

PREFACE

The enactment of the Right to Information Act, 2005 (RTI Act) is a historic event in the annals of democracy in India. Information is power and now a citizen has the right to access information "held by or under control of" the public authorities. Concurrently, it is the duty of all public authorities to provide information sought by citizens.

The Act mandates a legal-institutional framework for setting out the practical regime of right to information for every citizen to secure access to information under the control of public authorities. It prescribes mandatory disclosure of certain information to citizens. It also mandates the constitution of a Central Information Commission (CIC) and State Information Commissions (SICs) to inquire into complaints, hear second appeals, and guide implementation of the Act. Most of the intelligence agencies are excluded from the ambit of RTI Act, 2005 as would be seen from Schedule 2 to the Act. However, Central Bureau of Investigation (CBI) and Directorate General of Central Excise Intelligence (DGCEI) are notable exclusion to this exemption. The nature of job of an intelligence agency is to gather intelligence, cause investigation and prosecution of offenders. To execute these functions, these agencies have to maintain utmost confidentiality of information. However, having not been excluded from the purview of RTI Act, 2005, DGCEI has to maintain a fine balance between the transparency and public interest under the Act and the protected interest under Section 8 of the Act.

Directorate General of Central Excise Intelligence (DGCEI) is the apex intelligence organization functioning under the Central Board of Excise & Customs, Department of Revenue, Ministry of Finance, entrusted with detection of cases of evasion of duties of Central Excise and Service Tax. The Directorate General is headed by Director General. The role of the Directorate General in tackling the menace of duty evasion is manifold. It develops intelligence, especially in new areas of tax evasion through its intelligence network across the country and disseminates information in this respect, by issuing Modus Operandi Circulars and Alert Circulars to appraise field formations of the latest trends in duty evasion. Wherever found necessary, this Directorate General on its own, or in co-ordination with field formations, organizes operations to unearth evasion of central excise duty and service tax.

At present DGCEI with its Headquarters at New Delhi has 6 Zonal Units and 18 Regional Units. All the Zonal and Regional Units are having CPIOs and Appellate Authorities and Transparency Officers for implementation of the RTI Act, 2005.

While all efforts have been made to make this compilation of favourable CIC decisions on exemptions, as accurate and as elaborate as possible, the information given in this booklet is for reference and must not be taken as binding in any way. This compilation is intended to provide guidance to the CPIOs and the first Appellate Authorities. It cannot be a substitute for the Act and the rules made there under.

Important CIC Decisions regarding Exemptions from Disclosure of Information under RTI Act, 2005

The following CIC decisions interpreting the RTI Act 2005 give valuable clarification in applying exemptions and responding to the RTI applications seeking information relating to ongoing investigations:-

(1) Investigation into tax evasion can be said to be over or complete, only after the final adjudication about the tax liability had been made after the matter has gone through all the stages of appeals and revisions as well as a final decision about prosecuting or not prosecuting that person has been taken by an appropriate competent authority.

In the case of Shri Shanker Sharma and M/s. First Global Stock broking Pvt. Ltd. and others Vs. Director of Income Tax (Inv.)-II & CPIO, Deptt. of Income Tax, Mumbai (F. No. CIC/AT/A/2007/00007 dated 10.07.2007) the applicant had sought names and details of informer on the basis of whose information searches were conducted on Shanker Sharma and Devina Mehra by Deputy Commissioner of Income Tax (Investigation) on reasonable belief. Tax evasion is frequently a complex and elaborate process. The evader is often not a single person, but is part of an elaborate network, in which criminal elements – even mafia, are closely involved. The persons who supply information to the public authority about tax evaders are, no doubt, actuated by the lure of the rewards which come their way for successful identification of tax evasion. Yet, at the same time, such persons are also accepting grave risks to themselves and their families. If their names and identities are disclosed, they can very well incur the wrath of the persons who suffer financially on account of the action by the public authority, as well as of the criminal elements who may be behind the scene operators. Divulging the source of the public authority's information, on the basis of which such authority acts to recover the legitimate revenues of the State, would cripple the very functioning of this Department, and will have deleterious and long-lasting affect on its functioning as well as on the State's revenues.

