputy General Manager (HR), EdCIL (India) Ltd., Ministry of HRD, CIC/SG/A/2010/00643/11027

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examine the suspects and others thoroughly’. The police authorities argued that the information sought formed part of the police case diary and it was a privileged document as held by the Hon’ble Supreme Court. Also, the Allahabad High Court has held that ‘the case diary contains not only the statements of witnesses recorded under Section 161 Cr.P.C, and the site plan or other documents prepared by the investigating officer, but also reports or observations of the investigating officer or his superiors. These reports are of a confidential nature and privilege can be claimed thereof’. As such information sought was denied under Section 8(1) (g) of the Right to Information Act. The Commission agreed with the appellant authority’s averment that disclosing the details of the case diary would have far-reaching consequences in terms of the confidentiality of the information received by the police and may even endanger the physical safety of those examined by the police authorities. However, the Commission observed that each case would have to be examined independently, on the basis of facts specific to that case.

The information as to the names or particulars of the examiners/ coordinators/ scrutinizers/ head examiners are exempted from disclosure under Section 8(1) (g) of the Right to Information Act, on the ground that if such information is disclosed, it may endanger their physical safety. Those portions of the answer books which contain information regarding the examiners/ coordinators/ scrutinizers/ head examiners or which may disclose their identity with reference to signature or initials, shall have to be removed, covered, or otherwise severed from the non-exempted part of the answer books, under Section 10 of the Right to Information Act.199

A copy of the news/comments sent to the Ministry of Social Justice & Empowerment regarding inclusion of shakhwar tribe as sub-caste at Sr. No. 14 in Madhya Pradesh Scheduled Caste List and inspection of the concerned files was refused under Section 8(1) (j). Rejecting the argument, the Commission called for the file. Noting that the proposal for inclusion was rejected at the level of the Minister, and has not become subject to a Cabinet note which cannot be disclosed till such time as the decision taken, the Commission directed to disclose the comments of the recommendation letter.200

3.1.8 EXEMPTION 8-Impede process of investigation

Section 8(1) (h) provides as under:

199 CBSE and another v. Aditya Bandopadhayay and Others (2011) 8 SCC 497 (Para 53)
200 P. L. Shakhwar v. Registrar General of India. CIC/WBC/2007/00465
“Notwithstanding anything contained in this Act, there shall be no obligation to give any citizen, information which would impede the process of investigation or apprehension or prosecution of offenders.”

The information which would impede the process of investigation or which would impede the apprehension of offenders or which would impede the process of prosecution of the offenders is denied to be disclosed. A public authority may refuse to disclose a record that contains information obtained or prepared by any public authority, or part of a public authority, i.e. an investigative body in the course of lawful investigations pertaining to the detection, prevention or suppression of crime and the enforcement of any law of India or a province. This is a discretionary prejudice based exemption which protects the law enforcement records of police forces and investigative bodies akin to police forces.

It should be noted that here the term used is ‘investigation’ which is not limited to criminal law investigation & it may refers to investigations directed toward activities which are prohibited under central or state laws. These can, of course, include activities which are crimes and primarily, the activities referred to are those punishable as offences under central or state law. Potentially, however, investigation could extend to activities for which a civil law remedy exists. Public authority or investigating agency should consider disclosing information where they are satisfied that no injury will result from the disclosure i.e. it would not impede the process of investigation or apprehension or prosecution of offenders.

It is important to note that the exemption under Section 8(1) (h) may be claimed for a record in the hands of a public authority other than an investigative body as long as the record was prepared by, or at one point came into the hands of such an investigative body in the course of an investigation. Thus, for example, the Department of Health and Welfare can claim an exemption under this section for a report it holds which was originally prepared by the Narcotic Bureau during a narcotics investigation.

Under this section the public authority may refuse to disclose information relating to investigative techniques or plans for specific lawful investigation. Any information relating to an investigative technique can be protected under this exemption. Plans, however, must relate to a specific lawful investigation. The term ‘lawful’ means that the investigation itself must not be contrary to law. It does not, however, address the issue as to the legality of the investigative techniques used.
This exemption protects the integrity and effectiveness of the process of investigation or apprehension or prosecution of offenders. The type of investigation to which this exemption can be applied is limited in two ways: (a) The investigation must be lawful. This means that it must not be contrary to law; and (b) The investigation must come within the definition of the term ‘investigation’. Therefore, it must pertain to the administration or enforcement of an Act of parliament or State; be authorized by or pursuant to an Act of parliament or State; be within a class of investigations specified in the rules.

It should be noted, however, that other more general types of investigative activities not specifically authorized by law or undertaken for the purposes of administering or enforcing law, such as program evaluations, internal audits and other such studies and analyses would not qualify as an investigation under this section and, therefore, could not be exempted under this provision. Prior to determining whether to exempt or disclose information on the basis of injury to the enforcement of a law or the conduct of lawful investigations, it is suggested that public authority must consult with the investigative body or other public authority with primary interest in the law being enforced or specific investigation involved.

The case of Bhagat Singh v. CIC\textsuperscript{201} is of direct relevance to the application of Section 8(1) (h). The CIC held that as the investigation on TEP had been conducted by the Director of Income Tax (Investigation), the relevant report was the outcome of public action which needed to be disclosed. It therefore, could not be exempted under Section 8(1) (j). Accordingly, the Director of Income Tax (Investigation) was directed to disclose the report, after the entire process of investigation and tax recovery, if any, was complete in every respect.

In Secretary, Ministry of Information and Broadcasting, Government of India & Others v. Cricket Association of Bengal & Others,\textsuperscript{71} the Supreme Court observed that under Section 8, exemption from releasing information is granted if it would impede the process of investigation or the prosecution of the offenders. It is apparent that the mere existence of an investigation process cannot be a ground for refusal of the information; the authority withholding information must show satisfactory reasons as to why the release of such information would hamper the investigation process. Such reasons should be germane, and the opinion that the investigation process will be hampered should be reasonable and based

\textsuperscript{201} Bhagat Singh v. CIC. WP(C) 3114/2007.
on some material. Sans this consideration, Section 8(1) (h) and other such provisions would become alibis for denial of information.

In another case Vishwanath Poddar v. Ministry of Company Affairs, the appellant sought information about some companies which was denied by the respondent on the ground that the prosecution was still going on. The Commission in its decision held that under the Right to Information Act 2005, a public authority cannot withhold information merely on the ground that the matter is *sub judice*. Even in regard to the matter where the prosecution is still continuing, the CPIO can provide the information subject to provisions of Section 10(1) of the Act by applying the doctrine of severability.

In Onkar Parsad alias O.P. Maheshwari v. Delhi Police, the CIC observed that FIR is the key to all investigations and prosecutions of offenders and is generally exempted from disclosure under Section 8(1) (h). The FIRs also attract the exemption of Section 8(1) (g) in so far as their disclosure is likely to identify the source of information or assistance given in confidence for law enforcement or security purposes. This position will hold good generally for all current investigations and prosecutions. FIRs of cases finally decided by the courts will not ordinarily attract the exemption of Section 8(1) (h). Separately, such FIRS will need to be tested against the requirement of Section 8(1) (g).

In Govind Jha v. E-in-C Branch, Army HQ, the Commission held that while in criminal law, an investigation can be said to be completed with the filing of the charge sheet in an appropriate court by an investigating agency, in cases of vigilance related enquiries, misconduct and disciplinary matters, the investigation can be said to be over only when the competent authority makes a determination about the culpability or otherwise of the person investigated against. In that sense, the word ‘investigation’ used in Section 8(1) (h) of the Act should be construed rather broadly and should include all enquiries, verification of records, assessments and so on which may be ordered in specific cases. In all such matters, the enquiry or the investigation should be taken as completed only after the competent authority makes a prima-facie determination about presence or absence of guilt on receipt of the investigation/enquiry report, from the investigation/enquiry officer. The CIC further stated that premature disclosure of investigation and related information has the potentiality to tar the employee’s reputation permanently, which cannot be undone even by his eventual

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exoneration. The balance of advantage thus, lies in exempting investigations/enquiries in vigilance, misconduct or disciplinary cases, etc. from disclosure requirements under the Act, till a decision in a given case is reached by the competent authority. The CIC concluded that therefore in investigations in vigilance related cases by CVOs or by departmental officers, as well as in all cases of misconduct, misdean
Another, etc., there should be an assumption of continuing investigation till, based on the findings of the report, a decision about the presence of a prima-facie case, is reached by a competent authority. This will, thus, bar any premature disclosure, including disclosure of the report prepared by the investigating officer, as in this case.

In *S.M Lamba v. Oriental Bank of Commerce*, the appellant sought copies of office notings on the basis of which prosecution against him was issued by the CBI. The appellant authority contended that as prosecution was in progress in the CBI Court, the appellant could have obtained the relevant documents for his defence through the trial court. The Commission upheld the exemption under Section 8(1) (h) applied by the appellate authority.

In another case, *S.P. Singh v. Central Board of Excise & Customs*, the appellant asked for copies of certain documents from a file, which contained papers relating to his prosecution. In this case, the CBI had filed a charge sheet in the court of special judge for CBI cases, based on the prosecution sanctioned against the appellant. The asked-for documents were denied under Section 8(1) (h), as at this stage, it would impede the process of prosecution of offenders. The appellant, however, contended that since prosecution had already been filed in the court of law, there would not be any impediment if the documents sought by him were provided to him. The appellate authority was of the view that prosecution in itself is a process and impediment may occur at any stage during prosecution.' The Commission decided that as the process of prosecution had been initiated, exemption under Section 8(1) (h) was justified.

In *Ravinder Kumar v. Joint Commissioner of Police (Vigilance), New Delhi*, the Commission held that the enquiry report with all documents was already in the public domain. Also the Hon’ble High Court had not imposed any prohibition on the police to keep the documents confidential. The CIC concluded that no coherent basis was found for the

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206 *S.P. Singh v. Central Board of Excise & Customs*, 191(ICA)/2006 CIC/MNN2006/00519
appellant’s contention that the request for information of the applicant would come under Section 8(1) (h).

When the appellant is the initiator of the prosecution and investigation has been completed and the matter is at the stage of prosecution, denying information to the appellant to satisfy herself that the police is not seeking to cover up for the accused, is not sustainable under section 8(1) (h). 208

In S. Malik v. National Handloom Development Corporation Ltd, 209 the Commission stated that the charge sheet had been served on the appellant and it was presumed that the CBI report had also been transmitted to him either in full or in part as accompanying evidence. The Commission rejected the appellate department plea that disclosure of this report would impede investigation in this matter since the report itself was the basis for the charge-sheet. The investigation was thus over. There was no investigation which the disclosure of the CBI report could be construed to impede.

The term investigation would include inquiries/search/scrutiny which would be either departmental or criminal and therefore when a departmental inquiry is on, the information sought in relation to such an inquiry can be denied in terms of Section 8(1) (h) of the Act. 210

The term ‘investigation’ in respect of government officials could mean both investigations by the CBI as well as investigation by the department. A completed investigation is no more in ‘process’ and therefore, cannot be said to be impeded if information connected with such investigation is disclosed. 211

In civil and administrative matters, especially under the Right to Information act, the word ‘investigation’ needs to be liberally interpreted and the exemption cover under Section 8(1) (h) should also be made available to all proceedings pending a final decision by a competent authority.212 This covers not only investigation which would imply the enquiry process in this case, but also apprehension and prosecution which will include orders of the final authority on the conclusion of the proceedings. 213

208 Full Bench decision in Guninder Kaur Gill v. Crime Branch, Delhi Police and District & Session Judge, Delhi CIC/AT/A/2006/00074 and CIC/WB/A/07/00679.
210 Sarvesh Kaushal v. Food Corporation of India & Others, 121/ICPP/2006
211 Susheela Rani v. C. P. W. D., CIC/WB/A/2006/00730
212 K.S. Prasad v. Amrjeet Singh, CPIO, Securities and Exchange Board of India, CIC/AT/A/2007/00234
Madras High Court in *M.R. Prakascim v. Tahsildhar*\(^{214}\) had held that ‘investigation’ contemplated under Rule 11 in the 2nd Schedule of the Income Tax Act was an investigation which was in *pan materia* with an enquiry held usually by Civil Courts under Order XXI Rule 58 of the CPC. The term ‘investigation’ had to be interpreted broadly and liberally and could be said to be complete only after the final adjudication had been made on completion of all the processes.\(^{215}\)

Investigation in taxation matters is construed to be ‘investigation’ under Section 8(1) (h) of the Right to Information Act and at no stage similar to prosecution is found in matters of tax law enforcement, the concept of extended investigation is adopted to fill the lacunae.\(^{216}\)

The phrase ‘prosecution of offenders’ means the conclusion of trial resulting in final conviction or acquittal of the accused. The expression ‘prosecution’ has been defined as ‘the institution or commencement of a criminal proceeding, the process of exhibiting formal charges against an offender before a legal tribunal, and pursuing them to final judgment on behalf of the state or government or by indictment or information. A prosecution exists until terminated in the final judgment of the court, which results in the sentence, discharge or acquittal.’\(^{217}\) Hence, prosecution culminates only with the finality of the judgment rendered in a given case.\(^{218}\)

Technically speaking, the prosecution is said to commence as soon as the prosecutor moves the court for action against the accused person. According to Webster’s dictionary, ‘prosecution’ means to prosecute a right or a claim in a court of law. It also means to pursue a person by legal proceedings for redress or punishment or to pursue for redress or punishment of a crime of violation of law before a legal tribunal. According to Wharton’s Law Lexicon, it means a proceeding either by way of indictment or information, in the criminal courts, in order to put an offender upon his trial. In all criminal prosecutions, the State is nominally the prosecutor. The word ‘prosecution’ occurring in Article 20 was discussed by the Supreme Court in *Maqbool Hussain V. State of Bombay*,\(^{219}\) and in this context the Hon’ble court observed that the ‘prosecution would mean an initiation or starting of proceedings of criminal nature before a court of law or a judicial tribunal in accordance with the procedure prescribed

\(^{214}\) (1974) 97 ITR 235

\(^{215}\) S.K. Katiyar *v.* Customs & Central Excise Department, CIC/AT/A/2008/01586.

\(^{216}\) Please refer to the Chapter 40 Income Tax’ for details.


\(^{218}\) Md Shahid Anwar Advocate *v.* CBI CIC/WB/A/2009/000750.

\(^{219}\) Maqbool Hussain V. State of Bombay, AIR 1953 SC 325
in the statute which creates the offence and regulates the procedure. Prosecution ends either in acquittal or conviction of the accused. It may also end with discharge of the accused.  

This Commission needs to only determine as to whether with the filing of the revision petition in the High Court, the prosecution can still be deemed to be continuing. The legal position in this regard is well settled as the legal pursuit of a remedy, suit, appeal, and second appeal are really steps in a series of proceedings, all connected by an intrinsic unity and are to be regarded as one legal proceeding as held by Supreme Court. Thus, a revision petition, if already admitted by the High Court, will go on to establish that the prosecution still continues.

Impede literally means to retard the progress by means of obstacles or hindrances. It was argued before the Commission that the expression ‘impede’ used in Section 8(1) (h) should be construed as impeding a given investigation, disciplinary or prosecution process, or having potentiality to do so. According to this argument, expanding an employee’s access to documents and records in excess of what he would be entitled to under the statutes or rules under which he might be facing action, or what would be authorized to him under the discretion vested in the court and the authorized officers under those statutes, undoubtedly has the potential to impede the processes current under those statutes...if the Right to Information Act is invoked to allow access to documents which the courts or inquiry officer or investigating officer would exclude, the net-effect of such an action could be impeding the processes under those other statutes. The Commission is in agreement with this line of argument.

The context of ‘impede’ is attached to both ‘investigation’ as well as "prosecution of offenders" under the Right to Information Act. These correspondences contain the details of the evidence against the public servant, the sources of information and also information received in confidence by the investigating agency/vigilance bodies. Disclosure of this variety of information through an agency other than the court can compromise the process of investigation as well as prosecution. Evidence released to a prosecuted-party goes through a process of distilling through examination by the court. If same, or similar, material is allowed to be released to a litigant through the process of Right to Information Act, it undoubtedly

\[221\] Supreme Court in Garikapati v. Subbiah Choudhry- 65 AIR 1957 SC 540
\[222\] ibid.
\[224\] Md Shaid Anwar Advocate v. CBI, CIC/WB/A/2009/00750.
compromises the court’s authority and ability to decide whether or not such information was worth disclosing. In this sense, it doubtless compromises and impedes the process of prosecution as stated in Section 8(1) (h) of Right to Information Act.

Mere continuation of prosecution or process of investigation is not enough to deny information to an information seeker under the Right to Information Act, unless the disclosure of such information would impede the process of investigation or apprehension or prosecution of offenders.

It is observed that ‘the word ‘impede’ is not synonymous with ‘obstruct’. An obstacle which renders access to an enclosure inconvenient, impedes the entrance thereto, but does not obstruct it, if sufficient room be left to pass in and out. ‘Obstruct’ means to prevent, to close up. The word ‘impede’ therefore does not mean total obstruction and compared to the word ‘obstruction’ or ‘prevention’, the word ‘impede’ requires hindrance of a lesser degree. It is less injurious than prevention or an absolute obstacle. Contextually in Section 8(1) (h) it will mean anything which would hamper and interfere with procedure followed in the investigation and have the effect to hold back the progress of investigation, apprehension of offenders or prosecution of offenders. However, the impediment, if alleged, must be actual and not make belief and a camouflage to deny information. To claim exemption under the said section it has to be ascertained in each case whether the claim by the public authority has any reasonable basis. Onus under Section 19(5) of the Right to Information Act is on the public authority.

The section does not provide for a blanket exemption covering all information relating to investigation process and even partial information wherever justified can be granted. Exemption under Section 8(1) (h) necessarily is for limited period and has an end point i.e. when process of investigation is complete or offender has been apprehended and prosecution ends.

While the terms ‘investigation’, ‘apprehension’ and ‘prosecution’ are well-defined and the processes are clearly demarcated in Criminal Procedure Code, the term ‘investigation’ has a different connotation in civil and administrative laws as proceedings.
under civil and administrative laws are referred to as ‘investigation’ or alternatively as ‘enquiry’ till a competent authority takes a final decision in the matter. In other words, as soon as an investigation or an enquiry by a subordinate enquiry officer in civil and administrative matters comes to an end and, the investigation report is submitted to a higher authority, it cannot be said to be the end of investigation. Receipt of the investigating officer’s report by the competent authority may be followed by a host of other actions such as commencement of disciplinary proceeding, further enquiry, assessment proceedings in income tax cases and so on, which themselves assume the characteristics of ‘investigation’, which can be truly said to be concluded only with the decision by the competent authority.230

Commission had held that the issue of the show cause notice could not be said to bring the investigation to a close. It only meant that a new phase of the same investigation would be continued till the matter was fully resolved through a quasi-judicial decision by the authorized officer.231 The term ‘Investigation’ had to be interpreted broadly and liberally and could be said to be complete only after the final adjudication had been made on completion of all the processes.232

The mere fact that the investigation is complete does not mean that the information which forms part of the investigation process will be outside the purview of Section 8(1) (h) because the same Section also bars the disclosure of that information as it can impede the prosecution of offenders at the same time.233

The word ‘prosecution of offenders’ and ‘process of investigation’ have to be understood in the context of "impede". It is inconceivable to comprehend that after ‘investigation’, the discretion of the trial court can be impeded by disclosure of information.234 Ordinarily, the public authority from whom the information is sought takes a decision whether the disclosure of information would impede the process of investigation or prosecution. The public authority may take the view of the investigating agency to arrive at the decision. Rarely, the CIC may call for the file to examine the facts of the case.

It is not for us to substitute our assessment of whether information if provided will impede the process of prosecution or not, which is within the competence of the authorized

234 Ibid.
agency, in this case the CBI. Even though the case may have failed in its initial prosecution, the appeal before the Hon’ble High Court is an extension of that prosecution and Section 8(1)(h) will, therefore, apply.\textsuperscript{235} We in the Commission cannot substitute ourselves for the investigating or prosecuting agencies constituted under the appropriate law. We can at best ensure that their opinion is sought before a claim of exemption is made under Section 8(1)(h).\textsuperscript{236} If the investigating agency is other than the public authority from whom the information is requested, the investigating agency may be consulted to determine whether the disclosure of information would impede the investigation.\textsuperscript{237} The Commission on hearing submissions of both sides noted that the custodian of the enquiry report is the CBI and hence directs the PIO to transfer the request to the PIO, CBI with a request to furnish an appropriate reply to the appellant directly.\textsuperscript{238}

In the normal course it has been our practice not to substitute our judgment for that of the prosecuting agencies in cases under prosecution, as to what will or will not impede the process of investigation. In this case, however, we find that the prosecution has been proceeding for years without caring to even charges being framed...To enable us, therefore, to examine as to the manner in which inspection of the concerned file will impede the process of prosecution in this case, if at all particularly since this process has been pending for so long, the concerned file will be submitted to us for our inspection.\textsuperscript{239} Since the respondents have already rejected the investigation conducted by Mahabir Singh and suspended him for his pains, it is not understood how a report submitted by him, which is not relied upon by the investigating agency can in any way impede the process of investigation.\textsuperscript{240}

A small error in quoting the proper Section may lead the PIO in an embarrassing position. Whereas the appeal is disposed of accordingly, it needs to be clarified to the public authorities concerned that there is no Section 8(h) of the Right to Information Act. This error has already been rectified in the decision of the appellate authority, and the responses regarding exemption from disclosures have been assumed to be in reference to Sec 8(1)(h). However, both the CBI which is an investigating and prosecuting agency and, therefore needs to be clear on this provision of the Right to Information Act, and the Vigilance Department of

\textsuperscript{235} P.K. Sarin v. Central Bureau of Investigation(CBI), Anti Corruption Branch, CIC/WB/A/2006/00873.
\textsuperscript{236} Susheela Rani v. C. P. W. D., CIC/WB/A/2006/00730.
\textsuperscript{237} S.R. Goyal v. PIO, Services Department, Coordination Branch (NCT Delhi), CIC/WB/A/2006/00523.
\textsuperscript{238} S.K. Agarwal v. Southern Railway, Chennai, CIC/OP/N/2009/001122-AD.
\textsuperscript{239} Dhirendra Krishna v. Central Bureau of Investigation (CBI), CIC/WB/C/2006/0094.
The CPWD are directed to take note of this because there are likely to be other such cases coming before them.\textsuperscript{241}

The Commission felt that larger public interest demanded that information may be supplied to the appellant for expeditious hearing of the matter that has been drawing on since 1998 when the CBI filed charge sheets against the 7 accused persons. The respondents could not convince the Commission as to how the information now sought would impede the prosecution.\textsuperscript{242} Simply because an investigation is ongoing, it does not necessarily mean that the disclosure of the information by itself will impede the process of investigation.\textsuperscript{243}

The emphatic argument by the learned counsel for the petitioner that since the process of investigation is already over as the charge sheet has already been filed by the Central Bureau of Investigation is not correct. Exemption from disclosure of information can be claimed for any information which may impede the process of investigation or apprehension with the respondent that the information sought by the petitioner may impede the prosecution of the offender. Whether the respondents have apprehension or not is to be decided by the respondents in the present facts and circumstances. The apprehension of the respondents is not without any basis. In any case the prosecution of the offender is pending. Since prosecution of the offender is pending and has not been completed, it cannot be inferred that divullgence of information will not impede the prosecution of the offender, The respondents, therefore, are justified in claiming exemption under Section 8(1) (h) from disclosure of information sought by the petitioner. The argument of the learned counsel for the petitioner that since the process of investigation has been completed as charge sheet has already been filed cannot be accepted and is contrary to all the circumstances under which exemption can be claimed under Section 8(1) (h) of Right to Information Act, 2005.\textsuperscript{244} Similar view has been held in Sunil Gupta v. DDA,\textsuperscript{245} Prem Singh v. CGDA\textsuperscript{246} and Sanjay Bhardwaj v. Delhi Police, South Dist.\textsuperscript{247}

The copy of the ‘rogatoire’ being exempt from disclosure because of the nature of the content of the documents. Perusal of the file indicates that the documents in the file are clearly sensitive in nature, disclosure whereof may indeed hamper the progress of the case

\textsuperscript{241} Susheela Rani v. C. P. W. D., CIC/WB/A/2006/00736.
\textsuperscript{242} Dhirendra Krishna v. Central Bureau of Investigation (CBI), CIC/WB/C/2006/00964.
\textsuperscript{243} Mohd. Yusuf Abbas e. Directorate of Education, Delhi, CIC/WB/A/2006/00429.
\textsuperscript{244} Division Bench of the Hon’ble Delhi High Court in WP(C) No. 16712/2006 in Surender Pal Singh v. UOI & Ors.
\textsuperscript{245} Sunil Gupta v DDA, CIC/LS/A/2009/00685.
\textsuperscript{246} Prem Singh v. CGDA, CIC/SM/A/2009/0039935.
\textsuperscript{247} Sanjay Bhardwaj v. Delhi Police, CIC/SS/A/2010/000525.
filed by the CBI against Ravi Nair. In view of the fact that the investigation at the CBI Court is pending and is yet to attain finality, therefore, disclosure of such sensitive information relating to the charges, grounds for framing of charges etc. against the accused, at this stage runs the risk of the progress of the case being hindered as the accused could influence and/or manipulate the outcome of the investigation by destroying and/or distorting evidences against him or even by avoiding arrest. Hence the information regarding, the copy of the ‘rogatoire’ need not be furnished in the interest of justice and under provisions of Section 8(1) (h) of the Right to Information Act 2005.248

Disclosure of any information during the pendency of an ongoing investigation creates additional pressure points for the investigation agency and should not be authorized for disclosure.249

The appellant suspected foul play in the death of his daughter. He has been obviously meeting and representing to various Police officers in order to get the investigation move forward, but as alleged by him, nothing seemed to have happened to expedite investigation. The appellant says that he has submitted a number of applications pointing out the deficiencies in the conduct of the investigation but has not received a response. His appears to be a case of a distraught father seeking justice for what he suspects to be unexplained death of his daughter. In fairness to him, the police authorities should take him into confidence about the stage and the status of the investigation... In this present case I do not think the disclosure of the present stage and the status of the investigation to the appellant will in anyway impede the process of investigation as laid down in Section 8(1) (h). Far from impeding the investigation, taking the appellant into confidence will give a positive direction to the investigation and enable the authorities concerned to swiftly reach at the truth.250

In this case the court took serious notice of the two-year delay in releasing of information and the lack of adequate reasoning of the orders of PIO and appellate authority...This principle will apply equally to prosecution. The appeal is, therefore, allowed.251

A few illustrative examples where disclosure has been held to impede the ‘process’

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249 Prem Prakash Dusad v. Securities & Exchange Board of India (SEBI), CIC/AT/A/2008/00153.
• The CBI file was inspected by CIC. The noting sought by appellant extends from para 666 to para 1277, which summarizes the entire case. The entire noting covers the SP report, approvers who turned hostile and other such information, the disclosure of which in our view would certainly interfere with the process of investigation by either exposing, pressurizing or buying over witnesses and potential informers.  

• Post mortem reports contain various details with regard to nature and type of injuries/wounds, time of death, nature of weapons used, etc. Furnishing of these details when investigation is still in progress is likely to impede investigation and also prosecution of offenders. It is the case of the petitioners that enquiries/ investigation are in progress and further arrests can be made. Furnishing of post mortem report at this stage would jeopardize and create hurdles in apprehension and prosecution of offenders who may once information is made available take steps which may make it difficult and prevent the State from effective and proper investigation and prosecution.

• In matter of Ottavio Quattrocchi (Bofors matter), information was not provided as it could impede the process of investigation/prosecution. The other information relating to the case made out by the prosecution, the procedure or methodology involved, cannot be disclosed at this stage when only the charge sheet has been filed since it would in all likelihood lead to hampering of the prosecution case apprehending that the accused may try to influence and/or manipulate the facts and evidences of the case to his convenience.

• The FR-I can be deemed to be information, disclosure of which will impede the prosecution and therefore exempt from disclosure under Section 8(1) (h).

• In many cases, it has been directed to transfer the Right to Information application to the registrar of the concerned court to provide the information. The information, which is being sought, can be had from the competent court trying the case. Any discretion exercised under Right to Information Act would amount to impeding the process of investigation or apprehension or prosecution of offenders.

• The appellant is an accused in the criminal prosecution launched by the customs and CBI who has claimed the information sought is required to prove his innocence. It would be

253 Addl Commissioner of Police (Crime) v. CIC & Another, WP(C) No. 7930 of 2009.
255 Hari Dev Goyal v. CPIO, SEBI, 1419 of 2012.
provided to him under the law by the prosecuting agencies and the court of law to ensure justice to him. At this juncture when the prosecution proceedings have been initiated and is at the advanced stage, exemption from disclosure of information under Section 8(1) (h) has been correctly applied by the CPIO.

- We have repeatedly in cases concerning the Delhi Police held that once a case has been submitted for prosecution all the information concerned with that prosecution becomes the property of the trial court, even though it may still be in the physical possession of the police.

- The matter pertains to corruption involving several officers and staff, including the appellant. This is indeed an issue of vital public interest. In view of the pending prosecution in the court of law, which follows a well-established procedure under the law to ensure natural justice, the disclosure of information as would, at this stage, impede the process of prosecution of offenders.

- As per Section 172(3) of the Cr.P.C. regarding diary of proceedings in investigation, it is provided that neither the accused nor his agents shall be entitled to call for such diaries, nor shall he or they be entitled to see them merely because they are referred to by the court; but, if they are used by the police officer who made them to refresh his memory, or if the court uses them for the purpose of contradicting such police officers, the provisions of Section 161 or Section 145, as the case may be, of the Indian Evidence Act, 1872 (1 of 1872) shall apply. Upon this, it is clear that the Cr.P.C. specifically debars the disclosure of case diaries. Any deviation allowed will necessarily impede the process of prosecution. It is open to appellant to seek access to these records under the specific provisions of the Indian Evidence Act, 1872 before the trial court.

A few illustrative cases where the CIC has held that the disclosure of information is not going to affect the ‘process’

- Completed investigation is no more in ‘process’ and, therefore, cannot be said to be impeded.

- In the instant case the investigations are clearly over and therefore we would only have to see whether releasing the information would impede the process of prosecution of

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258 Aditya Singh v. Office of the Chief Commissioner of Customs (Preventive), Mumbai, 38/IC(A)/06.
260 Prakash Chandra v. Anirbh Joshi, Assistant Director (Vigilance) & PIO, 39/IC(A)/06.
offenders if the basis of prosecuting the accused is the truth as it exists on the records, it is not possible to understand how it could impede the process of prosecution of the offender. If there are any details in the SP’s report which would create any doubts in the mind of the judge who is conducting the trial, this must certainly be disclosed in the interests of justice. The Commission cannot see how the truth could impede the prosecution anything but justice demands that the truth must be placed before the court.

- Mere because the truth as it exists on the notings would be placed before the court is not logical to assure that it would be considered the impeding the prosecution. The court would obviously look at everything that is placed before it and revealing all records could only assist the court in coming to the right conclusion.

- Citations in respect of those officers and members of the staff who have received awards and in respect of whom citations were already read out, should be provided to the appellant within two weeks of the receipt of this order.

- The CPIO is, therefore, directed to provide a copy of the sanction order for prosecution of the appellant. And, the CBI is directed to provide the copy of the investigation report after due application to Section 10(1) of the Act, to ensure that the material that might impede the process of prosecution is duly withheld.

- As per police manuals of most of the states, a copy of the arrest memo is required to be given to the arrested person. The Chandigarh Police also would be following this procedure. Not only this, as per Supreme Court ruling in Bhasu’s case, even the relatives/friends of the arrestee are also to be intimated by the arresting officer. This being the scheme of law, the denial of copy of arrest memo to the appellant is not justified.

- Disclosure of such factual information of an administrative nature, namely, about the requisition of the services of two constables, cannot adversely affect the course of any investigation.

- If this information, i.e. the CBI report, was provided to the complainant, he could have in no way influenced the process of investigation by the Railways as the CBI report was already finalised. Even if, public information officer felt that the names mentioned in the CBI report could have hindered the process of inquiry/investigations, he could have easily

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263 Prakash Chandra v. D. Verma, Dy. Secretary (Vigilance) & PIO, Govt. of NCT of Delhi, CIC/SG/A/2009/00013/2695.
267 Navdeep Gupta v. Chandigarh Police, CIC/WB/A/2008/00958/LS.
invoked the provisions of Section 10(2) of the Right to Information Act. However, he preferred not to do so. The explanation provided by him is not acceptable to this Commission as he could not give any satisfactory explanation as to why the report was denied to the Complainant when the second application was filed, in spite of the fact that the departmental inquiry against him, was over.269

- The records of the case reveal that the information is sought by the appellant in order to defend himself before the CBI Court and prove his innocence. A criminal trial is a public activity. Hence, furnishing of the said information is a part of the fundamental constitutional right to life and liberty of the appellant as granted under the Article 21 of the Constitution of India. Even on this count, the information as sought by the appellant should be supplied to him.270

- He wanted to know whether the IIT Kanpur had received complaints of research/scientific misconduct against a staff member. The respondent made a categorical statement that no complaints had been received regarding scientific misconduct against the staff member concerned. Subsequently, the appellant pointed out to the authorities that an instance of scientific misconduct was in fact available in the public domain on the Internet and pointed this out to the concerned authorities. The respondent constituted a fact-finding committee about this allegation. The appellant wanted details of this committee and its findings. The Commission approved the request.271

- The inquiry report has awaited a decision for one and a half years. The judgment of Delhi High Court Bhagat Singh v. Chief Information Commissioner & Others in WP(C) No. 3114/2007] will have a direct bearing particularly since the appellate authority had in fact laid down a time limit for its submission, which has been grossly transgressed. And because the findings of the inquiry are grave, these should have received immediate attention, either to establish that they are unfounded or to act upon them, neither of which is the case, leading to the kind of suspicion expressed by the appellant. The plea of respondents seeking exemption from disclosure is therefore, unsustainable.272

- The PIO has stated that the investigation was started five years back and yet a final view has not been taken...It cannot be in the interest of any organization or nation to continue the farce of a permanent investigation thereby defeating the very purpose of citizens complaining about wrong doing. Section 8(1) (h) of the Right to Information Act

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270 A. L. Motwani v. ITI Limited ITI Bhavan Doorwani Nagar Bungalow, CIC/MA/A/2008/1233/AD
exempts, ‘information which would impede the process of investigation or apprehension or prosecution of offenders,’ No case has been made out to conclusively show that any investigation would be impeded. The PIO in fact has said that investigation may be impeded. A mere apprehension of an impediment cannot be grounds based on which a citizen’s fundamental right can be denied. In fact, it is in everybody’s interest that results of investigations are declared as soon as possible and in case a very tardy investigation process is being followed public authorities should suomotu declare the progress of such investigations every quarter.273

- When investigation has been conducted on the basis of his complaint, the complainant is entitled for a copy of the investigation report. In the present case, the information the appellant is seeking information which the department has received from members of the public who are complaining against various officers of the department. Members of the public who have sent these complaints did not have choice with regard to who they would like to file a complaint with. Complaints of such nature would have to be filed with the department which has the powers to investigate such complaints. Furthermore, the department would not be acting on these complaints based on any loyalty towards the persons who have filed the complaints but because of the statutory duties entrusted with the department. These duties require the department to investigate such complaints. The element of trust involve in such a situation is not the one required for a fiduciary relationship. The complainants trust the department to take action and to discharge its statutory duty... But in the present case the department would be investigating the complaints not on behalf of the Complainant or in the Complainant’s personal interest. It is possible that while discharging its duties, the department may benefit the Complainant but that does not amount to a fiduciary relationship between the Complainants and the department.274

- The applicant needs to satisfy herself that the police is not seeking to cover up for the accused in this case as a result of suspicion having aroused for the reasons mentioned in her petition. We can, therefore, find no grounds for respondents denying information sought to appellant on the basis of Section 8(1) (h) when she herself is the initiator of the prosecution.275

275 Guninder Kaur Gill v. Crime Branch, Delhi Police and District & Session Judge, Delhi CIC/AFA/2006/00174.

210
The appellant himself was the victim of those alleged fraudulent withdrawals from two accounts of the bank. It was on the basis of his complaint that the investigation was conducted internally by the bank authorities and certain conclusions were arrived at. The Ombudsman and the proceeding before the police were started at the behest of the appellant himself and not by the respondents. I do not see why the information relating to the above investigation should be declined to the appellant only because he has chosen himself to start those proceedings before the Ombudsman and the police. The Morarka case cited by the respondents does not apply to the present application.\textsuperscript{276}

The Respondents are hereby directed to provide all the file notings/notes/correspondences relating to the complaints of the appellant. The Deputy Commissioner of Police is also directed to provide the action taken report on the complaint of the appellant against the SHO.\textsuperscript{277}

Complainant has talked of the material, which she contends has been illegally disclosed, as ‘complaint related’ and not the complaint. It is only when a complaint is entered into the complaint sub-module or in the temporary complaints register maintained in a branch office that it will be entitled to protection of Section 8. ‘Complaint related material/information’ cannot in itself be deemed the complaint, thus warranting invocation of Section 11 in disclosure. In the arguments in the hearing complainant has described these as having been were submitted in relation to the investigation of a case registered on her complaint. We are in full agreement that complaints registered with CBI should be handled in full compliance with their manual, and their unauthorized disclosure discouraged, we must also concede that it is not the responsibility of this Commission to ensure that their manual is complied with, except inasmuch as it has a bearing on Sec 8(1) of the Right to Information Act, 2005.\textsuperscript{278}

Although speedy investigations in matters of revenue-evasion is a salutary goal, it would be inappropriate and, even injurious, to on-going investigations if informants are allowed to intrude into the investigative process - all in the name of enforcing a Right to Information. Intrusive supervision of investigative work of public authorities - especially by interested parties - has the effect of impeding that process, in the sense it exposes the officers to external pressures and constricts the freedom with which such investigations

\textsuperscript{276} Lalit Seth v. State Bank of India, Mumbai, CIC/SM/A/2009/001896/AT.


\textsuperscript{278} Guninder Gill v. Central Bureau of Investigation (CBI) & Bank Securities & Fraud Cell (BS&FC), CIC/WB/C/2010/000152.
are to be conducted. The Commission also feels that there is no reason why officers of public authorities should space their investigations to benefit informants.  

- In cases where an assessee’s case is being reviewed by a competent authority on the basis of information provided by an informer, the latter shall naturally be interested in substantial increase in the reassessed taxable income as it shall determine the value of his reward. Larger the reassessed income, larger is the reward. However, such an interest alone will not amount to public purpose even when couched in the altruistic language of safeguarding state-revenue and especially, when internal checks and balances, as well as appellate provision, are all in place to protect the State’s revenue.  

- The appellant submits that he would like to know the reasons why his complaint before the Police was filed. Therefore, he submits, he should not be denied a copy of the statement of witnesses taken during the course of enquiry. The Commission directs the Respondent CPIO, to provide a copy of the statements of witnesses taken during the course of the enquiry. The identity of witnesses, however, may not be revealed, if the OPIO deems it necessary, for reasons to be recorded in writing.  

- The information held by Central Establishment department, will now be made available to the appellant subject only to the rule of severability contained in Sec 10(1). An inquiry was conducted which revealed that the allegations were not substantiated and no cognizable offence was made out, therefore, FIR was not lodged and the complaint was filed...We hereby direct that the CPIO, DCP, New Delhi District will supply a certified copy of the final inquiry report...together with the reasons for accepting/rejecting the same by the appropriate authority in the form of any file note/document in which recorded to appellant. He was unable to provide justification except to say that in one or two cases investigation may establish the facts different to what is assumed at the start of investigation. How this will impede the process of investigation, he was unable to say case was remanded to first appealable authority.  

- It is trite that FIR is a public document and falls in public domain. The police arrive at a final conclusion in the investigation of the criminal case after following the procedure prescribed in Cr. PC by way of recording statements of witnesses, collecting documents and seeking expert opinion in cases, where necessary. The final report is filed in the
concerned court in the form of a charge sheet or closure report, as the case may be. After
the filing of the charge sheet, the concerned court hears the matter in an open court which
can be attended by any person, including those who have no concern with the case, when
the court has not specifically excluded any individual from the open hearing. Needless to
say, the open hearing implies the disclosure of the identity of the accused persons as well
as charges against them. It would, thus, appear that the entire procedure of criminal trial
falls in public domain.\textsuperscript{284}

- The daily diaries maintained by the police stations and first information reports (FIRs)
cannot be disclosed on account of the exemptions under Section 8(1) (g) and Section 8(1)
h of the Right to Information Act.\textsuperscript{285} A copy of the FIR indeed cannot be denied to a
party to the case. Under Section 154 (2) of the Cr.P.C. a complainant himself/herself
receives this free of cost.\textsuperscript{286} In the case of the FIR, we find that the names of the
investigating team led by a sub inspector (now deceased), a victim of the encounter, have
been described together with the team that visited Batla House at 11.00 a.m. on the day of
encounter. The name of the person lodging the FIR has also been mentioned. Similarly,
the post mortem reports detail the names of the doctors of the AIIMS who conducted the
postmortem. We readily agree that disclosure of this information could expose all these
persons to uncalled for pressure, which could act as a major impediment in the process of
investigation...Under the circumstances these names must be withheld together with their
description including designation.\textsuperscript{287}

3.1.9 EXEMPTION 9-Cabinet papers

Section 8(1) (i) provides as under

“Notwithstanding anything contained in this Act, there shall be no obligation to give
any citizen, cabinet papers including records of deliberations of the Council of
Ministers, Secretaries and other officers.”

The request made by any person for obtaining the information regarding the Cabinet
papers which includes the records of deliberations of the Council of Ministers, Secretaries
and other officers is exempted from disclosure. This Section 8(1) (i) is partially unreasonable

\textsuperscript{284} Indra S. Prasad v. N.H.R.C. CIC/LS/A/2010/000093.
\textsuperscript{285} Ravinder Kumar v. Ajay Kumar, Deputy Commissioner of Police & CPIO, Special Cell, PHQ, Delhi Police & Another.
CIC/AT/A/2006/00188.
\textsuperscript{287} Prashant Bhushan v. Deputy Commissioner Police (DCP), Crime & Railways, CIC/WB/A/2009/0023.
as it takes away from the public gaze the entire decision making process. The deliberations, opinions etc. should be available to the public after the decision is made. While it is certainly undesirable ‘governance in the market place’ but that this is an unnecessary protection to the working of public authorities and goes against the principle of openness.

The proviso to this clause states that the decisions of Council of Ministers, the reasons for such decisions and the material on the basis of which the decisions were taken shall be made public after the decision has been taken and the matter is complete or over. The second proviso expressly provides that those matters which come under the exemption specified in this section i.e. whole Section 8(1) shall not be disclosed.

The Indian government is based on a Cabinet system. Thus, responsibility rests not in a single minister but on a committee of ministers sitting in Cabinet. Cabinet ministers are collectively responsible for all actions of the Cabinet and they must support all decisions of the Cabinet whether directly involved or not and whether they agreed initially or not. However, to reach that final decision, all ministers must be able to express their views freely during the discussions leading up to Cabinet decisions. To allow this exchange of views to be disclosed publicly would result in the erosion of collective responsibility for ministers. As a result, the collective decision-making process has traditionally been protected by the rule of confidentiality which protects the principle of the collective responsibility while enabling ministers to engage in full and frank discussions necessary for the effective functioning of a Cabinet system of government.