The CPIO has pointed out that this matter was raised before the High Court by the same party in the same matter and the Court had firmly sided with the Income Tax Department in holding that the sources of information and files containing the notings of the Income Tax Department “are not required to be disclosed and privilege claimed by the respondents in that regard is accepted.” The ground for the Court to arrive at such a decision was sound and based upon a deep appreciation of the functioning and the purpose of the public authority, as well as the machinations of those who find themselves at the receiving end of law enforcement by such designated public authorities. Any tampering with the established system is fraught with unforeseen and potentially destructive consequences for the entire edifice of the public authority.

The respondents’ response is that this averment of the appellants is not correct. The term “investigation” in the case of Income Tax Department includes not only initial investigation but all subsequent actions which included all levels of appeals and final determination of the Income Tax liability based upon the initial investigation. Till that has been completed no investigation can be said to be complete in its true sense. He also urged that a decision as to whether or not to prosecute the person investigated against, is taken only after all the above-mentioned stages of investigation are completed. Any disclosure of the information connected with the initial investigation, at any stage prior to final conclusion of prosecution, if any, would be detrimental to the public authority’s case. He cautioned against taking an overtly mechanical view about completion of investigation as urged by the appellants. He also added that in matters of Police actions, very often there is a symmetrical progression of investigation and prosecution, with clearly defined limits. This is not so in matters of the so-called white-collar-crimes, which Income Tax evasions mostly are. Actions here are not so well defined and are often running to and fro till the final picture emerges and a final decision is taken about prosecuting or not prosecuting a given person who may have been investigated against.

DISCUSSIONS:

The respondents have cogently and persuasively argued that the information as requested by the appellant, for the reasons stated by the respondents, comes within the ambit of the exemptions under Section 8(1)(h) and 8(1)(g) of the RTI Act. Both these Sections prohibit disclosure of information connected with ongoing investigations and prosecutions and, information disclosure of

which would compromise the source of the information of law enforcement authorities and could jeopardize the life or physical safety of those providing such tip-offs. There is a strong case that information connected with such law enforcement work by a public authority must be provided requisite protection from disclosure in view of its uncontested impact on the functioning of the public authority and, in that sense, all general law enforcing agencies. The RTI Act has very thoughtfully restricted access to information in such matters. The point made by the appellants that the investigation in the matter should be construed to be over, has been persuasively rebutted by the respondents. It will be pertinent to mention that Section 8(1)(h) of the RTI Act exempts an information which would impede the process of investigation or apprehension or prosecution of offenders. The Act, however, does not define either the term "investigation" or "process of investigation". The Code of Criminal Procedure basically makes a distinction between an investigation, "inquiry" and "trial" and all the three terms denote three different stages of a criminal case. The first stage is reached when a police officer investigates into a case. After completing the investigation, when the case is sent to a Magistrate, the next stage begins, which is either an inquiry or a trial. As has been held by the Apex Court in the Directorate of Enforcement Vs. Deepak Mahajan (AIR 1994 SC 1775), the word "investigation" cannot be limited only to police investigation but includes the "investigation" carried on by any agency whether he be a police officer or empowered or authorized officer invested with the power of investigation. The expression "inquiry" as defined under the Code of Criminal Procedure is of wide import and takes in every proceedings other than a trial conducted by a Magistrate.

Thus, the term 'investigation' used in Section 8(1)(h), in the context of this Act should be interpreted broadly and liberally. We cannot import into RTI Act the technical definition of 'investigation' one finds in Criminal Law. Here, investigation would mean all actions of law enforcement, disciplinary proceedings, enquiries, adjudications and so on. Logically, no investigation could be said to be complete unless it has reached a point where the final decision on the basis of that investigation is taken. In that sense, an investigation can be an extended investigation. In the case of the Income Tax Department investigation into tax evasion can be said to be over or complete, only after the final adjudication about the tax liability had been made after the matter has gone through all the stages of appeals and revisions as well as a final decision about prosecuting or not prosecuting that person has been taken by an appropriate competent authority. The respondents are, therefore, right in

holding that it would be a misnomer to hold that investigation in matters such as this, the moment the Investigating Officer submits his report to the competent authority spells the end of investigation.