In order to preserve this rule of confidentiality, Section 8(1) (i) of the Right to Information Act provides that there shall be no obligation to give any citizen cabinet papers including the record of deliberations of the council of ministers, secretaries and other officers. Cabinet papers are not exhaustively defined in the Act. This provision may attracts some specific types of records; record of deliberations of the council of ministers, secretaries and other officers. But this list does not restrict the generality of the group of records referred to as cabinet papers. It is suggested that public authority must carefully consider in all instances where information which may qualify as a cabinet confidence has been identified in response to a request under the Act.

Records that are excluded from the Act must be distinguished from records exempted from disclosure. Exempted records are subject to review by the information commissioners.
and the court. Excluded records are not; neither the information commissioner nor the courts have the authority to examine such documents.

In *Sweety Kothary v. Department of Legal Affairs*,\(^\text{288}\) the Commission stated that the test which the first proviso of the Section 8(1) (i) stipulates for disclosure of information is whether the decision-making process is complete and over, and a decision has been made. In this case, deliberations of the ACCs Appointment Committee of Cabinet had been completed and the basis of the ACC decision was the recommendations of the selection committee constituted for this purpose. As such, the material on which the decision had been made by the ACC was liable to be disclosed once the decision itself had been finalized and was in public domain. The Commission held that regarding disclosure of cabinet papers, particularly when the action had been taken and the matter was over, the contention that Section 8(1) (i) of the Act was applicable as the matter was sub-judice, was not tenable. In so far as action taken by Department of Telecommunications (DOT), DoP&T, and ACC on the appointment of Sinha was concerned, the matter was complete and the information sought could therefore be disclosed.

It was held that a small committee of ministers too is a part of cabinet and its decisions are covered under Section 8(1) (i), even though it may comprise of Ministers of State. Cabinet papers, which include the records of deliberations of the Council of Ministers, Secretaries and other officers, shall be disclosed after the decision has been taken and the matter is complete or over. The matters which are otherwise exempted under Section 8 shall not be disclosed even after the decision has been taken and the matter is complete or over. Every decision of the Council of Ministers is a decision of the Cabinet as all Cabinet Ministers are also a part of the Council of Ministers. The Ministers of State are also a part of the Council of Ministers, but they are not Cabinet Ministers.\(^\text{289}\)

In *Doypacle Systems Pvt. Ltd. v. UOI & Others*,\(^\text{290}\) the Supreme Court referred to the importance of the cabinet papers.

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

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\(^{288}\) *Sweety Kothary v. Department of Legal Affairs*, CIC/AT/A/2006/00077.


\(^{290}\) *Doypacle Systems Pvt. Ltd. v. UOI & Others*, AIR 1988 SC 782
In *R.K. Jain v. UOI*, the following submissions of the Solicitor General further describes as to what is meant by cabinet papers- “Noting of the officials which lead to the cabinet note and cabinet decision and all papers brought into existence to prepare cabinet note are also its part”.

The Cabinet decision, the reasons thereof and the material on the basis of which the decision was taken, is liable to be disclosed once the decision has been taken, and the matter is complete, or over. Cabinet papers cannot remain excluded, since it is on that basis that decisions are taken. Information in regard to promotion of Superintending Engineer to Chief Engineer and Chief Engineer to higher post in the Ministry of Shipping, Road Transport and Highways, in the light of judgment of Apex court in *UOI v. B.S. Agarwal & Others*, (sought)…papers relating to noting submitted to the ACC can in no way seek exemption under Section 8(1) (j). The very act of submitting a note to the ACC is, in fact, a public activity and cannot in any way be deemed to be a private activity. Cabinet papers be given by applying the principle of severability to the ones which cannot be provided.

The object of granting immunity to documents of this kind is to ensure the proper working of the government and not to protect the ministers and other government servants from criticism however intemperate and unfairly based. Moreover, this reason can have little validity in a democratic society which believes in an open government. It is only through exposure of its functioning that a democratic government can hope to win the trust of the people. Till the decision is made, disclosure of Cabinet papers is barred under Section 8(1) (i) Decision on a cabinet note cannot be treated as complete unless the matter of the decision has been completed. Matters which are ‘complete or over’ with a decision of the Cabinet, no doubt, shall be disclosed under the provisions of this proviso, but matters, which, though subject-matter of a decision of the Cabinet, are yet to be ‘complete or over’, shall be disclosed only after they are ‘complete or over’. The present information, i.e. the rejection of the award of the arbitration tribunal, no doubt, has received a Cabinet decision, viz, to recommend its rejection to the parliament, but still it is not ‘complete or over’. It is the

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291 *R.K. Jain v. UOI*, AIR 1993 SC 1769
294 *A.N. Gupta v. Ministry of Personnel, Public Grievances & Pensions, Department of Personnel & Training (DoPT)*
296 *Conway v. Rimmer* 1968 AC 910.
parliament which now has to deliberate on the recommendation of the Cabinet and give its final decision. Only with the exercise of the legislative authority shall the matter connected with rejection of an arbitration award can be said to be truly ‘complete or over’.

The recognition of New System of Medicine Bill, 2005 is yet to be finalized and as such information asked for by the appellant cannot be shared at this stage. A question was raised whether Section 8(1)) is applicable in cases involving deliberations by Appointments Committee of the Cabinet (ACC) which is only a committee involving 2 to 3 ministers in respect of certain DPC proceedings. Whether the Council of Ministers and Cabinet are the same with reference to Section 8(1) (i) was discussed by the Commission in *P.D Khandelwal v. Dep’t of Personnel & Training, (DOPT)*, and quoted in many subsequent orders. The plea taken by the first appellate authority that the decision of the Council of Ministers are disclosable but Cabinet papers are not, is totally untenable. Every decision of the Council of Ministers is a decision of the Cabinet and, as such, all records concerning such decision or related thereto shall fall within the category of ‘Cabinet papers’ and, as such, disclosable under Section 8(1) (i) after the decision is taken and the matter is complete, and over.

Aggrieved by non-selection for empanelment to the post of Member, CBDT, the applicant sought certain information which could throw light on the reasons for her non-selection. As regards the documents concerning DPC, the Commission directed the public authority to make available information in terms of request of the appellant barring details concerning 3rd parties for which the respondents may suitably use the severability clause in Section 10(1) of the Act.

Details of decisions of Council of Ministers taken during a specific period and publication of the reasons for and the material on the basis of which the decisions were taken was denied claiming that these are exempted under Section 8(1) (i) of Right to Information Act, 2005. It was also informed that details of any specific decision of the Council of Ministers/Cabinet on any specific issue, if considered necessary, may be sought from the concerned Ministry/Department to whom the business has been allocated. Appellant submitted that there has to be some record of where decisions were taken regarding particular subjects by government in Cabinet and that must be the Cabinet Secretariat, the nodal agency.

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299 P.D Khandelwal v. Dep’t of Personnel & Training, (DOPT), CIC/WB/A/2008/00081.
300 P.K. Jain v. Dep’t of Personnel & Training (DoPT), C/WB/A/2007/01359.
301 J.D. Sahay, Chief Commissioner of Income Tax-I, Ahmedabad v. Ministry of Finance Department of Revenue, New Delhi, CIC/AT/A/2008/00027 & 33.
servicing the Council of Ministers. Comparing this activity with that of the UPSC, appellant argued that if the Cabinet Secretariat does not hold such a record the request for information is required to be transferred under Section 6(3) (ii). The respondent submitted that no separate record of decisions taken by Cabinet has been maintained except in the appropriate file. The Commission held that “… the information accessible must be held by or under the control of the public authority from whom it is sought. In this case the details of Cabinet decisions sought, i.e. the reasons for the decision and the material on the basis of which decisions were arrived at, is not held by the Cabinet Secretariat once the decision is taken. Besides, the authority to decide on whether the proviso to Section 8(1) (i) on the matter on which decision is taken ‘is complete or over’, which can make the decision eligible for disclosure, can only be taken by the implementing authority which is the competent Ministry.” The Commission held that demanding transfer of the application under Section 6(3) (ii) would fall within the mischief of Section 7(9); since such activity would disproportionately divert the resources of the Cabinet Secretariat, apart from the consequences being doubtful in terms of information obtainable by having a cascading effect of such diversion on all concerned Ministries. Holding that there is a need for acting upon the appellant’s suggestion that Cabinet Secretariat take effective steps to comply fully as regards disclosures in conformity with provisions to Section 8(1) (i) on a proactive basis, the Commission made a recommendation to Cabinet Secretary under Section 25(5) to discuss with them the ways and means by which this record of the Cabinet decisions maintained by Cabinet Secretariat is brought into full conformity with the requirements of Section 8(1) (i) of the Right to Information Act, 2005 read with Section 4(1) (b) (xiv) and sub-sections (c) and (d) of Section 4(1).  


It is only when proposals formulated are actually taken up for consideration by the Cabinet that they become so exempt. In other words, when a Cabinet note is finally approved for submission to the Cabinet through the Cabinet Secretariat Section 8 (1) (i) will apply. Exemption under Section 8(1) (i) will apply only when a note is submitted by the Ministry that has formulated it to the Cabinet Secretariat for placing this before the Cabinet. All concomitant information preceding that, which does not constitute a part of that Cabinet note will then be open to disclosure under Section 4(1) (c), but in a manner as will not violate the provisions of Section 8(1) (i). The Commission further recommended under Section 25(5)
that Cabinet Secretariat considers amending Part V of Circular No. 1/16/1/2000-Cab of 15.4.2002 to allow for public consultation in appropriate form.  

Copies of documents with regard to the extension in service of Director General, ICMR, for two years beyond the age of 62 years were refused by the DOPT contending that the Secretariat of the Appointments Committee of the Cabinet (ACC) handles proposals, which are received from various ministries/departments for obtaining approval of the ACC. The approval of the ACC is conveyed to the respective ministries/departments and therefore the DOPT holds documents only in a transitory and in a fiduciary manner. The directions given by the ACC in the matter are still being followed up with the Ministry of Health and Family Welfare, and therefore the matter is not complete and thus disclosure of the same is restricted under Section 8(1) (i) of the Right to Information Act. The Commission held that “... The reason for seeking the information is more in the nature of procedural lapses or eligibility of a person for appointment to the post in question. It is not clear as to how the information seeker is likely to benefit from the disclosure of information. To ensure the proper use of Right to Information Act, such issues as above should be taken up with appropriate authorities rather than to the CIC in the garb of seeking information. Even if it is accepted that there are justifiable reasons for seeking information, it would have been appropriate for the appellant, in the first instance, to ascertain the availability of information from the concerned CPIO before application for information was put up. This could have expedited the matter”.  

The information relating to import of one million ton of wheat including the tender documents, minutes of meeting, the State Trading Corporation’s recommendation, the Cabinet approval for importing wheat, the International Grain Council report, the Reuters’ Report, the advice from the Finance Division and Expenditure Division over the issue etc. was refused. The reason given was that the matter was sub-juice in the Hon’ble Bombay High Court in Writ Petition Nos. 89 of 2007 and 333 of 2006 and also under Section 8(1) (i) claiming that Cabinet decisions are exempted from disclosure. It was also submitted that the documents relating to Cabinet decisions do contain materials relating to matters other than the import of wheat and they are not disclosable to the appellant. The Commission held that “... It may be apt to advert to the preamble to the Right to Information Act, 2005, which speaks of promotion of transparency and accountability in the working of every public...
authority. The preamble also stresses that information is vital for the efficient functioning of a democratic polity and for holding the governments and their instrumentalities accountable to the governed. Needless to say, the decision for import of over one million tonnes of wheat was taken by the competent authority and the people of the country are entitled to know the decision-making processes involved herein”. The Commission ordered to supply the relevant portion of the material.

National Commission for Religious and Linguistic Minorities Report concerned with the special reference for the extension of scheduled castes christians/muslims of SC origin - The file in this matter being with the Ministry of Minority Affairs and the Prime Minister’s Office having no objection to the inspection of the file noting to appellant Thomas, the appeal is, therefore, allowed.

It appears that the request for inclusion stands rejected at the very initial stage and there is no proposal for submission of any recommendations to the Cabinet...Under Secretary Ministry of Social Justice appeared before us together with the concerned. The proposal for inclusion (of the shakhwar community) was rejected at the level of the minister on 9.2.2005 on the basis of note. There is no reference to Cabinet. Under the circumstances the comments of the RGI appended note is now made available to appellant, attached to this decision notice. The concerned letter itself is not disclosed since it contains the identity of the person who wrote it and department received it and is also immaterial to the subject of the information sought.

Appellant is entitled to receive information about the basis of the decision of the Cabinet in regard to the minimum pension of pre- 01.01.2006 pensioners. However, since respondents have expressed their difficulty in segregating the information contained in the files, it shall be in order that the appellant be allowed to inspect those files and documents for him to take from it such information as he wished to have.

Thus, the records of deliberations of the Council of Ministers, Secretaries and other officers should not be claimed to be exempt from disclosure when the matter is complete or over if they constitute the reason or the material on the basis of which the Cabinet decision is taken.

3.1.10 EXEMPTION 10-Personal Information

Section 8(1) (j) provides as under:

“Notwithstanding anything contained in this Act, there shall be no obligation to give any citizen, information which relates to personal information the disclosure of which has no relationship to any public activity or interest, or which would cause unwarranted invasion of the privacy of the individual unless the central Public Information officer or the state public information officer or the appellate authority, as the case may be, is satisfied that the larger public interest justifies the disclosure of such information.

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

The personal information exempted from the disclosure includes, the information, disclosure of which has no relationship to any public activity; the disclosure of which has no relationship to any public interest; the disclosure of which would cause unwarranted invasion of the privacy of the individuals; Such information can be disclosed if the central public information officer or the state public information officer or the appellate authority is satisfied that the larger public interest justifies the disclosure of such information. The proviso to this clause provides that the information which cannot be denied to the parliament or a state legislature shall not be denied to any person.

The Right to Information Act provides that, a public authority shall refuse to disclose any record containing personal information when there is no relationship of the information requested to any public activity or interest or which would cause unwarranted invasion of the privacy of the individual. The term ‘personal information’ has not been defined in the Act.

This is a prejudice based exemption but conditional i.e. unless public information officer is satisfied that larger public interest justifies the disclosure of such information i.e. disclosure of personal information is subject to larger public interest test. Not all personal information is exempted. If the personal information asked for has a relationship to any public activity or interest or it is not causing unwarranted invasion of privacy of individual then public information officer has to disclose the information.

It should be noted that, personal information is a very wide term. There are various types of information considered to be personal information and to indicate that the term is

221
taken very broadly, thus, information relating to a person’s lifestyle, income or sexual preference, is to be considered personal information.

Once an individual has been dead for twenty years, information about him or her is no longer considered to be personal information for the purposes of Section 8 (1) (j). As according to Section 8 (3) any information relating to any occurrence, event or matter which has taken place, occurred or happened twenty years before the date on which the request is made under Section 6 shall be provided to any person making a request under that section.

Thus Section 8 (1) (j) exemption cannot be claimed for information relating to the current or past positions or functions of a government employee information relating to services being performed or performed by an individual contracted by a public authority, or information about a discretionary benefit of an economic nature conferred on an individual.

This exclusion in Section 8 (1) (j) reflects the fact that there is certain information relating to government employees, persons performing services under contract for a public authority and discretionary benefits which, barring other considerations, the public has a right to know. The exclusions in this section should, however, be construed narrowly, bearing in mind that these are specific exclusions to the general principle that personal information should be exempt from the right of access under the Right to Information Act.

A public authority may disclose any record containing personal information if: the disclosure is in accordance with Section 8(1) (j) of the Right to Information Act i.e. when public information officer or the appellate authority is satisfied that the larger public interest justifies the disclosure of such personal information. An example could be availing of discretionary benefits of a financial nature by a person viz. list of individuals who have obtained residential plots out of discretionary quota of the government, concessions of discretionary nature given to individuals, financial benefits given to journalist etc.

The release of personal information in certain circumstances would be permissible where an individual is seeking access to information about himself or herself, he or she should, generally speaking, should be given the information requested.
Scope of Section 8(1) (j)

Section 8(1) (j) was exhaustively examined by the full bench of the CIC in G.R. Rawal v. Director General of Income Tax (investigation), Ahmedabad. The Commission stated that Section 8(1) (j) excludes from disclosure of information which relates to personal information, the disclosure of which has no relationship to any public activity or interest; or would cause unwarranted invasion of the privacy of the individual.

However, in both the cases, the CPIO or the appellate authority may order disclosure of such information if they are satisfied that the larger public interest justifies disclosure. This would imply that even personal information which has some relationship to any public activity or interest may be liable to be disclosed. An invasion of privacy may also be held to be justified if the larger public interest so warrants. It is, therefore, necessary to analyse the ambit and scope of both the expressions ‘personal information’ and ‘invasion of privacy.’ In common parlance, the expression ‘personal information’ is normally used for name, address, occupation, physical, and mental status, including medical status, as for instance, whether a person is suffering from disease like diabetes, blood pressure, asthma, tuberculosis, cancer, etc., including the financial status of the person, as for instance, his income or assets and liabilities of self and other members of the family. The expression shall also be used with respect to one’s hobbies like painting, music, sports, etc. Most of these mentioned above are information personal to one, and one may not like to share this with any outsider. In this sense of the term, such information may be treated as confidential since one would not like to share it with any other person. However, there are circumstances when it becomes necessary to disclose some of this information if it is in the larger public interest. Thus, for example, if there is a doubt about the integrity of any person occupying a public office, it may become necessary to know about his financial status and the details of his assets and liabilities, as well as those of close members of the family. Similarly, if there is an allegation about the appointment of a person to a public office where there are certain rules with regard to qualification and experience of the person who has already been appointed in competition with others, it may become necessary to make inquiries about the person’s qualification and experience and these things may not be kept confidential as such. The Commission observed that it may not be possible to lay down exactly the circumstances in which personal information of an individual may be disclosed to others. This will depend on the facts of each case. No hard and fast rule can be laid down for this purpose.

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A case decided on 23 March 2007 by the Bombay High Court, where the prisoner had to be admitted to Sir J.J. Hospital, Mumbai on the ground that he was suffering from diabetes and blood pressure may be referred to in this regard. The PIO did not order disclosure of his medical problem to those who thought that his admission into the air conditioned rooms of the hospital, as against the tough conditions prevailing in the jail, was unjustified, and there was public outcry, including in the media against his admission to an air conditioned hospital. The PIO had refused information under Section 8(1) (j) of the Right to Information Act and under Regulations of the Medical Council of India. However, the High Court did not accede to this viewpoint. The court ordered that the information relating to the convict patient be given after following procedure under Section 11 of the Right to Information Act.

Coming to ‘invasion of privacy’, the Commission noted that the US Restatement of the Law, Second, Torts, Section 652 defines the intrusion into privacy in the following manner.

“One, who intentionally intrudes, physically or otherwise, upon the solitude or seclusion of another or his private affairs or concerns, is subject to liability to the other for invasion of his privacy, if the intrusion would be highly offensive to a reasonable person.”

The law of privacy although not defined is, however, well recognized under the Indian legal system and it has all along been treated as a sacred right not to be violated unless there are good and sufficient reasons. Even under Right to Information, the normal rule should be of ‘non-disclosure of any information concerning one’s private life’ and disclosure should be ordered only when there is larger public interest and in that case too, the procedure laid down under Section 11 of the Act should be followed as held by the Bombay High Court in the above cited case.

The Commission stated that as we have no specific law on the subject, in such cases we have been guided by the UK Data Protection Act 1998, Section 2 of which, titled Sensitive Personal Data reads as follows:

“In this Act ‘sensitive personal data’ means personal data consisting of information as to: (a) The racial or ethnic origin of the data subject; (b) His political opinions; (c) His religious beliefs or other beliefs of a similar nature; (d) Whether he is a member of a Trade Union; (e) His physical or mental
health or condition; (f) His sexual life; (g) The commission or alleged
commission by him of any offence; and (h) Any proceedings for any offence
committed or alleged to have been committed by him, the disposal of such
proceedings or the sentence of any court in such proceedings."

If we were to construe privacy to mean protection of personal data, this would be a
suitable reference point to help define the concept. Regarding information whose disclosure
would lead to unwarranted invasion of privacy, there could be a set of information which may
be said to belong to exclusive private domain and hence, not be liable to be disclosed. This
variety of information can also be included as ‘sensitive and personal’ information as in the
UK Data Protection Act, 1998. Broadly speaking, these may include religious and ideological
ideas, personal preferences, tastes, political beliefs, physical and mental health, family
details, and so on.

The Commission stated that when the matter is about personal information unrelated
to public activity, laying down absolute normative standards as touchstones will be difficult.
This is also because the personal domain of an individual or a group of individuals is never
absolute and can be widely divergent given the circumstances. In case the information relates
to a person which in ordinary circumstances would never be disclosed to anyone else; such
information may acquire a public face due to circumstances specific to that information and
thereby cease to be personal. It is safer that what is personal information should be
determined by testing such information against the touchstones of public purpose. All
information which is unrelated to a public activity or interest and, under Section 8(1) (j), if
that information be related to or originated in person, such information should qualify to be
personal information under Section 8(1) (j).

The Commission held that information such as income tax returns, and other such
details filed by a person with public authorities entrusted with such public tasks as tax
determination, qualified to be personal information. The disclosure of this information was
barred under the provisions of Section 8(1) (j) on grounds that this information was provided
to the public authority in the discharge of the public duty of that public authority and unless
the person providing such information allowed the public authority to disclose the same, the
secrecy of the information should be maintained. Unless proved that such information related
to a public activity, it would be said to be ‘public information’, and being ‘personal’ should
attract the bar under Section 8(1) (j). In stating this, the Commission kept in mind the
incalculable and irretrievable harm that disclosure of this category of personal information could cause to the person providing the same.

In so far as the assessment details are concerned, they are definitely personal information concerning some individual or legal entity. The assessment details, if disclosed, may result in an undue invasion to the privacy of an individual. Disclosure of such details, therefore, cannot be permitted unless there is an overriding public interest justifying disclosure. However, in the case, G.R. Rawal v. Director General of Income Tax (Investigation), Ahmedabad,\textsuperscript{310} the appellant has asked for the following in his Right to Information application: ‘Tax payable as per the decision of the Settlement Commission in the case of Winprolene Plastics and tax paid by said company’.

Mere disclosure of the amount determined to be payable by a quasi-judicial authority and the amount of tax paid by an assessee as a result of such decision, even if it may be categorized as ‘personal information’, cannot be said to be unrelated to a public activity or interest. The Commission therefore, held that the public authority may, therefore, withhold other assessment details but should disclose the amount of tax determined by the Settlement Commission and the amount actually paid by the assessee company.

In number of cases, viz., Hemant Kumar Jain v. Commissionerate of Income Tax (CIT)\textsuperscript{311} Mumbai, Farida Hoosenally v. Chief Commissioner of Income Tax, Mumbai,\textsuperscript{312} and J.S. Garg v. Ministry of Urban Development,\textsuperscript{313} the Commission has observed that income tax returns filed by persons are personal information of third parties and therefore, these should not be disclosed under Section 8(1) (j) of the Act. Income Tax Returns filed by the assessee are confidential information, which include details of commercial activities and that it relates to third party. These are submitted in fiduciary capacity. The exemption can only be in case the tax liabilities are opened for assessment. Likewise, income tax assessment orders, though an outcome of public action, contain both personal details of asseeses as well as information that is commercially confidential. Hence, these documents should not be disclosed under Section 8(1) (d) of the Act.

\textsuperscript{310} G.R. Rawal v. Director General of Income Tax (Investigation), Ahmedabad, CIC/AT/A/2007/00490
\textsuperscript{311} Hemant Kumar Jain v. Commissionerate of Income Tax (CIT)\textsuperscript{311} Mumbai, 300/IC(A)/2006.
\textsuperscript{312} Farida Hoosenally v. Chief Commissioner of Income Tax, Mumbai, 22/IC(A)/2006.
In Arun Verma v. Director General of Income Tax (Systems), New Delhi, the appellant sought permanent account number (PAN) and temporary account number (TAN) along with date of allotment in respect of 26 companies, which was denied under Section 8(1) (j) of the Right to Information Act. The Commission, in its decision stated that PAN is a statutory number, which functions as a unique identification for each tax payer. Making PAN public could result in misuse of this information by other persons to quote wrong PAN while entering into financial transactions and could also compromise the privacy of the personal financial transactions linked with PAN. This also holds true for TAN. Information relating to PAN and TAN, including the date of issue of these numbers, is composite and confidential in nature under Section 138 of the Income Tax Act. The appellant had not made a case of bonafide public interest for disclosure of PAN/TAN for these companies.

In Kousthubha Upadhyaya v. DOP&T, the Commission quoted its earlier decision in Roshan Lal v. Kendriya Vidyalaya Sanghathan, where it was held that annual property returns by government employees are in the public domain and hence, there seems to be no reason why they should not be freely disclosed. This should also be considered as a step to contain corruption in government offices since such disclosures may reveal instances where property has been acquired, which is disproportionate to known source of income. The Commission, therefore, directs the respondents to provide copies of property returns asked for by the appellant.

It may be noted that earlier in number of cases, viz., Raj Kumar v. Deputy Joint Commissioner of Police, Delhi, Mukesh Kumar v. Department of Revenue, Ministry of Finance and S. Saran v. Rashtriya Ispat Nigam Ltd, Visakhapatnam Steel Plant (VSP) - the Commission had held that annual immovable property returns are not disclosable.

In Gunjlata Verma v. MTNL, the complainant sought an action taken report on a complaint under which she had sought to know the grounds for condonation of unauthorized absence of about 8 years in respect of an employee. The CPIO refused to furnish the information under Section 8(1) (j) of the Right to Information Act. In its decision, the Commission held that the grounds for condonation of unauthorized absence of the...
employee cannot be treated as personal information and the CPIO was directed to give information within 15 working days.

In A. S. Lall v. Director General (Prisons), Prison HQrs, New Delhi,\(^{321}\) the appellant sought details about the lodgment in Delhi jails of one particular accused person. The same was denied under Section 8(1) (j) of the Right to Information Act. The Commission in its decision held that the lodgment in jail of an accused, whether on conviction by a court of law, or as an under trial, cannot be classified as ‘personal information’ or ‘invasion of privacy’. The lodgment in jail of an accused or a convict is information which properly belongs to the public domain and every citizen has a right to access it.

In Tilak Mohan Mathur v. DDA,\(^{322}\) the appellant applied to the CPIO seeking information on action taken on a report on unauthorized construction of seven flats encroaching public land. The same was denied. The Commission clarified that data protection under Section 8(1) (j) and Section 11 (third party information) cannot be invoked to deny information not held in confidence. This is all the more so in the present case where the information had been sought with regard to an individual held in violation of the law.

In Baldev Chander Sehgal v. DDA,\(^{323}\) the applicant sought reasons for cancellation of his plot despite his payment for restoration; examples of restoration of property upon which he would be also eligible; and asked for information in two specific cases of which he gave the file number. The exemption from disclosure was pleaded under Section 8(1) (j). The Commission in its decision held that allotment of plots, their cancellation or re-allotment was not a private activity, since this was a public activity conducted in public interest by the concerned public authority. The information sought by the appellant regarding the two cases cited by him should be given to him.

In Manoj K. Kamra v. Punjab National Bank, Jaipur,\(^{324}\) the Commission stated that disbursement of loans was a public activity and therefore the issue of non-performing assets (NPA) was a matter of serious concern to the society. However, the disclosure of reports of valuation of immovable properties of borrowers was not enough to identify the sources of NPA. The Commission held that the link between valuation of mortgaged properties of borrowers and NPA was not clear. There was therefore, no bonafide public interest in

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\(^{321}\) A. S. Lall v. Director General (Prisons), Prison HQrs, New Delhi, CIC/WB/A/2006/00020.

\(^{322}\) Tilak Mohan Mathur v. DDA, CIC/WB/A/2006/00126.


disclosure of valuation reports submitted to the bank by the borrowers. The bank was also required to maintain secrecy of details of loan accounts as it was personal information and was also in the nature of commercial confidence. The exemption from disclosure of information under Sections 8(1) (d), (e) and (j) had been correctly applied by the bank.

In Ajay Pal Singh v. State Farms Corporation of India, New Delhi, the Commission held that the information about the personal details were held by the public authority in a fiduciary capacity, that is, information furnished by an employee which is held in trust by a corporate body. Such information is normally not open to disclosure, except under circumstances in which it can be proved that the disclosure of this information served a public purpose. In overall consideration of the matter, the Commission held that the information sought by the appellant would invoke the exemption of Section 8(1) (e) and Section 8(1) (j) of the Right to Information Act and thus, need not be disclosed to him.

In Janardan Dubey v. Office of Joint Secretary (Trg) & CAO, Ministry of Defence, the appellant sought personal information concerning a third person working under the respondent. The information was denied under Section 8(1) (j) of the Right to Information Act. The Commission held that there was no reason why any person should get information about a government employee in respect of the family members listed on the CGHS card, the name of the dispensary, whether that employee was married, the name of his wife, the date of his informing the public authority about his marriage, the names of his nominees for the GPF and CGHS and other documents, the dates on which the forms had been filled, and whether any disciplinary action was pending against him. Apart from being personal information disclosure of such information served no public purpose. It was quite possible that disclosure of such information would have led to unwarranted harassment and intimidation of the employee by other parties. The Commission had to exercise utmost caution in authorizing disclosure of personal information of employees of public authorities. Except when dictated by overwhelming public purpose, such information was better left undisclosed under the provision of exemption Section 8(1) (j) of the Act. There may be situations where family details, GPF nominations, etc. may be disclosed if a person is suspected of bigamy and of entering legally untenable false details.

In *KSC Babu v. NTPC*, the appellant sought information regarding marks obtained by each individual considered for promotion from a particular grade in higher grade. The same was denied under Section 8(1) (j). The Commission held that in the matter of selection/promotion etc., there should be transparency without compromising the confidentiality of the process of selection, promotion. Section 8(1) (j) could not be applied in such a case.

In *Dinesh Berry v. Bharat Petroleum Corporation Ltd., Mumbai*, the appellant sought information regarding travel expenses statement and tour itinerary in respect of an official of public authority. The same was denied on the ground that the information sought was personal information relating to a particular employee, the disclosure of which would cause unwarranted invasion of privacy of the individual. The Commission in its decision stated that the information sought related to the tour programme and travel expenses of a public servant, which could not be treated as personal information.

In *H.C. Verma v. Indian Oil Corporation*, the appellant sought to inspect medical bills submitted by a number of officials during a particular period. In its decision, the Commission held that information sought related to medical bills, which could identify the ailments an employee may have suffered, the prescription made by doctor, the doctors consulted, etc. The disclosure of such documents as diagnosis of disease and prescription of medicine, etc., is not in public interest, as much of information pertained to individual sufferings. However, expenditure incurred on medical treatment had to disclose. However, there may be situations like an HIV-positive patient who may transmit the disease to his or her prospective spouse. He may not be entitled to maintenance of confidentiality since the life of the spouse would be at stake. In *X v. Hospital*, a two-judge bench of the Supreme Court of India held that since HIV is fatal and the life of the spouse had to be saved, the right to privacy of the patient was not absolute in that situation. There was nothing wrong if the hospital informed the prospective spouse of X’s HIV status. As such, disclosure to the partner about the HIV status of the spouse was held valid.

In *S.J Godhwani v. Ordnance Factory Board, Kolkata*, the Commission in its decision stated that disbursal of an LTC claim was from public funds and thus attracted...
public interest. Most transactions in tax-payers’ money, such as salaries and wages, allowances and financial benefits such as LTC, etc. were in the public domain for the reason that they involved a transaction in public funds. The Commission stated that details about the amounts claimed as LTC, block year for which claim was made, number of persons for whom claim was made, dates of filing the claim, and disbursal, advance taken, if any, should be disclosed to the appellant. However, other personal details such as names of the family members, their age, etc. were personal and hence not disclosable.

It was held by the full bench of the CIC in its decision in *Rakesh Kumar Singh & Others v. Lok Sabha Secretariat & Others* that Section 8 (1) (j) had to be read as a whole.\(^1\) If done so, it would be apparent that ‘personal information’ does not mean information relating to the information seeker, but about a third party. That is why, the section 8(i) (j) clearly states unwarranted invasion of the privacy of the individual. If one were to seek information about himself or his own case, the question of invasion of privacy of his own self did not arise. If one were to ask information about a third party and if it were to invade the privacy of the individual, the information seeker could be denied the information on the ground that disclosure would invade the privacy of a third party. Therefore, when a citizen seeks information about his own case and as long as the information sought is not exempt in terms of other provisions of Section 8 of Right to Information Act, this section cannot be applied to deny the information.

Further, in *Manohar Singh v. NTPC*,\(^2\) the Commission in its decision held that under the Right to Information Act, in case when a citizen seeks information concerning him, the same cannot be denied, applying the provisions of Section 8(1) (j) stating that disclosure has no relationship to any public interest or activity or would invade the privacy of the individual. This decision of the Commission was also quoted in *M.L. Meena v. Ministry of Health & Family Welfare*.\(^3\)

In *A.L. Mehta v. Central Board of Direct Taxes*,\(^4\) the Commission in its decision stated that the present Right to Information queries of the appellant were fully, covered by the Commission’s earlier decision in *Alka Mehta v. Income Tax Department*.\(^5\) In that case, the Commission held that protection of personal information, especially of a third party, is a

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valuable privilege which should not be lightly done away with or diluted. The Commission
has, therefore steadfastly declined to authorize disclosure of all such information. In cases
where an assessee’s case is being reviewed by a competent authority on the basis of
information provided by an informer, the latter shall naturally be interested in substantial
increase in the reassessed taxable income as it shall determine the value of his reward. Larger
the reassessed income, larger is the reward. However, such an interest alone will not amount
to public purpose even when couched in the altruistic language of safeguarding state-revenue
and especially when internal checks and balances, as well as appellate provision, are all in
place to protect the state’s revenue. The appellant’s apprehension is, therefore, without any
basis and her plea is bereft of merit. In view of this, the Commission directed that there
would be no disclosure in the above case. It may be noted that this case is different from G.R.
Rawal v. Director General of Income Tax (Investigation) Ahmedabad cited earlier, where the
full bench of the CIC held that mere disclosure of the amount determined to be payable by a
quasi-judicial authority and the amount of tax paid by an assessee as a result of such decision
even if it may be categorized as ‘personal information,’ cannot be said to be unrelated to a
public activity or interest.

In common language, we would ascribe the adjective ‘personal’ to an attribute which
applies to an individual and not to an institution or a corporate. From this it flows that
‘personal’ cannot be related to institutions, organisations or corporate. Hence, Section 8(1) (j)
cannot be applied when the information concerns institutions, organisations or corporate.337

Certain human rights, such as, liberty, freedom of expression or right to life are
universal and, therefore, would apply uniformly in all countries uniformly. However, the
concept of ‘privacy’ is a cultural notion, related to the society and different ‘societies’ would
look at these differently. India has not codified this right so far, hence in balancing the right
to information of citizens. and the individual’s right to privacy, the citizen’s right to
information would be given greater weightage.338

It is not possible to define ‘personal information’ as a category which could be
positively delineated; nevertheless it should be possible to define this category of information
negatively by describing all information relating to or originating in a person as ‘personal’
when it has such information which has no public interface. That is to say, in case the
information relates to a person which in ordinary circumstances would never be disclosed to

anyone else; such information may acquire a public face due to circumstances specific to that information and thereby cease to be personal. It is safer that what is personal information should be determined by testing such information against the touchstones of public purpose. All information which is unrelated to a public activity or interest and, under Section 8(1) (j), if that information be related to or originated in person, such information should qualify to be personal information under Section 8(1) (j).

If one were to seek information about himself or his own case, the question of invasion of privacy of his own self does not arise. Therefore, when a citizen seeks information about his own case and as long as the information sought is not exempt in terms of other provisions of Section 8 of Right to Information Act, the PIO should provide the information. When a person seeks information about his own affairs or his company/firm, unless his authority to seek the information is in doubt, Section 8(1) (j) cannot be applied.

‘Personal information’ does not mean information relating to the information seeker, but about a third party. That is why, in the under Section 8(1) (j), it is stated ‘unwarranted invasion of the privacy of the individual’. If one were to seek information about himself or his own case, the question of invasion of privacy of his own self does not arise.

Prima facie it is clear that the applicant is seeking information concerning a disciplinary case against him and as such it is not information concerning some other person so as to attract Section 8(1) (j) of the Right to Information Act, 2005.

Information pertaining to the requester cannot be denied under Section 8(1) (j) as being personal information. ‘Personal information’ does not mean information relating to the information seeker, but about a third party. Personal information is exempt from disclosure if it would cause unwarranted invasion of the privacy of the individual. If one were to seek information about himself or his own case, the question of invasion of privacy of his own self does not arise.

I see no reason why this information, which involves the decision by the public authority to extend the time which has a public bearing, should not be authorized to be disclosed regardless of whether or not it is a subject matter of an ongoing arbitration.
proceeding. This variety of information is not covered by any exemption Section of the Right to Information Act. It relates to a public activity and is liable for disclosure.\textsuperscript{344} A court of Inquiry is a public not a private activity.\textsuperscript{345} The entire procedure of criminal trial falls in public domain.\textsuperscript{346} A telephone call to the police control room is clearly a public activity.\textsuperscript{347}

The complaint filed by Sonu Sharma before the Police cannot be treated as personal information that it has no relationship to any public activity or interest. Moreover, the appellant has a right to know the nature of the complaint filed against him.\textsuperscript{348} Appointment letters are certainly issued in the course of the public activity by the department and it is not possible to claim that disclosing this would be invasion of the privacy of any individual.\textsuperscript{349} There can be no ‘invasion of privacy’ of the person whose statement the record is purported to be, nor indeed can a court of inquiry be held to be anything but a ‘public activity’ in the context of the use of this phrase under Section 8(1) (j).\textsuperscript{350}

Since departmental promotions are a public activity, information with regard to these also cannot qualify for exemption from disclosure under Section 8(1) (j).\textsuperscript{351}

When a society gives information to a statutory authority in the fulfillment of statutory requirements, it is a public activity.\textsuperscript{352} The Commission fails to see how allotment of special/fancy VIP numbers to motor vehicles at the discretion of a minister of a state government could be considered an information personal, either to the minister, or to the beneficiaries of his orders. It surely does not invade anybody’s privacy. The function is very clearly a public function and as AA has pointed out it is also a statutory function.\textsuperscript{353}

Even though the Inquiry Report is regarding the conduct of another employee, the fact remains that the employee has not generated the report by sharing any personal information. Instead, the report is the result of an administrative/ vigilance inquiry conducted by an inquiry officer. It is an admitted fact that some administrative action was taken on the basis of the inquiry report and the employee had been kept under observation and then transferred out. If the competent authority had thought it fit to inquire into whatever allegation had been

\textsuperscript{344} R.B. Pandit v. National Highways Authority of India (NHAI), CIC/AT/A/2008/01334.
\textsuperscript{346} Indra Prakash v. N.H.R.C., CIC/LS/A/2010/000093.
\textsuperscript{347} Sunita Bhagat v. Dg. Commissioner of Police, IPC, CIC/WB/A/2008/00196.
\textsuperscript{348} Omprakash v. Asst. Commissioner of Police, Operation Cell, North East Delhi Police, Seelampur, New Delhi, CIC/SS/A/2010/00087.
\textsuperscript{349} Saidur Rahman v. Renu Sharma, Senior Divisional Personnel Officer, Northern Railway, CIC/SG/A/2009/000844/3562.
\textsuperscript{351} VP Singh v. Dep. Of Personnel & Training (DePT), Ministry of Commerce, CIC/WB/A/2009/000133.
\textsuperscript{353} Subhodh Jain v. Transport Department, Government of NCT of Delhi dt. 15.10.2007.
received against the employee concerned, it is undoubtedly in public interest to know about
the report not only for the sake of promoting transparency in that particular office but also to
set an example for others.354

The information regarding the attendance of a particular employee in the office on
certain dates is clearly administrative in nature and must be available in the public domain. It
cannot be anybody’s case that the presence or absence of an employee in the office on a
particular day can be a private or secret affair between the public authority and the employee
concerned only.355

A privilege pass is given to an employee in the course of his public duties as one of
the benefits he is entitled to and that there is nothing personal about it.356

Since the grant of visa itself is a public activity, the information on the basis of which
such grant was made, especially whether a grant of visa was preceded by submission of
correct and authentic information by the visa-seeker, also assumes a public persona. Since
there is a linear relationship between the furnishing of information by an applicant for visa
and the grant of visa to her/him and, grant or denial of visa being a public activity, the
information connected with that should be assumed to be in public domain.357

Monetary rewards granted to individual employees of the public authority should also
be liable for disclosure, especially because this is a claim on the budgetary resources of the
state...it would be incorrect to assume that there would be a risk simply from the fact that a
reward has been given to an employee for his outstanding work.358

There has been a lot of confusion regarding the disclosure of documents submitted to
a public authority by an individual or an organisation. While views may differ whether it can
be considered as a part of public activity, a PIO should not have any doubt that most such
documents are third party information and cannot be disclosed without following the
procedure under Section 11.

Various public authorities in performing their functions routinely ask for personal
information from citizens, and this is clearly a public activity. When a person applies for a
job, or gives information about himself to a public authority as an employee, or asks for a

354 Basta Ram Naval v. CPIO & Dy. CDA (Admn), CIC/SM/A/2008/00049.
358 Ashok Kumar Lahiri v. Customs Department, Kolkata, CIC/AT/A/2008/00748.
permission, licence or authorization, all these are public activities. The application for an arms licence is certainly a public activity. Section 4(1) (b) (xiii) mandates suomotu publishing by all public authorities of particulars of recipients of concessions, permits or authorisations granted by it.359

The application for a new connection for water made to public authority is clearly a public activity. A person submits an application and attached papers in fulfillment of his statutory duty to get water connection.360

Wherever a privilege is granted to a person under a given provision of law, all the activities connected with such grant, assume the characteristics of a public activity. No information germane to the grant of that privilege to that person under the law can thereafter be held as confidential and private or personal.

Information furnished by citizens to officers connected with census operations, agricultural census or other data collection operations is voluntarily given with an assurance from the public authority that such information shall be kept confidential. The crucial differentia is that such personal information, besides being confidential, is not in any way connected with grant of a privilege such as a visa or a license to own a weapon. Therefore, while the former information is personal and confidential, the latter is not.361

The act of applying for a job or a selection process is not a private activity but is clearly a public activity, and disclosure of the documents and papers submitted to obtain the job cannot be held to be an invasion in privacy.362

The question that is to be asked is not whether requested information should be disclosed because somebody else - in this case the appellant - considered such information to be public and not personal information, but the real question was, what was the belief of the applicant about the nature of such information when they gave the information to the public authority and what was the understanding of the public authority about it. If those providing such information to the public authority did so with a clear understanding that they were providing to such public authority their personal information and the public authority held such information knowing full well that it was a personal information of the applicants for registration of trusts, which was not to be ordinarily disclosed, then such information would

359 Jagveeh Kumar Sharma v. G.L. Meena, Joint Secretary (Home) & PIO, GVCT Of Delhi, CIC/ WB/A/2008/00113/SG/0712 adjunct.
362 Neeraj Kumar v. Jit Singh Public Information Officer DR(SC/ST Cell) JNU, CIC/SO/A/2008/00248/1596.
Disclosure of intimate facts about one's life, profession or relationship can affect an individual in multiple ways. Disclosure of even true private facts has the tendency to disturb a person's tranquility. It may generate many complexes in him and may even lead to psychological problems. He may, thereafter, have a disturbed life all through. In the face of these potentialities, and as already held by the Supreme Court in its various decisions, the right of privacy is an essential component of right to life envisaged by Article 21. The right however, is not absolute and may be lawfully restricted for the prevention of crime, disorder or protection of health or morals or protection of rights and freedom of others.