DECISION:

The CPIO also explained, at great length, as to how the Department creates a database of its informants and sources, and code-names them so that their identities can be a strictly guarded secret. This is not known even to officers within the public authority, except those who may be directly dealing with the matter. To disclose the nature of the information even after deleting from it the names of the specific sources of the informant, can potentially damage the entire system. I agree with this reasoning.

In consideration of the above, the appeals are rejected.

(2) Once it is established that a certain information requested by an applicant is related to a quasi-judicial proceedings, RTI Act cannot be invoked to access the information related to that proceeding.

In the case of Shri Vijay Kamble Vs Customs Department, Mumbai (F.No.CIC/AT/A/2008/01466 dated 23.03.2009), the appellant asked for copies of show cause notices and other documents relating to the proceedings by Directorate of Revenue Intelligence (DRI) and currently under adjudication by the Commissioner of Customs (Exports). CPIO and the Appellate Authority declined to disclose the information variously citing Sections 8(1)d, 8(1)(h) and Section 8(1)(j) of the RTI Act.

In their comments filed before the Commission, respondents have reiterated their point that the subject matter of this RTI-query was regarding evidence in an ongoing investigation conducted by Commissioner of Customs (Exports). Disclosure of any information at this stage would hamper the current investigation. During the hearing, respondents submitted that any process of investigation needs to be protected from intrusive intervention of third-parties claiming to be do-gooders. Unless the investigation is allowed to be conducted in the letter and spirit of the law in this case the Customs Act and if unconnected persons are allowed to intervene in the proceeding through

intrusive enquiries, it would be difficult to maintain the integrity of the investigative process, expose the investigating and the adjudicating officers to external influences and duress and prevent them from concentrating on the case on hand. They also pointed out during the hearing that the adjudicating process was a quasi-judicial proceeding and in terms of the full Bench decision of the Commission (Rakesh Kumar Gupta Vs. Income Tax Appellate Tribunal (ITAT); Appeal No.CIC/AT/A/2006/00586; Date of Decision: 18.09.2007), it is beyond the scope of the RTI Act. If intervention for disclosure of information germane to an ongoing adjudication process is allowed, it will lead to questions being asked about proceedings before judicial courts and even the superior Courts. This should go against the scheme of separation of powers under the Constitution of India.

Certain key aspects of this particular appeal relating to the information are: (i) the information is relating to a current adjudication proceedings before the Commissioner exports; (ii) matter was investigated by the Directorate of Revenue Intelligence, where after it was transferred to the Commissioner (Exports) for further adjudication; (iii) the adjudication proceedings are presently going on; (iv) the information relates to twelve third-parties, seven of which have objected to its disclosure on the ground of these items of information being their commercial confidence besides being personal to them; (v) Commissioner Customs (Export) has issued show cause notices to all 12 parties as a prelude to conduct the adjudication and (vi) matter has been hanging fire since 1998.

DECISION:

Both appellant and respondents have brought-forth multiple aspects of this case in the context of the provisions of the RTI Act. The principal factor, which needs to be addressed, nevertheless, is whether the proceedings before Commissioner of Customs admittedly a quasi-judicial proceeding would admit of action under the RTI Act. It has been the decision of the Commission in Rakesh Kumar Gupta Vs. Income Tax Appellate Tribunal (ITAT); Appeal No.CIC/AT/A/2006/00586; Date of Decision: 18.09.2007 that once it is established that a certain information requested by an applicant is related to a quasi-judicial proceeding, RTI Act cannot be invoked to access the information related to that proceeding.

That full Bench decision is entirely applicable to the present case. In view of this, it will not be possible for me to allow disclosure of the requested information.

Appeal disposed of with these directions.

(3) Appellant can not take recourse to the RTI Act to challenge a judicial decision regarding disclosure of a given set of information.

In the case of Rakesh Kumar Gupta Vs. Income Tax Appellate Tribunal (ITAT) (Appeal NO.CIC/AT/A/2006/00586; Date of Decision: 18.09.2007), it was held that Judicial Authority must function with total independence and freedom, should it be found that the action initiated under the RTI Act impinges upon the authority of that Judicial body, the Commission will not authorize the use of RTI Act for any such disclosure requirement.