The Article 12 of the Universal Declaration of Human Rights adopted by the General Assembly of the United Nations states: “No one shall be subjected to arbitrary interference with his privacy, family, home or correspondence, nor to attacks upon his honour and reputation. Everyone has the right to the protection of the law against such interference or attacks.” India does not have a privacy law, though certain Acts like ‘The Information Technology Act, 2000’ have strict penal provisions for tempering with confidential digital data, breach of privacy and confidentiality. The Privacy Act of 1974, in US is a comprehensive law that establishes a code of practices that governs the collection, maintenance, use, and dissemination of information about individuals that is maintained in systems of records by the federal agencies from which information can be retrieved by the name of the individual/identification number. The US Restatement of the Law, Second, Torts, 652, defines the ‘invasion of privacy’ in the following manner: ‘One, who intentionally intrudes, physically or otherwise, upon the solitude or seclusion of another or his private affairs or concerns, is subject to liability to the other for invasion of his privacy, if the intrusion would be highly offensive to a reasonable person.’ The Commission has often referred to the definition of ‘sensitive personal data’ under Section 2 of UK’s Data Protection Act, 1998 holding that “If we were to construe privacy to mean protection of personal data, we have used this as a suitable starting point to help define the concept”.

The need for a specific law for the protection of privacy is felt, more so in the light of events like ‘Radia-gate’ tape leak. The broad principles concerning the law of privacy were

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summarized by the Hon’ble Supreme Court in the case of Rajagopal v. State of Tamil Nadu and accordingly, it was held that a citizen has a right to safeguard the privacy of his own, his family, marriage, procreation, motherhood, childbearing and education among other matters. None can publish anything concerning the above matters without his consent - whether truthful or otherwise and whether laudatory or critical. If he does so, he would be violating the right to privacy of the person concerned. But a publication concerning the above aspects becomes unobjectionable, if such publication is based upon public records including court records. Once something becomes a matter of public record, the right of privacy no longer exists. The only exemption to this could be in the interest of decency. In the case of public officials, it is obvious that right of privacy or for that matter, remedy of action for damages is simply not available with respect to their acts and conducts relevant to the discharge of their official duties. This is so even where the publication is based upon the acts and statements that are not true unless the official establishes that the publication was made with reckless disregard for truth. So far as the government, local authority or other organization and institution exercising governmental power are concerned, they cannot maintain suit for damages for defaming them.

In Rajagopal v. State of Tamil Nadu the Supreme Court arrived at a conclusion that the right to privacy is implicit in the right to life and liberty guaranteed to the citizens under Article 21. It is a ‘right to be let alone’. ‘Right’ includes right to privacy as a part of the right to life under Article 21...but the right to hold a telephone conversation in the privacy of one’s home or office without interference can certainly be claimed as ‘right to privacy’. Conversations on the telephone are often of an intimate and confidential character... Telephone-tapping would, thus, infact Article 21 of the Constitution of India unless it is permitted under the procedure established by law. The state has no right to invade the privacy of an individual. There are some extraordinary situations where the State may be allowed to invade on the privacy of a citizen. Disclosure of ‘wills’ would constitute invasion of privacy. Appellant is within his rights to ask whether indeed there is a will executed by the three people mentioned.

365 Rajagopal v. State of Tamil Nadu (1994(6) SCC 632
366 Ibid
The residential addresses of the (LIC) agents are not to be disclosed as per Section 8(1) of the Act.371 Details of persons occupying residential property can be denied.372 The names & addresses of the Right to Information applicants also cannot be taken as personal & private.373

The claim that disclosure of information about location of walls and various facilities in a residential house is an invasion of privacy is indeed taking the concept of privacy too far. Curbing illegibilities and corruption is certainly one of the objectives of the Right to Information Act and under the current circumstances this may happen if greater transparency is practiced in this matter.374

It will definitely not be proper if the personal information concerning certain personalities who were recommended but not considered for grant of the award (Padma awards) for any reason, is disclosed and made public. It will surely be at the least a social embarrassment and may amount to invasion of privacy.375

A deceased person retains certain degree of privacy and information relating to him cannot be disclosed merely because he is no more. All information pertaining to a dead individual should not be disclosed as certain information continues to be protected by his right to privacy even after death. However, the Commission is of the view that information pertaining to an individual’s PF account, contributions made from his salary, etc. does not come within the ambit of information that continues to remain protected from disclosure even after the death of the individual and can be disclosed under the Right to Information Act since such disclosure cannot be considered an invasion on the privacy of a person who is dead.376

Appellant is the daughter of the divorced wife of a deceased official and that she is claiming pensioner benefits whereas the deceased father had nominated his third wife (who is living) as the beneficiary of his pension and other dues. The third wife had claimed all the benefits. Hence the public authority had requested the appellant to get a succession certificate from the court based on which the pensioner benefits would be released. The Commission, on perusal of the information provided, observed that the appellant has been advised to produce

376 S Balaji v. Public Information Officer Regional PF Commissioner, EPFO, CIC/SG/A/2010/000462/8540.
a succession certificate from the court before any action can be taken with regard to death-cum terminal benefit on account of the death of her father.

Information relating to pensioner dues in respect of a deceased employee of a public authority, should be allowed to be accessed only by those who were statutorily entitled to access this information or were designated as nominees by the deceased employee during his lifetime. Anyone, who does not fall in the two latter categories, is a rank outsider to the information and cannot be allowed to access the same. The appellant being the deceased employee’s father doesn’t alter this position.

In case of seeking information relating to the accounts of a deceased customer of a bank, the information seeker has to establish that he is the legal heir of the deceased.

In any public authority, information about a former employee could be found out by looking at several records, such as, acquaintance roll, leave registers, seniority lists, etc. Even if this particular person had passed away a long time back, the authorities concerned could have tried to find out about him from one or the other relevant records or documents only if they had tried hard and should not have so casually dismissed the request by stating that no record in this name existed.

The matter regarding the terminal benefits stands settled for over 20 years in favour of his wife. It is quite possible that disclosure of this information on the basis of applicants’ one-sided plea will jeopardize deceased wife’s legal interests. The Commission, therefore, doesn’t wish to allow this old matter to be reopened through the Right to Information-route. The information requested admittedly pertains to a third-party, without whose consent no disclosure can be authorized.

Disclosure of several items of information requested by applicant pertaining to the receivables from the government by a deceased employee is quite clearly the personal information of a third party. There was no reason why these should be given to him, especially when there is no public interest which commends its disclosure.

N. Ranganathan v. Corporation Bank, PBA/07/1297.
Ranjeet Ashok Solanki v. CPIO Cantonment Board, Pune (MOD), CIC/WT/A/2007/00623-SM.
Ashok Kumar v. Customs, Central Excise & Service Tax Department, Allahabad, CIC/AT/A/2009/000751/000694.

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All payments made by the public authority to its employees while serving or to their dependents after the death of the employees and like salaries and other compensation paid to the employees are no different. Section 4(1)(b) of the Right to Information Act mandates that the public authority should proactively publish all details of compensation paid to the employees. 383

The SC certificate applicant and the police verification report of are in public to be provided. 384 The certificate based on which an individual has been employed in the reserved category by a public authority cannot be held as personal. 385

Under Section 4(1)(b)(xiii) of the Act, every public authority is expected to disclose the particulars of the recipients of concession, permits and authorization granted by it. The dealer in question is the recipient of the benefit of reservation policy under the ST caste. Therefore, all the particulars relating to him including the caste certificate should be put in public domain. 386

The registered companies willingly divulge details of their activities to the respondent with a view to availing of certain concessions and benefits in operationalising their business activities. Therefore, issuance of registration certificate is largely in the public interest the denial of which under Section 8(1)(j) of the Act is unjustified. 387

Such call details, where public as well as private calls are intertwined, cannot be provided to avoid invasion of privacy under Section 8(1)(j) of the Right to Information Act. I do not find any public interest in disclosure of this information. 388

The telephone number of a private individual appearing for examination, which is not an official number of an official of the government, is private information, the disclosure of which would serve no public interest and is not concerned with any public activity. It would, therefore, amount to invasion of privacy. 389

A private citizen’s privacy right is undoubtedly of the same nature and character as that of a public servant. Therefore, it would be wrong to assume that the substantive rights of

387 Anil Sachdev v. N.S.I.C. Ltd. 5726/IC(A)/2010.
389 Dr. Mahesh Mangalat v. N. K. Sharma, Public Information Officer & Dy. Secretary, Union Public Service Commission, UPSC, CIC/WB/A/2009/000724.
the two differ. A citizen’s fundamental rights, which include the right to privacy - are not
subsumed or extinguished if he accepts or holds public office. Section 8(1) (j) ensures that all
information furnished to public authorities - including personal information (such as asset
disclosures) are not given blanket access; the information seeker has to disclose a sustainable
public interest element for release of the information. Thus, when a member of the public
requests personal information about a public servant, - such as, asset declarations made by
him - a distinction must be made between the personal data inherent to the position and those
that are not, and therefore affect only his/her private life. This balancing task appears to be
easy; but the PIO would realise it is not so in practice.

It has been held by a Constitution Bench of the Supreme Court that an individual does
not forfeit his fundamental rights, by becoming a public servant, the fundamental rights
guaranteed by Article 19 can be claimed by government servants. Article 33 which confers
power on the parliament to modify the rights in their application to the armed forces, clearly
brings out the fact that all citizens, including government servants, are entitled to claim the
rights guaranteed by Article 19.390

The Supreme Court repelled an argument that public servants do not possess
fundamental rights, through another Constitution Bench, as follows: It was said that a
government servant who was posted to a particular place could obviously not exercise the
freedom to move throughout the territory of India and similarly, his right to reside and settle
in any part of India could be said to be violated by his being posted to any particular place.
Similarly, so long as he was in government service he would not be entitled to practice any
profession or trade and it was therefore urged that to hold that these freedoms guaranteed
under Article 19 were applicable to government servants would render public service or
administration impossible... We find ourselves unable to accept the argument that the
Constitution excludes government servants as a class from the protection of the several rights
guaranteed by the several Articles in Part III save in those cases where such persons were
specifically named... In our opinion, this argument even if otherwise possible has to be
repelled in view of the terms of Article 33. That Article selects two of the services under the
State- members of the armed forces charged with the maintenance of public order and saves
the rules prescribing the conditions of service in regard to them – from invalidity on the
ground of violation of any of the fundamental rights guaranteed by Part III and also defines

the purpose for which such abrogation or restriction might take place, this being limited to ensure the proper discharge of duties and the maintenance of discipline among them. The Article having thus selected the services members of which might be deprived of the benefit of the fundamental rights guaranteed to other persons and citizens and also having prescribed the limits within which such restrictions or abrogation might take place, we consider that other classes of servants of government in common with other persons and other citizens of the country cannot be excluded from the protection of the rights guaranteed by Part III by reason merely of their being government servants and the nature and incidents of the duties which they have to discharge in that capacity might necessarily involve restrictions of certain freedoms as we have pointed out in relation to Article 19(1) (e) and (g). 391

If public access to the personal details, such as, identity particulars of public servants, i.e. details such as their date of birth, personal identification numbers, or other personal information furnished to public agencies, is requested, the balancing exercise, necessarily dependent and evolving on case by case basis may take into account the following relevant considerations, i.e. whether the information is deemed to comprise the individual’s private details, unrelated to his position in the organization, and, whether the disclosure of the personal information is with the aim of providing knowledge of the proper performance of the duties and tasks assigned to the public servant in any specific case; whether the disclosure will furnish any information required to establish accountability or transparency in the use of public resources. 392

A right of confidence for all correspondence and communications which arc expressly or impliedly given in confidence must be recognized. A public servant acts for the public good in the discharge of his duties, and is accountable for them. The nature of restriction on the right to privacy is therefore of a different order. In the case of private individuals, the degree of protection afforded is greater; in the case of public servants, the degree of protection can be lower, depending on what is at stake. If an important value in public disclosure of personal information is demonstrated by way of objective material or evidence, the protection afforded by Section 8(1) (j) may not be available. The onus of showing that disclosure should be made, is upon the individual asserting it; he cannot merely say that as the information relates to a public official, there is a public interest element. In such cases,

392 Vijay Prakash v. UOI and Others, WP(C) 803/2009
the PIO can proceed to the next step of issuing notice to the concerned public official, as a ‘third party’ and consider his views on why there should be no disclosure.\(^{393}\)

A surmise that the third party should be handed over this information in order to satisfy himself that a particular civil servant had complied with, or violated the CCS conduct rules, will be an erroneous one and will be open to wide spread misuse.\(^{394}\)

There have been calls from many quarters for the disclosure of the assets of a public servant and many state governments have decided in favour of such calls. Government servant does not lose his rights as a citizen by virtue of joining a government job. The appellant had requested for movable/immovable property details and income and expenditure of an Asstt Commissioner of Income Tax and the Commission had held that this information was personal information of such officer and, therefore, barred from disclosure under Section 8 (1) (j) of the Right to Information Act.\(^{395}\)

Public servants cannot claim exemption from disclosure of charges against them or details of their assets. Given our dismal record of mis-governance and rampant corruption which colludes to deny citizens their essential rights and dignity, it is in the fitness of things that the citizen’s right to information is given greater primacy with regard to privacy.\(^{396}\) The DOP&T viewed that the disclosure of information pertaining to annual property returns filed by the government employee may be decided by the concerned PIO in the light of consent or otherwise of third party and after following the stipulated procedure laid down under Section 11 of the Right to Information Act... But because it is established that in the cooperation group housing society a joint property is located in which the interest of appellant stands established, and because the property statement, although indeed that of a third party, is not a confidential document held by government, we, therefore, find that disclosure of the property details cannot constitute invasion of privacy. The information is, thus, not exempt from disclosure under any of the clauses of the Right to Information Act, 2005.\(^{397}\)

The property returns submitted by the DDA officials to public authority in pursuance of certain rules and regulations are in the nature of personal information. The government has set in place a detailed mechanism for dealing with this information while maintaining its

\(^{393}\) CPIO, Supreme Court of India v. SC Agrawal & Another WP(C) 288/2009.


\(^{397}\) Vimla Mehra v. Ministry of Home Affairs (MHA) & Dep’t of Personnel & Training (DoPT), CIC/WB/A/2009/001586 & 587.
confidentiality. This information cannot be routinely disclosed as it is covered under Section 8(1) (j) of the Right to Information Act. A contrary view is possible only when a strong case is made out for its disclosure. Disclosure of information such as assets of a public servant, which is routinely collected by the Public authority and routinely provided by the public servants, cannot be construed as an invasion of the privacy of an individual. There will only be a few exemptions to this rule which might relate to information which is obtained by a public authority while using extraordinary powers such as in the case of a raid or phone-tapping. Any other exemptions would have to be specifically justified. Besides, the Supreme Court has clearly ruled that even people who aspire to be public servants by getting elected have to declare their property details. If people who aspire to be public servants must declare their property details it is only logical that the details of assets of those who are public servants must be considered to be disclosable. Hence, the exemption under Section 8(1) 0) cannot be applied in the instant case. The Commission has noticed that a number of people are seeking information on the assets of the public servants. Since these assets would have to be disclosed, the Commission under its powers under Section 19(8) (a) directs the PIO of DDA to display this information on the website of the public authority so that there will be no requirement of filing Right to Information application in such matters by applicants. This is in fulfillment of the public authority’s obligation under Section 4. 99

We have consistently held that the property returns filed by an employee are in the nature of personal information and cannot be disclosed unless it would serve a larger public interest. Disclosure of such information would amount to unwarranted invasion of the privacy of the employee concerned. 400

Property Returns have rightly been withheld from disclosure as the information is personal to the third party and given to the respondents confidentially on an assurance that its confidentiality shall not be breached except under specific circumstances such as disciplinary/vigilance enquiries against the third-party. 401

The personal assets of any person - including the civil servant - are, as the term itself defines, ‘personal’ to such person/civil servant. When he joins the service, he accepts certain Conduct Rules restrictions on himself, one of which is giving prior intimation for transaction

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400 Surendra Myneni v. CPIO, Andhra Bank, CIC/SM/A/2010/900716&900736.
in certain categories of movable and immovable assets to the competent authority and obtaining the approval of that authority. The only reason why such prior intimation and approvals thereof can or should be disclosed - the matter being decidedly personal to the civil servant - is on account of these being in public interest. If public servants - here the expression is used expansively to include members of the higher judiciary too - are obliged to furnish asset declarations, the mere fact that they have to furnish such declaration would not mean that it is part of public activity, or ‘interest’... a public servant does not cease to enjoy fundamental rights, upon assuming office. That the public servant has to make disclosures is a part of the system’s endeavor to appraise itself of potential asset acquisitions, which may have to be explained properly. However, such acquisitions can be made legitimately; no law bars public servants from acquiring properties, or investing their income. The obligation to disclose these investments and assets is to check the propensity to abuse a public office, for private gain. If the information applicant is able to demonstrate what Section 8(1) (i) enjoins the information seeker to, i.e. that ‘the larger public interest justifies the disclosure of such information’ the authority deciding the application can proceed to the next step, after recording its prima fade satisfaction, to issue notice to the ‘third party’ i.e. the public servant who is the information subject, why the information sought should not be disclosed. After considering all these views and materials, the CPIO or concerned State PIO, as the case may be can pass appropriate orders, including directing disclosure. This order is appealable.

Regarding the name of charge-sheeted officer and the copy of the enquiry report, the decisions appear contradictory whether they should be disclosed. The process of investigation continues till the vigilance proceedings come to an end. A decision would have to be taken whether any disclosure would lead to impeding the process. Disclosure of the vigilance proceedings to a third party needs to be dealt in a conservative manner unless there is a public interest. Information regarding the disciplinary proceedings/departmental action against the employees cannot be classified as personal information.

Disclosure of names of charge-sheeted officers of any public authority which have the effect of tarnishing the reputation of such officers and demoralizing them, especially if at the conclusion of the disciplinary enquiry such officers are completely exonerated, they would

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403 CPIO, Supreme Court of India v. SC Agrawal & Another WP(C) 288/2009.
have suffered incalculable damage to their personal standing and reputation if their names were to be disclosed only for the reasons that charges had been framed against them.405

The final order of the competent authority imposing penalty on the charged employees cannot be described as personal information as the penalties imposed and implemented are already in the public domain.406

Disclosure of information about individuals on the agreed and secret lists denied under Section 8(1) (j), 8(1) (h) of the Right to Information Act.407 A harmonious reading of Section 124 of the Indian Evidence Act and Section 11(1) of the Right to Information Act leads to the conclusion that if an information is held to be confidential in public interest under Section 124 of the Indian Evidence Act, that can be urged as a ground for non-disclosure of the information under Section 11(1) of the Right to Information Act. In the present case, the agreed List is admittedly confidential information, rather a critically confidential information, held by the public authority in its role as a third party within the provisions of Section 124 of the Indian Evidence Act. It was held that information relative to agreed List must not be allowed to be disclosed.408

Information with regard to complaints filed against any public officer with regard to the discharge of his official duties have relationship to a public activity or interest and therefore cannot fall within the ambit of Section 8(1) (j), unless it is shown that it is an unwarranted invasion on the privacy of the individual. Charges or complaints against a public servant cannot be considered to fall in the domain of his private life.409

If charges have been investigated and found to have been substantiated, leading to asking for a sanction for prosecution, this information cannot be considered as relating to the privacy of an individual... as soon as prosecution is launched the names and identities of those being prosecuted would be in the public domain. Therefore, as there is no difference in the status of the accused before the prosecution is launched, in both cases the accused is just that and innocent till proved guilty, there is no reason to think that revealing the names before

405 S.K. Goel v. The Oriental Insurance Company Limited, CIC/AT/A12007/0 1433.
406 Sudhir Saxena v. CPIO, State Bank of India, Allahabad, CIC/PB/C/2008/00008-SM.
prosecution was launched would be considered an ‘invasion of the privacy’ but not so after prosecution is initiated.410

When the copies of documents submitted by a government servant to a public authority are sought by a third party, a PIO should examine whether the documents contain personal information. Disclosure of the personal service record of a person would be regarded as third party information.411

Service book of an individual is private information.412 The copy of the complete service register of an employee is denied under Section 8(1) (j) since it is third party information and its disclosure has no relation to any public activity or interest.413

The appellant has sought to put the Right to Information to an ingenious use, i.e. confirming an identity of an employee of a public authority in the context of a similar sounding name which is entered in the land records pursuant to a land transaction. He has urged that he is serving a higher purpose, i.e. restoring the honour and the image of the Army in the eyes of the people by exposing a possible case of impersonation by one of its officers. There is no tangible public purpose which has been cited by the appellant that would convince the Commission to override the guaranteed exemption under Section 8(1) (j) to the individual. A mere suspicion cannot constitute the basis for a public interest.414

Copies of representations etc. made by an employee in respect of her transfer, her leave applications and ‘no objection’ issued by the competent authority during her foreign tour, the amount paid to against medical claims, the official declaration of with regard to the service and employment of her husband and son, etc. are personal information.415

The provident fund is not a public fund but the fund of a private individual/ employee in any organization.416 The appellant has sought for various information regarding other officials, like their marital status, whether their spouses are employed and if so in which organizations and in which places, records of posting of officials, areas of specialization etc.

410 Shruti Singh Chauhan v. Assistant Director (Vigilance), Directorate of Vigilance, GNCTD, Delhi, CIC/WB/A/2007/00840/SG/00044.
413 S. Shankar v. Southern Railways, Chennai CIC/OK/A/2008/01307-AD.
415 Pradip Kumar Saha v. Uco Bank, CIC/PB/A/2008/00672/00238-SM.
In the present appeal, the appellant has not established how the public interests would be served in disclosing these personal information of other officers.417

Applications regarding post-retirement benefits are fairly common from the retired persons as well as their friends and relatives. We think that the details about the payment of pension including the family pension cannot be withheld by claiming it to be personal information. Information regarding payment of pension like the payment of salaries and wages should be available in the public domain.418

The citizens have the right to know about the voluntary retirement proposals approved by the bank and all the related details just as they have a right to know about the serving employees and their compensation package etc.419

The appellant has asked for copies of certificates submitted by a retired employee of the respondent and other related information... The information asked for has no relationship with any public activity of the respondents. Moreover, it pertains to personal information of a retired employee. The denial of information under Section 8(1) (j) of the Act is, therefore, justified.420 The names and addresses of people to whom the post-death retirement benefit were given cannot be called an invasion of privacy.421 The information is related to a retired person who was charge-sheeted on minor penalty during his service period is not personal.422

The information regarding payouts to the employees serving or retired by public authority is liable to be disclosed under the provisions of the Right to Information Act. Section 8(1) (j) will not be applicable. Equally, Section 11(1) will not be applicable.423

A pensioner does not cease to become totally out of control from the government. On the contrary, his conduct and character are continuously monitored by the government. In that context, the whereabouts of such pensioner is also very much relevant and it cannot be a private information... Instances are many and news is coming from many parts of India that pension claims are made even in the name of dead persons. Therefore, such information

cannot be shut out when a query is made regarding the real address of a government pensioner.\textsuperscript{424}

The proviso to Section 8(1) (j) reads ‘Provided that the information, which cannot be denied to the parliament or a State Legislature shall not be denied to any person’. The Parliament has recognized that the individual citizen, the sovereign of this democracy, gives it legitimacy, and therefore its right to get information cannot exceed the right of its master. The Right to Information given to a citizen under the Act has often been compared to the right of the Members of the Parliament or State Legislatures to raise questions during the question hour. There is no law which enables parliament to demand all such information; it has to be necessarily in the context of some matter, or investigation. \textsuperscript{425}

The proviso does not limit the right of an applicant to narrow down the query to what can be asked from the Parliament or the State Legislature. It rather provides that what cannot be denied to the parliament or a state legislature shall not be denied to an applicant. The CIC, in its decision dated 30-08-2006 in \textit{Mahavir Singhvi v. Ministry of External Affairs}, held that if there were the intention of Parliament to restrict the scope of this proviso, it would have stated that information which cannot be asked through a parliament question could not be given to the applicant. So, there is no direct link between conditions of admissibility of questions as prescribed by the Rules of Procedure and Conduct of Business in the Lok Sabha/Rajya Sabha and the said proviso.\textsuperscript{426}

The proviso below Section 8(1) (j) of the Right to Information Act was subject of arguments. The said proviso was considered by the Bombay High Court in \textit{Surup Singh Hrya Naik v. State of Maharashtra & Others},\textsuperscript{427} and it was held that it is proviso to the said subsection and not to the entire Section 8(1). The punctuation marks support the said interpretation of Bombay High Court. On a careful reading of Section 8(1), it becomes clear that the exemptions contained in the clauses (a) to (j) end with a semi colon ‘;’ after each such clause which indicates that they are independent clauses. Substantive clause (j) however, ends with a colon ‘:’ followed by the proviso. Immediately following the colon mark is the proviso in question which ends with a full stop. In Principles of Statutory Interpretation, 11th Ed. 2008 (at page No. 169) G.P Singh, has noted that “If a statute in question is found to be

\textsuperscript{425}Vijay Prakash v. UOI and Others, WPC 803/2005.
\textsuperscript{426}Mahaveer Singhvi v. Central Public Information Officer Ministry of External Affairs, CIC/OK/C/2006/00010, CIC/OK/A/2006/0002 & 00049.
\textsuperscript{427}AIR 2007 Bom. 121
carefully punctuated, punctuation, though if minor element, may be resorted to for purposes of construction." Punctuation marks can in some cases serve as a useful guide and can be resorted to for interpreting a statute. Normally, a proviso is meant to be an exemption to something in the main enactment or to qualify something enacted therein which but for the proviso would be within the purview of the enactment... The proviso in the present cases is a guiding factor and not a substantive provision which overrides Section 8(1)(j) of the Right to Information Act. It does not undo or rewrite Section 8(1)(j) of the Right to Information Act and does not itself create any new right. The purpose is only to clarify that while deciding the question of larger public interest i.e. the question of balance between 'public interest in form of right to privacy' and 'public interest in access to information' is to be balanced.  

It is interesting to note that an information about the Prime Minister’s National Relief Fund which was refused to the Parliament, was taken up under the Right to Information Act treating it as a public authority. This makes a citizen more powerful than a MP/MLA. The information held by the PMO is not disclosable either before the Lok Sabha or the Rajya Sabha, as clarified in the letter of Secretary General, Lok Sabha C. C. Malhotra to the then Principal Secretary, PMO by a letter of 27.8.01 in which he has stated as follows: “During the current session of Lok Sabha, only two notices of questions relating to the Prime Minister’s National Relief Fund addressed to the Prime Minister were received. Both the questions were disallowed on the ground that these funds are not the concern of the Government of India.”

Ordinarily private information cannot be put in public domain. However, if the applicant is able to prove that there is public interest involved in the disclosure, the information can be disclosed. Commission also cannot be oblivious to the fact that personal information, when allowed to be accessed by third parties has the potential to expose the owner of such information to mischief, harassment, intimidation, defamation and worse. The boundaries of personal/private domains must never be allowed to the breached and, if at all breached, must be for compelling reasons, cautiously carefully and responsibly evaluated by a competent authority. Commission has reflected on the circumstances in which personal information can be disclosed in some of its earlier decisions such as in K.R.S. Narayanan v. Dr. R.K. Mitra, Deputy Secretary (Foreigners) & CPIO... Right to Information Act cannot be so interpreted as to allow poaching by third parties into personal domains. Infact,...

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428 Union of India v. CIC & P.D. Khandelwal & Others WP(C) No. 8396/2009  
429 Union of India v. CIC & P.D. Khandelwal & Others WP(C) No. 8396/2009.  
431 K.R.S. Narayanan v. Dr. R.K. Mitra, Deputy Secretary (Foreigners) & CPIO, CIC/AT/A/2007/00245
considering the fact that state agencies receive a vast amount of personal and private information, the need to prevent such information from escaping into public domain has become even more urgent.\footnote{Raj Kumari v. G.S. Panwar, Commissioner of Income Tax & CPIO, Rohtak, CIC/AT/A/2007/01339.}

Since the issue is already in the public domain, even though the information sought is undoubtedly with regard to private property, this property has been the subject of public activity, in the official demarcation of erstwhile state land as part private and part public. It is only in cases when no such relationship has been established that the plea of privacy can be taken under Section 8(1) (j). Hence, K.C. Jain, Jt. Secretary (Judicial), Ministry of Home Affairs is directed to provide the information sought to appellant.\footnote{Basanti Lal Singhvi v. Ministry of Home Affairs (MHA), CIC/SM/C/2009/001190-WB.} The documents submitted by the empanelled candidates are indeed crucial for determination of eligibility for award of dealership. In order to ensure that the aspirants have submitted genuine documents on the basis of which marks have been awarded to them, the documents submitted by them, except the personal information, should be put in public domain for scrutiny by any citizen. The land records are not confidential documents. The plot of land at which retail outlet is established should generally be put in public domain.\footnote{KSharada v. M/o External Affairs, CIC/AD/X/09/000161.}

The gravity of the issue of illegal immigrants is of rising concern, more so in view of the utmost priority of the national safety and security of the citizenry...The CPIO is directed to furnish the information availed by the police authorities to the appellant satisfying the appellant on the aspect as to whether: the passport obtained by the third party was on the basis of forged and fabricated documents or not.\footnote{A.N. Gupta v. Ministry of Personnel, Public Grievances & Pensions, Department of Personnel & Training (DoPT) CIC/WB/A/2007/0055 252}

Papers relating to noting submitted to the ACC can in no way seek exemption under Section 8(1) (j). The very act of submitting a note to the ACC is, in fact, a public activity and cannot in any way be deemed to be a private activity.\footnote{Jasraj Kair v. Ministry of Personnel, Public Grievances & Pensions, Department of Personnel & Training (DoPT) CIC/WB/A/2007/0055 252}

3.2 Doctrine of public interest under the Right to Information Act in India

Right to information is basis to any democracy. A vibrant citizenry is a prerequisite for survival of democratic society and governance. “Information is the lifeblood of democracy. Without adequate access to key information about government policies and programs, citizens and parliamentarians can’t make informed decision and incompetent or
corrupt governments can be hidden under a cloak of secrecy.” The principle of maximum disclosure is fundamental to freedom of information legislation in a democracy. But there are certain circumstances in which information might not be disclosed. In all circumstances, the principle of public interest can override objections to releasing information. The doctrine of public interest has been incorporated in the preamble of the Right to Information Act, 2005 itself.

“...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 Governments and their instrumentalities accountable to the governed;

AND WHEREAS revelation of information in actual practice is likely to conflict with other public interests including efficient operations of the Governments, optimum use of limited fiscal resources and the preservation of confidentiality of sensitive information;

AND WHEREAS it is necessary to harmonize these conflicting interests while preserving the paramountcy of the democratic ideal;.....”

The Public authority may allow access to information, if public interest in disclosure outweighs the harm to the protected interests. The scheme of the Act is based on the presumption that information should be disclosed unless the harm likely to arise from disclosure would outweigh the public interest in making the information available. This power of the public authority is irrespective of anything contained in the Official Secrets Act, 1923. This provision to allow access to information by public authority is also irrespective of any of the exemptions provided in Section 8(1). The Right to Information Act contains a general public interest override that applies to all exemptions. The test provides:

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437 As opposition leader, [Stephen Harper] wrote in the Montreal Gazette in the year before he came to power as quoted in - Lawrence Martin, Harperland: The Politics of Control.
438 An Act 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, in order to promote transparency and accountability in the working of every public authority, the constitution of a Central Information Commission and State Information Commission and for matters connected therewith or incidental thereto. 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 Governments and their instrumentalities accountable to the governed;
AND WHEREAS revelation of information in actual practice is likely to conflict with other public interests including efficient operations of the Governments, optimum use of limited fiscal resources and the preservation of confidentiality of sensitive information;
AND WHEREAS it is necessary to harmonize these conflicting interests while preserving the paramountcy of the democratic ideal.
NOW, THEREFORE, it is expedient to provide for furnishing certain information to citizens who desire to have it;
BE it enacted by Parliament in the Fifty-sixth year of the Republic of India.

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

Section 8(2) balances the public interest in disclosure with the ‘harm caused by disclosure to the protected interests.’ A general observation of considerable significance relating to balancing the possible harm in disclosure against the public interest in obtaining information is that the balance of the public interest in disclosure cannot always be decided solely on the basis of the effect of a specific disclosure. The exemption covering the proceedings of cabinet and cabinet committees, for example, is based on the need for confidentiality of such discussions, and not primarily on whether the disclosure of particular information would cause harm.

It is worthwhile to note a curious situation regarding the clauses (d), (e) and (j) of Section 8(1) which provide that the information exempt from disclosure may be disclosed if the larger public interest warrants the disclosure of such information. The exemptions covered under these clauses are subject to both larger public interest test and public interest override test as provided in Section 8(2). From a cursory look, it seems that there is merely a repetition regarding public interest test for these clauses while for the other clauses of Section 8(1) provides single channel for disclosure of information which is otherwise exempt. In respect of clauses (d), (e) and (j) of Section 8(1) there is a provision of disclosure of information in case larger public interest warrants or justifies the disclosure. In case of larger public interest balancing exercise has to be done between public interest in disclosure and public interest in non-disclosure. Even after applying larger public interest test, if balance lies in favour of non-disclosure, then only the requested information comes under exemptions provided in these clauses. The public interest override test as provided in Section 8(2) is applicable only when the requested information is exempted under the provisions of the Section 8(1). Once the requested information is exempted then only public interest override test will have to be applied to allow access to information if the public interest in disclosure outweighs the harm to the protected interests.

There is a provision of larger public interest test in respect of certain exemptions (such as information the disclosure of which would harm the competitive position of third party, information available in fiduciary relationship, personal information) in the Right to
Information Act which balance the public interest in disclosure with the ‘public interest in maintaining the exemption.’ The public interest in maintaining an exemption is to avoid the harm which the exemption seeks to prevent. In case of exemptions which are subject to larger public interest test, the Right to Information Act requires a decision-maker to balance the public interest in disclosure with the public interest in maintaining the exemption. This formulation of the test requires the decision-maker to carry out the balancing exercise. A public authority must release information unless, ‘in the circumstances of the case, the public interest in maintaining the exemption outweighs the public interest in disclosing the information’. This requires the authority to make a judgment about the public interest. The public interest is not necessarily the same as that in which the public is interested. Usually the public interest pertains to a fairly large group of people, but there is nothing to stop it applying to a single individual.

Factors which operate against disclosure include potential damage to community interests, and the need to avoid serious damage to the proper working of government at the highest level. Factors which operate for disclosure include the need for accountability of public bodies, and for individuals to know the reasons for decisions made which concern them. The factors may be taken into consideration for the disclosure of information like furthering the understanding of and participation in the public debate issues of the day; promoting accountability and transparency by public authorities for decisions taken by them; promoting accountability and transparency in the spending of public money; allowing individuals to understand decisions made by public authorities affecting their lives, in some cases, assisting individuals in challenging those decisions and bringing to right information affecting public safety.

Applying the public interest test requires a balancing of competing interests, i.e. the general public interest in disclosure and the public interest in maintaining the exemption i.e. the public interest in maintaining an exemption is to avoid the harm which the exemption seeks to prevent. There is a presumption that information should be disclosed unless the harm likely to arise from disclosure would outweigh the public interest in making the information available. It is necessary for the public authority to consider whether any harm or unfairness arising from disclosure is outweighed by the public interest in making the information available.
It is often suggested regarding the fact that the term ‘the public interest’ is not defined in the Right to Information Act leads to difficulty. This should not be the case. From time to time weighing competing interests may be difficult. However, this does not mean that the nature of the task facing a public authority when applying the public interest test is unclear. In effect something ‘in the public interest’ is simply something which serves the interests of the public. When applying the test, the public authority is simply deciding whether in any particular case it serves the interests of the public better to withhold or to disclose information. The following examples may illustrate the point.

The Act exempts information whose disclosure would impede the process of investigation or apprehension or prosecution of offenders.\(^4\) A request is received by a police force about the relative detection rates for burglaries in different areas of a city. The police may consider that by responding to the request there is some risk that criminals may be able to make use of the information in planning crimes. It is therefore relevant to at least consider the exemption. However, the risk of assistance being given to burglars must be weighed against the general public interest in openness, important aspects of which include promoting accountability and increasing participation in public debate about matters of public policy such as policing.

A second request is for information about the number of police officers allocated to guarding visiting dignitaries. In this case there is the same risk that supplying the information might assist criminals. There is also the same public interest in openness and accountability. However, the police may argue that the risk presented in the second case is considerably stronger than in the first.

This mechanism to take public interest considerations into account when deciding whether to release information even where an exemption applies is referred to as a ‘public interest override’ or ‘public interest test’ because the public interest considerations ‘override’ the exemption. The Indian Right to Information Act does not define ‘in the public interest’. The ‘public interest’ is a nebulous, unformulated and unstructured concept which is typically not defined in Right to Information Act, 2005. This flexibility is intentional. Legislators and policy makers recognise that the public interest will change over time and according to the circumstances of each situation. In the same way, the law does not try to categorically define what is ‘reasonable.’

\(^4\) Section 8(1) (b) of Right to Information Act, 2005.
There is clearly a public interest in access to information under the control of public authorities as already stated above in the preamble. It is more difficult to identify the public interest in disclosure of the particular information that has been requested. Public interest means that there is benefit to the public in certain information being made available. It is difficult to define what that benefit might be since it will naturally vary from case to case. The public interest will also vary from one time to another. In the United States, the authorities decided not to release security camera video footage from inside the World Trade Center on 11 September 2001. This was because it was considered too distressing to the families of those who died. A year later, however, the footage was released because it was decided that there was an overriding public interest in knowing how people had evacuated the building. This had lessons for future design and construction of buildings.

In order to apply the doctrine of public interest override as envisaged in Section 8(2) of Right to Information Act, 2005, an exercise is to be carried out whether the public interest in disclosure outweighs the harm to the protected interests. It is imperative that the information requested should be covered in one of the exemptions as provided in sub Section 8(1) only then the public interest override test can be applied. Public interest override cannot be used to deny information. It is, instead, an enabling provision warranting the disclosure of information even where it would otherwise fall in the category of exempted information.440 Actually before applying public interest override test it becomes essential to identify whether one of the grounds of exemptions set out in Section 8(1) applies to the information at issue. If it is considered that a particular withholding ground or exemption applies, the interest protected by that exempting provision or withholding ground is the relevant interest to weigh against other public interest consideration favouring disclosure of information or release of requested information. The exemptions provided in Section 8(1) serve particular protected interests which would be harmed if the requested information covered under the provisions of the exemptions is disclosed. Once the requested information is found to be covered under the exemptions then there may be an eventuality where its disclosure may also serve some other public interests. At the same time the disclosure of information would result in harm to the protected interests. So, the decision regarding disclosure of information will depend on whether the public interest outweighs the harm to the protected interests.

In applying public interest override test it would be necessary to identify the public interest considerations which may favour the release of information i.e. to identify the considerations which render, in public interest, the information to be disclosed. Depending on the circumstances, there can be many considerations which may favour the release of information in the public interest.

One of the factors which an agency should consider is whether the release of information would promote the accountability of ministers and officials or promote the ability of the public to effectively participate in the making and administration of laws and policies. However, these are not the only matters which an agency should bear in mind when considering whether it is desirable to make information available in the public interest.

The phrase ‘public interest’ is not restricted in any way. Wider concepts, such as an individual’s right to fairness and natural justice in respect of the actions of public sector agencies, should also be considered when assessing whether the overall public interest favours disclosure of certain information. This may often reflect the purposes for which the information is initially generated or supplied, the use to which it has been put and other uses to which it may also legitimately be put. The content, context and purpose of the information requested can often assist an agency in identifying those considerations which favour the release of information. The public authority should always give attention that what the information requested actually says. The authority should also look in to the content of the information such that its release would, in some way, promote the public interest such as does the information relate to the expenditure of public money or will it reveal factors taken into account in a decision making process. If so, would the release of such information serve to promote transparency and accountability in the working of public authority or encourage informed citizenry and transparency of information or to contain corruption or to hold governments and their instrumentalities accountable to the governed?

At times it helps the decision maker in deciding considerations which may favour the release of information in public interest in knowing as what is the background to the generation of the information at issue. Such as, was the information generated as part of a decision making process? What stage has been reached in that decision making process? Releasing background information, or information which sets out the options under consideration, will often enable the public to participate in the decision making process.
Although a requester is not required to explain his or her purpose in requesting information, knowing why the information is required by the requester is often helpful in identifying the considerations favouring disclosure of the information and assessing whether those considerations outweigh the interest in withholding the information. For example, a requester may seek background information from an agency in order to challenge certain allegations which have been made against him or her that the agency is investigating. In such cases, an agency may need to weigh certain considerations, such as promoting that individual’s right to fairness or natural justice, against the interests in favour of withholding the information. Such a right to fairness or natural justice will arise usually when allegations or charges have been laid and not at an earlier stage of an investigation when disclosure might prejudice the outcome of the investigation.

Finally, the public authority has to assess the weight of these competing considerations and decide whether, in the particular circumstances of the case, the desirability of disclosing the information, in the public interest, outweighs the harm to the protected interests. There is no easy formula for deciding which interest will be stronger in any particular case. Rather, each case needs to be considered carefully on its own merits.

The views of the Apex court help in a better understanding of the concept of public interest. Justice P.N. Bhagwati, in *S.P. Gupta v. Union of India*, held that “redressing public injury, enforcing public duty, protecting social, collective, diffused rights and interests are vindicating public interest enforcement of public interest or general interest in which the public or a class of the community have pecuniary interest or some interest by which their legal rights or liabilities are affected”. The Supreme Court observed that the purpose of the public interest is to “wipe out the tears of the poor and needy, suffering from violation of their fundamental rights, but not for personal gain or private profit of political motive or any oblique consideration.” *Janata Dal v. VHS. Chowdhary.*

The court would allow the objection to disclosure if it finds that the document relates to affairs of State and its disclosure would be injurious to public interest, but on the other hand, if it reaches the conclusion that the document does not relate to the affairs of State or the public interest does not compel its non-disclosure or that the public interest in the administration of justice in a particular case overrides all other aspects of public interest, it will overrule the objection and order the disclosure of the documents... in balancing the
competing interest, it is the duty of the court to see that there is the public interest that harm shall not be done to the nation or public service by disclosure of the document and there is a public interest that the administration of justice shall not be frustrated by withholding the documents which must be produced if justice is to be done.443

The idea of public interest has faced criticism for giving prominence to the ends of society over the ends of its individual members. It is said to sub-judice the idea of human rights, and the degree to which people should be able to fulfill their own ambitions against that of a larger goal. It has been criticised for being a vague term to which no precise or categorical meaning can be given. It has also been suggested that even if such an account could be provided, it is practically impossible to identify where the public interest lies.