The information sought by the Appellant raises a very important question about whether under the Right to Information Act it is permissible to access information held by another public authority which acts in a judicial capacity, especially when the information pertains to its orders in that judicial proceeding and actions related thereto. There may be other similar Tribunals whose orders and records could similarly be sought to be accessed through the Right to Information Act. This matter should, therefore, be considered by the Full Bench of the Commission.

Appellant said that public interest in disclosure of this information is overriding. In every judicial proceeding, every thing should be transparent and open in order to curb corruption. Limited disclosure by the ITAT is potential generator of corruption. The more the transparency the less is the corruption. The Appellant said that there has been rampant theft of tax amounting to thousands of crore of rupees and although he had filed more than 20 RTI applications but he had got no information. In reply to the arguments of the appellant, the respondents submitted that they have objected to the very maintainability of the appeal and submitted that it should be rejected on this score alone. However, on the appellant narrowing down his request for information, the Registry was directed to provide certified true copies of order in case Appeal Case No. ITAT No.567/Del/2005 pertaining to Escorts Ltd. So far as inspection of all the records mentioned in his

RTI request was concerned, it was informed to the appellant that a decision on similar request is pending before the CIC which is a superior authority and they are waiting for the CIC's direction in the matter. Respondents also pointed out that the appellant vide his letter dated 4.9.2006 did not press for his last request relating to examination of minutes maintained by the Members of the ITAT. If in spite of the decision of the ITAT, PIO had supplied the information, he would have committed contempt of the Tribunal.

ISSUES FOR DETERMINATION:

- I. Whether this Commission, under the Right to Information Act, can order the ITAT to disclose information which that Tribunal has decided not to disclose under the Income Tax Act, 1961 as amended from time to time and rules made thereunder?
- II. Whether the RTI Act applies to a judicial proceeding and, if so, does it override the existing law concerning dissemination of information in respect of a judicial proceeding?
- III. Whether the information, which the respondents say are prohibited under the Income Tax Act can be given under the Right to Information Act?

DISCUSSIONS:

In the instant case, the appellant has asked for a copy of the daily proceedings minutes maintained by the members of the Bench tried by the ITAT in appeal case No.ITA 567/Del/05. The CPIO in the instant case has replied that the daily minutes maintained by the members of the Bench are a part of the judicial proceedings and is meant only for the use of the members of the Tribunal. Admittedly, the proceedings before the Tribunal are judicial. Apparently, all judicial proceedings are conducted in open and transparency is the hallmark in case of all such proceedings. There is no element of secrecy whatsoever. But at the same time, it has to be borne in mind that the judiciary is independent and all judicial authorities including all courts and tribunals must work independently and without any interference insofar as their judicial work is concerned. The independence of a judicial authority is all pervasive and any amount of interference is neither desirable nor should ever be encouraged in any manner.

The appellant in the instant case wanted the minutes of the proceedings maintained by the learned members of the Tribunal which can only be the notes prepared by them while conducting the hearing or otherwise. 45. The respondents have drawn our attention to the following observations made by Hon'ble Justice Vivian Bose in *Surendra Singh v State of UP* (AIR 1954 Supreme Court 194):

“Judges may, and often do, discuss the matter among themselves and reach a tentative conclusion. That is not their judgment. They may write and exchange drafts. Those are not the judgments either, however heavily and often they may have been signed. The final operative act is that which is formally declared in open court with the intention of making it the operative decision of the court. That is what constitutes the ‘judgment’...”

Those observations, though made in a different context, highlight the status of the proceedings that take place before the actual delivery of the judgment. If according to the Supreme Court even the draft judgments, though heavily and 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. Any intrusion in regard to the judicial work even under the Right to Information Act is unnecessary. We are satisfied that at the level of appellate authority the appellant agreed not to press for this request. The position generally being so, in the present case, the question is when the power of disclosure of certain information is vested exclusively in a properly constituted judicial body, such as the ITAT, should the disclosure of the same information be made a subject to be determined under the RTI Act. In our view, it is not so. The independence of the judicial authority flows from the discretion given to that authority to take all decisions in matters properly brought within the purview of that authority. For example, the ITAT, as a judicial body, is also entrusted with the power to authorize disclosure or non-disclosure of a given set of information such as the information asked for by the appellant in the present appeal. In our understanding, it should not be necessary to separate the function of disclosure of information from the general function of that judicial body. In other words, it would not be appropriate for the Commission or any entity

functioning as part of the RTI-regime, to pronounce on the disclosure of a given set of information, if it is found that under another law (such as the Income Tax Act), this disclosure function is exercisable as part of the judicial function by a judicial authority, such as the ITAT.

DECISION:

It is our conclusion, therefore, that given that a judicial authority must function with total independence and freedom, should it be found that an action initiated under the RTI Act impinges upon the authority of that judicial body, the Commission will not authorize the use of the RTI Act for any such disclosure requirement. Section 8(1) (b) of the RTI Act is quite clear, which 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 appellant through his request under the Right to Information Act has sought a copy of the decision of the tribunal in the said appeal case decided by the tribunal. He has also wanted to inspect the case records. CPIO in his reply stated that copies of the order and the inspection of the records can be given and inspection of the case record can be allowed only to the concerned parties or the representatives duly authorized in this behalf. The first appellate authority on the other hand has directed a copy of the order of the tribunal to be given to the appellant but as regards the inspection, no decision has been passed by the appellate authority. However, at the time of hearing, it has been submitted on behalf of the respondents that Rule 35 of the Income Tax Appellate Tribunal Rules, 1963 provides that an order of the tribunal after it is signed shall be communicated only to the assessee and the Commissioner of Income Tax and there is no provision to give a copy thereof to any other person. Insofar as the inspection of the records is concerned, it has been placed before the Commission that there is an order by the Bench of the ITAT not to allow inspection to the appellant. However, copy of the order has not been filed before us.

(4) Information can not be disclosed till the investigations are over.

Shri Vinod Kumar Jain V/s Directorate General of Central Excise Intelligence, New Delhi
Appeal No.CIC/AT/A/2010/000969/SS

The Appellant sought the detail of complete proceedings / records of the investigation being carried out against the appellant with regard to enquiry in to the Lakhanpur and Bhanuth / Shambhu check posts in J & K and Punjab respectively as the SCN in the matter has been issued and the investigations are complete. The CPIO denied the information to the Appellant under section 8(1) (h) of the RTI Act, 2005 by stating that the investigation in the matter are still pending in view of Hon'ble CIC's decision in the case of Shri Shankar Sharma and M/s First Global Stock broking Pvt. Ltd. and others Vs. Directorate of Income Tax, Mumbai.

DISCUSSIONS:

The Commission has carefully considered the submissions of the parties. The primary contention of the Appellant is that the investigation is deemed to be complete and the exception under section 8(1) (h) is not attracted. We find no merit in such contention raised by the appellant. On the other hand, we do find that there is substance in the contention of the Respondent. The Commission concurs with the detailed order passed by the FAA of the Respondent and we also confirm our earlier order (supra) passed on this same issue where it was categorically held by one of the Learned Information Commissioners that: Appeal No.CIC/AT/A/2007/00007/ dated 10.7.2007 "the term 'investigation' used in Section 8(1)(h), in the context of this Act should be interpreted broadly and liberally. We cannot import into RTI Act the technical definition of 'investigation' one finds in Criminal Law. Here, investigation would mean all actions of law enforcement, disciplinary proceedings, enquiries, adjudications and so on. Logically, no investigation could be said to be complete unless it has reached a point where the final decision on the basis of that investigation is taken."

DECISION:

Thus, Commission sees no reason to interfere with the order passed by the FAA of the Respondent and hence the same is upheld.

The appeal is accordingly dismissed.

(5) Information can not be disclosed if action for prosecution of offenders is initiated, being exempt under Section 8(1) (h).