Public Interest has come to occupy an important place in a welfare state like India. Being at the cutting edge, unless the PIO understands it, the very purpose of this provision would be lost. In R. K. Jain v. Union of India,444 it was held that factors to decide the public interest immunity would include where the contents of the documents are relied upon, the interests affected by their disclosure; where the class of documents is invoked, whether the public interest immunity for the class is said to protect; the extent to which the interests referred to have become attenuated by the passage of time or the occurrence of intervening events since the matter contained in the documents themselves came into existence; the seriousness of the issue in relation to which the production is sought; the likelihood that production of the documents will affect the outcome of the case; and the likelihood of the injustice if the documents are not produced. There is no requirement in the Act of establishing any public interest for information to be obtained by the sovereign citizen nor is there any requirement to establish larger public interest, unless an exemption is held to be valid.445

The mandate of the Right to Information Act to disclose personal information under Section 8(1) (j) is even stricter since it appends the expression ‘larger’ to ‘public interest’. Mere public interest will not suffice in the disclosure of personal information such as the income tax returns of an assessee unless the applicant can prove that a ‘larger’ public interest demands such disclosure. The expression ‘larger’ cannot be defined or carved into a straight jacketed formula and neither can it be easily disposed of.446

444Manoj Kumar Saini v. The Chief Commissioner, Jaipur, CIC/LS/A/2010/001044DS.
3.3 Review and analysis of public interest overrides in the Right to Information Act decisions of various information commissions and courts

Section 8(2) stipulates that notwithstanding anything in the Official Secrets Act, 1923 nor any of the exemptions permissible in accordance with under Section 8(1), a public authority may allow access to information, if public interest in disclosure outweighs the harm to the protected interests. All the ten exemptions from disclosure of information permissible under Section 8(1) are subject to public interest override test. This requires a decision-maker to weigh the public interest in maintaining exemptions against the harm to the protected interests in disclosing the information. The Right to Information Act, 2005 does not define ‘public interest’ and so is the case with other freedom of information legislations in the world. This has been done intentionally so that determination can be made with regard to the specifics of each request. Decision-makers should give significant consideration to the public interest test when applying exemptions and identify in every case the specific public interest in releasing particular information. The questions involved in identifying ‘public interest’ are complex. The exemption made on grounds of commercial interest is the hardest type of exemption to override in the public interest. When the release of third party personal information is subjected to a public interest test, it requires decision-makers to balance an individual’s right to privacy with the public interest in release of the information.

3.3.1 Decisions where disclosure of information was in public interest

The Directive Principles of State Policy contained in Articles 36 to 51 in part IV of the Constitution of India can be taken as the background for identifying what constitutes public interest.

Disclosure of information regarding illegal occupation of government buildings is in public interest. The appellant submits that the aforesaid government quarter is under illegal occupation of a rowdy regarding which this Bench of the Commission had passed an order directing the Directorate of Estates to take the ongoing legal proceedings, to its logical conclusion with utmost expedition. In the factual matrix of this case, we are of the opinion that disclosure of requested information would be in the larger public interest in terms of Section 11(1) of the Right to Information Act.447

447 Hava Singh v. MTS, CIC/DS/A/2010/000124/LS & C0009/LS,
The appellant alleges that one of the criteria of being appointed on the Hawkers Vending Committee is that the person must reside in the same area. Hence, there is public interest in knowing whether the residential address of Mukesh Kumar makes him ineligible on the Hawkers Vending Committee.448

If there has been any unauthorized construction this becomes a matter of public interest since the MCD is expected to conduct administration in the public interest and addressing any unauthorized construction is decidedly a part of the mandate of the MCD.449

Matters related to transfer and postings, especially when such transfers are covered by certain norms set out by the public authority, are matters of public interest and cannot be declined to be disclosed as information personal to those benefited/affected by such transfers and postings.450

International cricket matches held in public stadiums are public event. Therefore, there is public interest involved in the disclosure of information regarding tickets.451

When a regulatory body or a stock exchange prepares a report on the complaints of investors against a broker, in fairness, all such reports should be made public. This is necessary to alert the investors about the brokerage firm or the broker as also to send down the message in the market that wrongdoings by the brokers would attract stern action... There was, therefore, public interest in disclosing the information regardless of whether it was covered by any of the exemption sections.452

The information as to whether a male child was indeed born on 17.11.1984 to Santosh - in the instant case, the interest of justice and larger public interest demand that such an accused who has allegedly submitted forged documents should not be allowed to go scot free, on bail seeking the protection of being a juvenile.453

The cause of death of an inmate of an asylum for the disadvantaged run by a public authority, in this case the department of social welfare is certainly a matter of public concern and should not have been denied in the first place.454

448 Jawahar Singh v. Public Information Officer & Assistant Commissioner Municipal Corporation of Delhi, CIC/SGN/2010/002310/9585
The allotment of distributorship cannot be arbitrary and contrary to rules and if there is some factor, which would vitiate the selection process, then it would definitely be a matter of public interest. 455

The information regarding the policies and procedures followed by the bank in matters of microfinance must be disclosed in public interest. 456

The loans given were to promote the welfare measure taken by a particular public authority to provide affordable houses to the people. There is, therefore, public interest in divulging as to how much of this loan was provided, how the interests were charged and who received what quantum of interest. This information will enable the public to critically assess the scheme and alert them about the risks and benefits.457

Considering that a large number of pensioners’ interest is in question, there is public interest in the disclosure of these actuary reports.458

The public authority had obtained immovable property returns from employees who had been involved in some fraudulent activity as members of a cooperative society and, therefore, it would be in larger public interest to disclose these details.459

It will be in the larger public interest if the identities of the charitable trusts/institutions/entities which are granted exemption from income tax under the statutory provisions are placed in the public domain.460

The names of the buyers of the coins from a particular bank branch on a specific date, along with the volume of each transaction, shall be provided to the appellant in public interest.461

The matter pertaining to corruption involving several officers and staff, including the appellant is indeed an issue of vital public interest.462

In the present case the information sought by appellant/complainant is on a matter of pressing public concern as indeed it should be in any civilized society. Indeed such
information merits collation at the level of police headquarters and display on the website. On the basis of the above, it was ordered to provide the information in accordance with the fees as held by this Commission to be valid within 15 working days of the receipt of this decision notice. It was also directed under Section 19 (8) (a) that the information so collated on FIRs that have been registered in each police station of boys and girls up to the age of 18 years found missing or kidnapped and in how many cases entries have been made in the Register?
It was also directed that be uploaded on the information website in line with Sec 4 (1) (b) of the Right to Information Act 2005?463

The appellant’s financial interest is affected in the matter, as he is seeking legal relief from the court. The disclosure of financial details, mainly PF contributions by his ex-wife would surely help the affected parties in arriving at the reasonable amount of maintenance to be paid to his divorced wife. The disclosure of information sought is, therefore, in larger public interest. 464

An amicable resolution of disputes between husband and wife is largely in public interest.465

The appellant is facing a criminal prosecution in a serious case and the appellant is his legally wedded wife as of now and to treat her as third party would not be correct. Further, under Section 8(1) (j), information can be disclosed if it is in the larger public interest to do so. In the peculiar facts and circumstances of the case, it would be in the larger public interest to disclose the requested information.466

There is adequate prima-facie evidence which shows the possibility of plagiarism, accordingly it was decided that the attested photocopy of the dissertation must be given to the appellant.467

Admittedly the tower has been installed in the property of third party as per contract entered into between public authority and the third party. The public authority is paying

466 Rakhee Bajaj v. Income Tax Department, Lucknow, CIC/LS/A/2010/000063.

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rental to the third party out of government funds, Hence, the entire matter falls in public domain. The information is disclosable in the larger public interest.\textsuperscript{468}

A copy of the report prepared by GB CID UP... Invocation of Section 8(1) (j) in the matter in hand is subject to over-rule, if the larger public interest so demands. In the matter in hand, the appellant’s son-in-law died an unnatural death in very unfortunate circumstances. He has already got a copy of the report prepared by Addl. SP, Kushinagar in this regard. We see no good reason to deny him a copy of the report of the CB, CID, UP for the reasons mentioned herein above, more so, when the investigation has already been completed.\textsuperscript{469}

RBI being the central bank is one of the instrumentalities available to the public which as a regulator can inspect such institutions and initiate remedial measures where necessary. It is important that the general public particularly the shareholders and the depositors of such institutions are kept aware of RBI’s appraisal of the functioning of such institutions and taken into confidence about the remedial actions initiated in specific cases. This will serve the public interest. The RBI would therefore be well advised to be proactive in disclosing information to the public in general and the information seekers under the Right to Information Act, in particular.\textsuperscript{470}

Considering that the petitioner was convicted for contempt and was sent to jail and thereafter spent larger part of his prison term in hospital, the right of public to be informed would normally outweigh the right of the petitioner to hold on to his medical records.\textsuperscript{471}

Disclosure of information can be held to be in larger public interest as it concerns contributions made or proposed to be made by a company in the EPF accounts of a large number of its employees.\textsuperscript{472}

As per Section 4(1) (b) (xiii) ‘particulars of recipients of concessions, permits or authorizations granted by it (public authority)’ should be put in public domain. Since all the registered consumers are beneficiaries of subsidized domestic gas, there is no justification for withholding the information asked for by the appellant. It was therefore, directed to provide

\textsuperscript{468} Arun Kr. Mistra v. BSNL, Faisabad CIC/DS/A/2010/00249/1/S.
\textsuperscript{469} Indrani Prasad v. N.H.R.C. CIC/LS/A/2010/00093.
\textsuperscript{470} Madhav Balwant Karmarkar v. Reserve Bank of India 243/IC (A)/2006.
\textsuperscript{471} Surup Singh Hrya Naik v. State of Maharashtra & Others, AIR 2007 Bom. 121.
\textsuperscript{472} P. V. Kurian Vs APFC, Kottayam, CIC/MA/A/2008/01430.
the information asked for, including the reasons for inordinate delay in delivery of services, to the appellant.\textsuperscript{473}

Since, it is clear that the appellant is a correspondent following up on a news story of 1999. Surely it will be in the public interest to set at rest any conjecture on the unsavory subject.\textsuperscript{474}

In a case where correspondence between the Government of India and the USSR regarding the issue of Netaji’s disappearance sought. The Commission felt that if the material could be made available regarding the Justice Mukherjee Commission for inquiry into the disappearance of Netaji there is no reason why this material should not be disclosed to any researcher now that the Commission’s work is over. While approving disclosure of this material the Ministry of External Affairs may seek a formal clearance from the Russian authorities.\textsuperscript{475}

In another case where information whether the third person while working as a Senior Architect in Delhi Administration performed duties without having been registered with the Council of Architecture in violation of Architect Act, 1972, is clearly a matter of public interest and is not of confidential nature.\textsuperscript{476}

Where the policy guidelines for appointments on compassionate ground and the manner in which it has been implemented in the recent five cases of appointment were sought, these were denied on the ground that no public interest was involved, the Commission held that the information should be furnished to the appellant.\textsuperscript{477}

In yet another case where the appellant asked for copies of the official correspondence relating to counting of past army service for pension purposes of a third person and respondent held that the information is purely personal to the third party, the Commission concluded that the information related to service matters is in public domain and should be disclosed in the interest of transparency.\textsuperscript{478}

\textsuperscript{475} Anuj Dhar, New Delhi v. Ministry of External Affairs, CIC/OK/A/2006/00671.
In a case where inspection of a claim file of another company was denied holding that no public interest was involved, the Commission directed that inspection of the file may be allowed after due application of Section 10(1).479

Except for the individual details, the disclosure of information relating to the beneficiaries of ‘Rural Postal Insurance Scheme’ is, therefore, largely in public interest.480

The Public Private Partnership (PPP) modality is a device for getting private investment into public projects with the objective of enhancing public welfare. Through this arrangement, the private sector participates in the supply of assets and services which have traditionally been provided by the government. It is usually characterized by an agreement between the governments and a private sector partner which undertakes to deliver an agreed service rendered. Going by the huge investments which are planned through PPP model, this sector is going to play a very important role in the economy and social sector. The PPP agreements involve commitment of the government’s financial and physical resources. It was held that if PPPs were not the mode of project execution, the entire operation would then be conducted by the government and would have been subject to the provisions of the Right to Information Act.481

However, there are circumstances when it becomes necessary to disclose some of this information if it is in larger public interest. Thus, for example, if there is a doubt about the integrity of any person occupying a public office, it may become necessary to know about one’s financial status and the details of his assets and liabilities not only of the person himself but also of other close members of the family as well. Similarly, if there is an allegation about the appointment of a person to a public office where there are certain rules with regard to qualification and experience of the person who has already been appointed in competition with others, it may become necessary to make inquiries about the person’s qualification and experience and these things may not be kept confidential as such. It may not be possible to lay down exactly the circumstances in which personal information of an individual may be disclosed to others. This will depend on the facts of each case. No hard and fast rule can be laid down for this purpose.482

480 Devnarayan Singh v. Department of Posts, 3099/IC(A)/2008.
If an informer is using Right to Information to get information which could help him to claim a reward by showing that tax has been evaded, it cannot be denied that a large public interest is being served of getting the public’s due taxes and curbing corruption.483

3.3.2 Decisions where disclosure of information was not in public interest

The CIC examined whether the income tax-related details pertaining to appellant’s husband (the third party) should be disclosed and whether a wife’s right to maintenance against the husband in a divorce proceeding is ground enough to overrule the exemption under the Act. Relying on the ratio of the Commission’s judgment in Selvi Shanmugam v. Income Tax Department,484 the CIC held that there is no public interest that would warrant overruling the exemption so clearly enjoyed by the requested information in this appeal.

Because it involves the parent’s personal welfare and the information was required in certain proceedings, there are not sufficient reasons to invoke the public interest clause to disclose the information otherwise found to be exempted.485

How can one argue that the appellant failing to collect his monies from a debtor is a matter of public interest? Such reasoning shall be far-fetched, bordering on the absurd.486

The appellant has made out a case that as the decision of the government in the arbitration matter would invariably touch the lives of large number of employees or workers, there is larger public purpose which should mandate overriding the exemption provision of Section 8(1) (e) of the Right to Information Act. The difficulty in accepting this proposition is that the very same workers collectively are the opposite party in the court proceedings against the government. The government received legal advice regarding how to present its case against the opposite party, the employees/workers. It would be incorrect to interpret the interest of the opposite party as public interest simply because it involves interests of the mass of workers/employees.487

The appellant has a dispute with his wife and the employee about whom the information has been sought is the father-in-law of the appellant. The information sought in

484 Devnarayan Singh v. Department of Posts, 3099/IC(A)/2008
connection with a private family dispute cannot be said to be serving any larger public interest.  

The ‘public interest’ argument of the petitioner is premised on the plea that his wife is a public servant; he is in litigation with her, and requires information, in the course of a private dispute - to establish the truth of his allegations. It was held that there is no public interest element in the disclosure of such personal information, in the possession of the information provider, i.e. the Indian Air Force. It was concurred with the view... the litigation is, pure and simple, a private one. It was decided that no public interest has been demonstrated by the appellant for seeking this information and that in fact appellant is defending himself before a court of law and it is not appropriate to utilize Right to Information Act as a means to obtain information by parties involved in private litigation since they have recourse to the judicial channel through which the same information can be presented before the court through appropriate court order to the department.

It has been the consistent position taken that income tax returns and income tax assessments of a personal firm cannot be disclosed to another through a Right to Information-application. The income tax returns and assessments thereof as well as any enquiry that might have been conducted in that relation contains sensitive, personal and commercial information about the assessee. Regardless of whether the assessment is occasioned by a complaint or taken up *suo moto* by the public authority, the nature of the information does not change.

In a case the appellant asked certain information relating to police action initiated against an employee of the respondent and the same was denied under Section 8(1) (j) being a personal information. The appellant did not show as to how he is affected in the matter or what the public interest in disclosure of information is, relating to the alleged criminal case being handled by the police. It was held that the denial is justified.

Insofar as the public interest is concerned in the matter, the provisions of Section 8(1) (e) makes it clear that it is for the competent authority to satisfy itself as to what the larger public interest warrants. In the instant case, the concerned public authority, who is also the competent authority as defined under Section 2 (e) (iv) of the Act has taken a conscious

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489 Vijay Prakash v. UOI and Others, WP(C) 803/2009
decision that the larger public interest does not warrant disclosure of the information which
has been held by them to be confidential and sensitive. The Commission does not intend to
interfere with this decision of the competent authority unless such satisfaction is shown to be
totally arbitrary or ‘illusory’.493

In a case where the appellant asked for a certified copy of the charge sheet filed by
CBI with the court in respect of third person, it was held that exemption under Section 8(1)
(h) is not applicable as investigation is complete. No public interest involved and the
appellant is not associated with the case. The appeal was treated as frivolous.494

In a case where the names of officers against whom CBI cases are under investigation
or pending trial sought, the Commission held that it is barred under Section 8(1) (h) and (j),
as it does not serve the public interest.495

In yet another case where the allegations against the appointment of CMD of a public
authority had been made to the then Prime Minister and the concerned minister by more than
dozens MPs before his appointment was approved. Therefore, the element of public interest
at this stage does not arise.496

In another case where details of complaint filed by a person against another sought
and the third party objected to the disclosure, the PIO decided the appellant cannot claim
public interest about a dispute between two persons. The Commission upheld the decision of
PIO in claiming exemption under Section 8(1) (j).497

In another case where the list of telephone calls made from an identified police station
on specific dates denied under Section 8(1) (j), the Commission observed that the
complainant has not indicated the public interest involved in disclosure of information
sought, hence denial of information justified.498

In another case where details of calls made from the phones installed at the offices of
the State of Rajasthan during a specific period sought and information denied under Section
8(1) (d) & (e), the respondent M/s BSNL, being a commercial and service organisation is
expected to maintain confidentiality of details of calls made by its customers. The appellant

493 Milap Choraria v. President's Secretariat, CIC/WB/A/2006/01003.
494 Milind Kumar Dange, Chennai v. CBI, Bank Securities & Fraud Cell, New Delhi, Case No. 134/IC(A)/2006 CIC/MNN2006/428.
495 Milind Kumar Dange, Chennai v. CBI, Policy & Coordination Div, New Delhi, Case No. 252/IC(A)/2006 CIC/MA/A/2006/00335.
496 Anil Kumar v. Department of Telecommunications, 59/ICPB/2006 PBA/06/86.
497 Ravinder Kumar v. Delhi Police, Delhi, Appn. No. CICUAT/A/2008/00609.
did not justify the public interest in disclosure of the information sought. It was held that denial under Section 8(1) (d) & (e) was justified. 

In a case where information sought in respect of a company from the Registrar of Companies denied under Section 8(1) (d) on the ground that as per the provision of Section 610 of the Companies Act, ‘persons who are not members of the company shall not be entitled to inspect or obtain the copy of the profit & loss account of a company’, it was held that as no public interest indicated in disclosure of the information, the decision of the appellate authority was justified.

In another case where the appellant asked for details of telephone calls made by certain subscribers, it was held that disclosure of information pertaining to call details of subscribers is not in public interest unless there is a valid justification. Disclosure was not permitted.

In a case where information about the Group Personal Accident Insurance Policy Nos. issued by New India Assurance Co. Ltd. in favour of M/s Larsen & Tubro Ltd. sought, the Commission held that there is no public interest in seeking the information of commercial confidence.

In another case where the Commission observed that property returns filed by the employees do not constitute public action, as these are submitted under fiduciary capacity which is exempt under Section 8(1) (e) & (j). The appellant had not established the public interest in seeking personal information.

In another case where the Commission observed that a major concern of the Right to Information Act is to contain corruption. No public interest in disclosure of information that forms the basis for the prosecution of the appellant. Since the matter is pending before the court, the court would surely ensure justice to the appellant. The Commission upheld withholding information under Section 8(1) (g) and (h).

In another case where the appellant sought details of extra income tax levied against a company. and copies of assessment orders, it was held that a mere mention of possible

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The undervaluation of third party’s income tax assessment by an assessing authority, supposedly causing loss of revenue to the state cannot alone be sufficient to justify invoking the public interest override of Section 8(2) or under Section 8(1) (j). The fact that a superior authority has decided to take up suo moto revision of a subordinate officer’s order is in itself not a confirmation of malafide assessment of subordinate assessing authority.

The details of all parks under the public private partnership along with the parties of the same along with the criteria for same shall be proactively uploaded on the website of the Corporation.

It should be noted that the public interest clause cannot be used to deny information to an applicant. It is, instead, an enabling provision warranting the disclosure of information where it is otherwise exempt. The existence of public interest should not merely be alleged or claimed. The onus is on the applicant to prove that there is a public interest. Appellant submitted that this industrial unit was located in a residential area and had been sublet to some party who had been running a hazardous industry there, surely the remedy for this does not lie in seeking the account details of the original owners of the industrial unit from the bank. The disclosure of the account details by the bank cannot prima facie help in any way in the matter. At least, the appellant has not been able to show how the disclosure of this information would help in curbing the pollution, if any, in the residential area.

The argument cannot be accepted that because the public will have an interest in such cases, the public be invited through public notice to comment on this case. This would imply that any request for information sought in the public interest would require the public to be heard, with absurd and unacceptable consequences.

These need to be closely tested against the ‘public purpose’ norm as found in Section 8(1) (j) of the Act, and allowed to succeed only if it does not fail that test. There is no reason why time and energy of a public authority be expended to supply information to one of its own employees, when that information is purely personal to that employee. Matters connected with disciplinary actions, vigilance enquiries and investigations, etc. must be construed to be personal information as mentioned in Section 8(1) (j), both for being

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507 Amit Kumar Raidani v. CPIO, Union Bank of India. CIC/385/A/2010/000313.
exclusive to the person - in this case the employee, and for having no public purpose or relationships to a public activity, and should be denied.\textsuperscript{509}

A PIO often comes across tall claims of public interest which need deep scrutiny. A differentiation needs to be made between unsubstantiated wild claims and those of genuine public interest. Merely on the allegation that the loan had been wrongly sanctioned because of the collusion between the borrower and the branch manager, the details about the account cannot obviously be disclosed.\textsuperscript{510}

A mere allegation of wrong-doing on part of an assessee by an interested person cannot provide the rationale for invoking the public-interest-override of Section 8(2).\textsuperscript{511}

An expression of intention of combating corruption in itself would not constitute public purpose, warranting disclosure of admittedly personal information.\textsuperscript{512}

A mere allegation and some peripheral evidence about the supersession of the society by the registrar of cooperative societies cannot be ground enough for breaching that relationship between the bankers and its customer. A member of the cooperative society is in no different position than a shareholder and a company. Neither the membership in the cooperative society nor the shareholding in the company gives a person the right to access information about the management’s operations, especially when this operation relates to opening and maintaining bank accounts.\textsuperscript{513}

3.3.3 ‘Larger Public Interest’: A balance between public interest in exemption and public interest in access to information

The term ‘larger public interest’ has been examined by the Delhi High Court in Writ Petition Civil No. 8396/2009 decided on 30-11-2009. The court observed that examination of Section 8(1) (j) shows that it consists of three parts. The first two parts stipulate that personal Information which has no relationship with any public activity or interest need not be disclosed. The second part states that any information which should cause unwarranted invasion of a privacy of an individual should not be disclosed unless the third part is satisfied. The third part stipulates that information which causes unwarranted invasion of privacy of an individual will not be disclosed unless public information officer or the appellate authority is

\textsuperscript{509} Shatmanyu Sharma v. N. Sasidharan, Commissioner of Customs (General) & CPIO, Mumbai Customs, CIC/AT/A/2006/00652 & 653.
\textsuperscript{510} B. Soujanya v. CPIO, Syndicate Bank, CIC/SM/A/2009/001715.
\textsuperscript{512} Moin Uddin v. Income Tax Department, CIC/AT/A/2007/01172.
\textsuperscript{513} Arvinda Shah v. Erstwhile State Bank of Indore (State Bank of India), CIC/SM/A/2010/000462AT.
satisfied that larger public interest justifies disclosure of such information. As observed by S.Ravindra Bhat, J. in *CPIO, Supreme Court of India v. SC Agrawal & Another*, the third part of Section 8(1) (j) reconciles two legal interests protected by law i.e. right to access information in possession of the public authorities and the right to privacy. Both rights are not absolute or complete. In case of a clash, larger public interest is the determinative test. Public interest element sweeps through Section 8(1) (j). Unwarranted invasion of privacy of any individual is protected in public interest, but gives way when larger public interest warrants disclosure. This necessarily has to be done on case to case basis taking into consideration many factors having regard to the circumstances of each case.

In *S.P. Gupta* (supra), the Supreme Court held that democratic form of government necessarily requires accountability which is possible only when there is openness, transparency and knowledge. Greater exposure about functioning of the government ensures better and more efficient administration promotes and encourages honesty and discourages corruption, misuse or abuse of authority. Transparency is a powerful safeguard against political and administrative aberrations and antithesis of inefficiency resulting from a totalitarian government which maintains secrecy and denies information. The Supreme Court also observed that the object of granting immunity to documents is to ensure proper working of the government and not to protect ministers or other government servants from criticism, however, intemperate and unfairly biased they may be. The reasoning can have little validity in democratic society which believes in open government. It was accordingly observed that the reasons given for protection the secrecy of government at the level of policy making are two. The first is the need for candour in the advice offered to minister; the second is that disclosure ‘would create or fan ill-informed or captious public or political criticism’. Lord Reid in *Conway v. Rimmer* thought the second ‘the most important reason’. Indeed, he was inclined to discount the candour argument’.

The Supreme Court, in *State of Punjab v. Sodhi Sukhdev Singh*, observed that the court would allow the objection if it finds that the document relates to affairs of State and its disclosure would be injurious to public interest, but on the other hand, if it reaches the conclusion that the document does not relate to affairs of State or that the public interest does not compel its non-disclosure or that the public interest in the administration of justice in the

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514 *CPIO, Supreme Court of India v. SC Agrawal & Another*, W.P. No. 288/200.

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particular case before it overrides all other aspects of public interest it will overrule the objection and order disclosure of the document.’

The courts have the power to have a prima facie enquiry and balance the two public interest and affairs of the State. Same applies to the CIC, who may examine the document/information to decide the question of ‘larger public interest’. It may be relevant to mention that, while inquiring into the complaint, Section 18(4) of the Right To Information Act empowers CIC to examine any record under the control of a public authority.

The CIC, in a landmark order, not only directed the public information officer (PIO) of Benaras Hindu University to provide the complete text of the question paper provided by the university to the examinees of the MD/MS examinations, but also stated that the clause of ‘public interest’ cannot be invoked for denial of information in this case. As per the Act, citizens right to access information is absolute, subject only to limitations prescribed under the Act. The Section 3 of the Act forms the core of the Act and is a crisp unambiguous declaration of the aims and objectives of the Act. To make this right meaningful and effective, citizens are not required to give any justification for seeking information. It was argued on behalf of the AIIMS that AIIMS was taking all precautions in a most satisfactory manner and they had also evolved a fool proof system. By disclosing the information we will not be able to protect any larger public interest. The CIC observed that right to information is one of the fundamental human right recognised by the world community and stands incorporated in the universal declaration of human rights and international covenant on civil and political rights. Any refusal of the information can be done only under Section 8(1) or Section 9 of the Act, which relates mainly to the sovereignty and integrity of the country and also information like third party trade secrets.516

Section 8(1) (d) and 8(1) (e) provides for disclosure of information subject to satisfaction of the ‘competent authority’ that the larger public interest warrants the disclosure. The term ‘competent authority’ has been defined in Section 2(e) of the Act and inter alia includes the Speaker in the case of Lok Sabha and the respective Chief Justice in the case of the Supreme Court or High Court. The Section 2(e) (iv) declares the President/Governor as the competent authority in case of all other authorities established or constituted by or under the Constitution. Does it mean that for every such matter of public interest determination, the file has to move to the President? Could the term, ‘competent authority’ mean something else

516 Times of India, 4-1-2009.
here? For many of the public authorities, no competent authority has been defined. How would one deal with such cases? A final word is yet to come on the issue. The question of determination of public interest warranting the disclosure of information is to be decided by the competent authority, which, in this case, would mean the appropriate ministry. The case of the appellant is that larger public interest warrants the disclosure, but under the Act this is to be decided by the relevant competent authority and in this case, the competent authority has held otherwise. It will not be proper on the part of the Commission to go into this question as to whether the determination of the public interest as done by the competent authority is correct or not. The competent authority must have considered this issue and decided the matter objectively. The Commission should not interfere with the findings of the competent authority unless there is a case where the decision of the competent authority is challenged on grounds of either arbitrariness or mala-fide or total non-application of mind.  

There can be little doubt that such information, including experimental technique, if opened to public disclosure, will be damaging to a competitive position. However, the issue being of the sensitivity that it is, we cannot dismiss the importance of public interest in the matter. If as upheld by us that the subject falls within the exemption from disclosure of Section 8(1) (d), a decision on disclosure can be taken only by the ‘competent authority’ under the Right to Information Act, 2005. Even though we therefore hold that this information can indeed be withheld under Section 8(1) (d), we would recommend that the competent authority in this case the President of India as defined under Section 2(e) (iv) satisfy himself on whether the larger public interest would be best served by disclosing such information. We are recommending this on the considered ground that we are not experts in this particular area and any decision on disclosure or otherwise in this area must be taken on obtaining expert opinion, which is best done at the level of government.  

3.3.4 Decisions where information was disclosed after application of public Interest override test where public interest in disclosure outweighs the harm to protected Interests  

Section 8(2) provides that a public authority may allow access to information where public interest in disclosure outweighs the harm to the protected interests, irrespective of anything in the Official Secrets Act and the exemptions allowed under Section 8(1). This power is given to the ‘public authority’ and not to the PIO and ‘thus an officer who is

518 Divya Raghunandan v. Department of Biotechnology, CIC/W/B/2006/00548.
empowered to take a decision on behalf of the public authority should only deckle to allow access to information where public interest in disclosure outweighs the harm to the protected interests. In Black’s Law Dictionary (page 1107) the words ‘public purpose’ have been defined thus: ‘The term is synonymous with governmental purpose... A public purpose or public business has for its objective the promotion of the public health, safety, morals, general welfare, security, prosperity, and contentment of all the inhabitants or residents within a given political division, as, for example, a State, the sovereign powers of which are exercised to promote such public purpose or public business.’

This matter was concluded by a decision of the Supreme Court in State of Karnataka v. Ranganatha Reddy, where it was held that the purpose of a public body to run a public transport service is undoubtedly in public interest and in this connection Krishna Iyer, J., observed thus... “The purpose of a public body to run a public transport service for the benefit of the people, operating it in a responsible manner through exercise of public power which is controlled and controllable by society through its organs like the Legislature and, at times, even the court, is manifestly a public purpose...” And Untwalia, J., speaking for the court made the following observation (SCC p. 482, para 11): “...Why can’t movables be acquired for commercial purposes if the exigencies of the situation so require? A particular commercial activity of the State may itself be for a public purpose...” Thus, the information sought in public interest or for serving a public purpose shall not be denied or deemed as exempt from disclosure.

Sub-section (2) provides that irrespective of anything mentioned in the Official Secrets Act, 1923 and the exempted categories of information given under Section 8 (1), where public interest in disclosure outweighs the harm to the protected interests; a public authority may allow access to such information though exempted from disclosure. In a case pertaining to assessment orders of M/s Applause Bhansali (P) Ltd. (30th March, 2006), the central information commission said the assessment is an action by a public authority and that every action taken by public authority is in public interest and hence, there is no basis for not disclosing such orders. In the spirit of Right to Information Act, the public authority is required to adopt an open and transparent process of evaluation norms and procedures for assessment of tax liabilities of various categories of persons.

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50 Ibid page 501, para 57.
52 Economic Times, 18-4-2006.
A case, where the appellant, asked for a copy of a project report, the CPIO denied the report under Section 8(1) (d) on the ground that it was confidential. The Commission held that the project/study reports are carried out in the context of development of specific areas and that they are carried out in an objective manner. There is no justification for not putting such study reports in public domain, especially when a large number of people are likely to be affected due to execution of the relevant projects.\textsuperscript{222}

In another case where the appellant sought copies of certain documents referred in the charge sheet issued to him in a departmental enquiry and same was declined under Section 8(1) (h) alleging the documents were part of an ongoing departmental enquiry, the appellant pointed out that his request for the documents needed for his defence from the disciplinary authority, but was not favoured with a reply resulting into lingering of the disciplinary proceedings which is putting his career in jeopardy. The Commission observed that it has taken the view that disciplinary proceedings rules themselves provide for what information the public servant may be allowed to access and which he may not, interfering with an already existing disclosure system under the disciplinary proceedings rules, had the potentiality of jeopardizing and affecting the proceeding under the disciplinary proceedings rules. An existing disclosure of information mechanism under a given Act must be considered rational, and given due respect unless it could be proved that such mechanism was irrational, unjust or illegal. Where the Commission notices that the proceedings are being unduly prolonged, and the information essential to build the public servant’s defence under the disciplinary proceedings rules have not been supplied to him by the disciplinary authority, it can decide that such information should be disclosed to the public servant under the Right To Information Act. It is a matter which attracts the public interest override provision under Section 8(2) and makes the information liable for disclosure. In this case, the Commission would have accepted the contention of the respondents that they were willing to supply that information to the appellant under the provisions of the disciplinary proceedings rules, far from it they do not even have a cogent explanation for not giving any relevant document along with the charge-memo served on him. Thus, the Commission held that the information requested by the appellant should be disclosed to him for preparing his defence in the ongoing disciplinary action.\textsuperscript{223}

\textsuperscript{222} Quayoom Muhammad, Sidhi (M P.) v. NTPC Ltd., New Delhi, CIC/MA/A/2007/00625.

\textsuperscript{223} A K Goyal, New Delhi v. Delhi Transport Corporation, New Delhi, Case CIC/AT/A/2007/00885.
In a case where Commission held that none of the conditions of Section 8(1) (g) applies in respect of disclosure of ACR. Also, providing copies of the ACR of the appellant to himself would not amount to invasion of privacy under Section 8(1) (j). However, since the appellant is still in service, such disclosure could harm inter-personal relationship inside the organisation which can certainly be defined as a protected interests under Section 8(2). When the appellant retires from service, this would no longer apply and she would be eligible to receive copies of her ACRs.524

In a case, where Col. H.C. Goswami (Retd.) a retired army officer of 1963 batch who was charge sheeted on ground of misconduct and general court martial was convened and he was directed to serve rigorous imprisonment of two years, the court martial proceedings and subsequent orders were quashed in CWP No, 675/1998, He was held entitled to all benefits as if he was not tried and punished and it was upheld by the Supreme Court. His case was then put up for consideration for promotion to the rank of Brigadier on 7-9-1999 and vide letter dated 25-10-1999 he was informed that he was not found fit for promotion and it was challenged in WP(C) 7391/2000 which was decided on 7-8-2008. The Division Bench held that Selection Board-II could not have directly or indirectly relied upon or discussed respondent no. 2’s trial and punishment in the court martial proceedings while evaluating his performance and considering his case for promotion. Reference was made to master data sheets and CR dossiers in which details of CAs earned since commissioned and court certificates, awards, citations in respect of honours, details of disciplinary cases are mentioned. It was noticed that evaluation of merits of the officers was not based upon any qualification of marks or aggregation of marks. Accordingly, the recommendations made by Selection Board-II denying promotion was set aside with a direction to reconvene a selection board to consider the case of respondent no, 2 afresh. In these circumstances, respondent no. 2 filed an application seeking information (regarding proceedings of Selection Board, extracts of his ACRs, overall performance grading of his promotion to the rank of Brigadier of batch 1999, etc.) Before CIC it was contended that there was no appraisal known as OAP and there was no figurative assessment of officers. But an overall profile was considered by senior officers to determine whether he was entitled to promotion, In this respect, the Delhi High Court decided as under:-

524 D. S. Sharma v. Municipal Corporation of Delhi, Appn. No. CIC/WB/A/2006/00497 to 508 (12 cases)
“77. Learned CIC in the impugned order has quoted several paragraphs from the judgment in the case of Dev Dutt (Supra) but has held that the said judgment is not intended to be applicable to the military officers. However, the appeal filed by the respondent no.2 has been allowed on the ground that the said respondent no. 2 has now retired and the effect of disclosure at best would lead to readjustment of pension benefits without seriously compromising any public interest. In these circumstances, the overall profile of respondent no.2 has been directed to be disclosed...

78. The disclosure directed by CIC does not require interference except that names of the officers who were members of the selection committee-II need not be revealed. Information asked for is personal to the respondent no. 2 and if names of members of selection committee-II are not revealed, there will be no unwarranted invasion of privacy. Even otherwise the facts disclosed above, repeated judgments in favour of the respondent no.2 and his frustration is not difficult to understand. Blanket denial of information would be contrary to public interest and disclosure of information without names would serve public cause and justice. Writ Petition is accordingly disposed of.”

In Vishal Uppal v. PMO, the appellant had applied to the CPIO, Prime Minister’s Office seeking to inspect files, etc. relating to the appointment of the Chief Information Commissioner and Information Commissioners. The appellate authority refused the request on the ground that the file on the subject is classified as ‘confidential’ under the Manual of Departmental Security Instructions, 1994 read with the relevant provisions of the Official Secrets Act, 1923 and according to the said Manual, such documents should be addressed to and seen only by those persons who have a direct concern with the subject matter contained therein. Further, while dismissing the first appeal, the appellate authority held that the papers being classified as ‘confidential’ and no case having been made out for making any exemption under Section 8(2) of the Act, the appellant could not be allowed to inspect the documents.

The Commission in its decision stated that Section 8(2) enables the public authority to disclose information notwithstanding anything in the Official Secrets Act, 1923 or any of the exemptions permissible under Section 8(1), if the public interest in disclosure outweighs the harm to protected interests. The Commission clarified that Section 8(2) is not a ground

525 Vishal Uppal v. PMO, CIC/WB/A/2006/00274.
distinct and separate from what has been specified explicitly under Section 8(1) of the Act for withholding information by the public authority. The appellate authority cannot withhold this information either on the ground that the information is classified as ‘confidential’ under the Official Secrets Act or under Section 8(2) alone. Section 22 of the Right to Information Act overrides anything inconsistent with the Right to Information Act, 2005. The Official Secrets Act, 1923 stands neither rescinded nor abrogated. The CIC held that while a public authority may withhold only such information as could be brought within any of the clauses of Section 8(1), it is open to that authority to classify any of these items of information as ‘confidential: thus limiting the discretion of any other authority in respect of these. It directed the PMO to re-examine the matter.

In Sandeep Jain v. India Meteorological Department (IMD), the appellant as General Secretary, IMD Non-Gazetted Staff Association, sought a copy of the Internal Review Committee report. The PIO intimated that the report is ‘confidential’ and cannot be disclosed. The Commission found that the file was classified as ‘confidential’. In its decision, the CIC stated that even though the file is indeed classified as ‘confidential’, under Section 8(2) of the Act notwithstanding anything in the Official Secrets Act, 1923, nor any of the exemptions permissible in accordance with Section 8(1) of the Act, a public authority may allow access to information if public interest in disclosure outweighs the harm to the protected interests. The CIC further observed that since the information contained in the file does not appear to contravene any of the exclusions under Section 8(1) and does appear to concern the larger public interest, that is, interest of the bulk of employees of the department, the public authority should therefore consider making the information available.

Section 8(2) of the Right to Information Act empowers the public authority to decide the question whether right to disclosure outweighs the harm to protected interests. PIO cannot decide this question and cannot pass an order under Section 8(2) of the Right to Information Act, holding, inter alia, that information is covered by the exemption clauses of Section 8(1) of the Right to Information Act and public interest in disclosure outweighs and justifies disclosure. Once PIO comes to the conclusion that any of the exemption clauses is applicable, he cannot decide and hold that Section 8(2) of the Right to Information Act should be invoked and larger public interest requires disclosure of information. Unlike Section 8(1) (j) of the Right to Information Act, under Section 8(2) this power to decide

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526 Sandeep Jain v. India Meteorological Department (IMD), CIC/WB/A/2006/00364.
whether larger public interest warrants disclosure of information is not conferred on the PIO.  

In *Sanjiv Kumar Jain v. Regional Passport Office*, one doctor, who studied in AIIMS and got an MBBS degree in 1986. The doctor who treated Jain's sons allegedly died at his hands. The appellant felt that doctor was not a competent doctor and on further enquiries, they discovered various discrepancies in the doctor’s education. The appellant was convinced that this was a case of a fake doctor, and applied to AIIMS to provide certified copies of the degrees and certificates regarding the doctor. Application was also made to the Regional Passport Office for details of the passport to find out whether doctor was using more than one passport. Both AIIMS and the Passport Office refused the request treating it as invasion of the privacy of doctor under Section 8(1) (j). In an appeal, the Commission examined several documents produced by the appellants and came to the conclusion that the case had prima facie evidence of forgery, impersonation, and falsification of documents. The Commission in its decision stated that ordinarily it would not have entertained the request of the appellant as the information related to a third party and was personal, but the matter was definitely in public interest and was covered by Section 8(2) of the Act and warranted a thorough investigation. The Commission asked the CPIO, AIIMS to send a notice to the third party, that is, doctor under Section 11 of the Right to Information Act, 2005 asking him to make his submissions in writing and authenticate copies of certificates and other papers submitted to AIIMS at the time of his admission. The Passport Office was also directed to provide passport details along with a photograph of doctor and allow the appellant to inspect any other passport carrying the same name but with different details.

In another case, *Shiv Shambu & Others and Sanjeev Kumar & Others v. UPSC*, the central information commission in its full bench decision on 13 November 2006 directed the UPSC to disclose the marks assigned to each of the applicants in general studies’ and optional papers. Further, the UPSC was directed to disclose the cut-off marks fixed for each of the papers and if no cut-off marks were fixed, it would have to disclose the subject-wise marks assigned to the short-listed candidates. It further asked the UPSC to consider disclosure of the scaling system under Section 8(1) (d) as it involves larger public interest.

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528 Sanjiv Kumar Jain v. Regional Passport Office. CR OK/A/2006/0048.
529 Shiv Shambu & Others and Sanjeev Kumar & Others v. UPSC. CR MA/A/2006/00793.
The UPSC filed a writ petition in the High Court of Delhi for setting aside the order of the central information commission. The High Court judgment was given by Justice Badar Durrez Ahmad on 17 April 2007 in UPSC v. CIC & Others.\(^5\) The court decided that the stand taken by the UPSC of taking cover under Section 8(1) (d) of the Right to Information Act is wholly inappropriate. First of all, the information that is sought by the respondents does not fall within the expression ‘intellectual property’. Even if it is assumed that it is information within the meaning of Section 8(1) (d) of the Right to Information Act, its disclosure would not harm the competitive position of any third party. In any event, the UPSC being a public body is required to act and conduct itself in a fair and transparent manner. Moreover, Section 8(2) indicates access to information if the public interest in disclosure outweighs the harm to the protected interests. The disclosure of information as directed by the CIC, does not, in any way, harm the protected interests of the UPSC or any third party. In any event, the public interest in disclosure is overwhelming. Regarding disclosure of the scaling system, the court held that as the same already stands disclosed by UPSC in the counter-affidavit filed before the Supreme Court in the case of UP Public Service Commission v. Subhash Chandra Dixit,\(^\text{51}\) nothing further needs to be done on this aspect.

In a case where information pertaining to income tax assessments of Vidharbh Cricket Association was denied to the appellant and the appellant argued that the VCA was not required to pay any income tax and the income tax paid by it was a result of mismanagement, the Commission held that extreme caution has to be exercised before an I.T. Return of an assessee and the corresponding assessments be allowed to be made public. A mere allegation of wrong doing on part of an assessee by an interested person cannot provide the rationale for invoking the public interest override of Section 8(2).\(^\text{52}\)

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