In the Case of Shri Vinod Kumar Vs Directorate General of Central Excise Intelligence (No.CIC/AT/A/2010/000910/SS dated 31.05.2011), the appellant sought information on four RTI queries pertaining to investigation relating to alleged fraudulent availment of CENVAT Credit against M/s Trusine Electronics Pvt. Ltd., New Delhi. The information was denied under u/s 8(1) (h) of the RTI Act by the CPIO. Aggrieved by the decision of CPIO, the appellant preferred first-appeal before the first Appellate Authority. The first Appellate Authority vide order dated 26.7.2010 upheld the decision of CPIO.

DECISION:

The respondents submitted before the Hon'ble CIC that DGCEI conducted investigation relating to fraudulent availment of CENVAT Credit on forged documents against M/s Trusine Electronics Pvt. Ltd. During the course of investigation the officers recorded statements of various persons and drew panchnamas of the searches carried out at various places. The appellant voluntarily deposited an amount of Rs.1 crore during investigations. The case has now been adjudicated by the Commissioner of Central Excise, Delhi-II confirming the Central Excise duty demand of Rs. 5,01,69,276/- and imposing a penalty of an equivalent amount on the company. A penalty of Rs. 10 lakhs has also been imposed on the Director of the Company Shri Vinod Kumar for his complicity in abetment of preparing forged documents. The respondents are in the process of filing charge-sheet for initiation of proceedings under Cr. P.C. Hence, the information sought is exempt under Section 8 (1) (h) of the RTI Act.

After hearing the parties and on perusal of the relevant documents on file, the Commission found no reason to disagree with the replies of the respondents. The replies of respondents upheld. The matter was disposed of accordingly at Commission's end.

(6) Information can not be disclosed to an offender against whom prosecution under Cr PC is lodged in the court of law.

Case No. CIC/SS/A/2011/000684

Shri L.S. Chandalia V/s Directorate General of Central Excise Intelligence, New Delhi.

The appellant filed RTI application seeking certified copies of file notings pertaining to a show cause notice served to the appellant and others. The appellant who was the then Superintendent of Central Excise Range, Bhiwani had colluded with the Bhiwani Textile Mills, in order to extend ineligible benefit available to the composite mill. The CPIO denied information u/s 8(1)(h) of the RTI Act, stating that the present case has not yet been finalized.

The FAA upheld the decision of CPIO with the observation that the investigation into tax evasion can be said to be over or complete, only after the final adjudication about the tax liability had been made after the matter has gone through all the stages of appeals and revisions as well as a final decision about prosecuting or not prosecuting that person has been taken by an appropriate competent authority. Divulging such information may cripple the very functioning of the Department, as in such a situation the officer and the informer have the danger of being exposed to such evaders who often have elaborate network involving criminal elements.

DISCUSSIONS:

The appellant who was Range Supdt Incharge at the material time was involved in a deliberate and conscious attempt to extend undue benefit as a composite mill to the said Textile Mill, for which they were otherwise not eligible. This fact has been upheld by the adjudication authority in its adjudication order. Accordingly the case has been found fit for prosecution and DG, CEI has accorded sanction for prosecution of Offender Company and the appellant.

DECISION:

After hearing the respondent, perusing the relevant documents on file and above submissions of the respondent, the Commission finds no reason to interfere with the replies of respondent. The replies of respondent are upheld.

The matter is accordingly disposed of at Commission's end.

(7) Public authority cannot be obligated to explain its process of investigation and decision making to the litigant with whom it is engaged in a legal matter.

In the case of Shri Milap Choraria V/s CBDT(No.CIC/AT/C/2008/00025 dated 27-7-2009), the appellant sought the information regarding file containing decisions pertaining to the applicant himself and hence personal in nature. The inspection of this file had no relationship to any public activity or interest. The matter being wholly personal to the applicant attracts exemption u/s 8(1)(j) of the RTI Act. During the hearing, the appellant, taking the broad meaning of the term "public interest", argued that every act of a Public officer was in "public interest". The respondents on the other hand have argued that the question of applicability of Section 8 (1) (j) mandates disclosure only when larger public interest so justified and must be read in the context of Section 123 of the Indian Evidence Act. The learned counsel appearing on behalf of respondent Public Authority submitted that a public officer could not be compelled to disclose communications made to him in official confidence when he considered that public interest would suffer by such disclosure. This means that the existence or otherwise of public interest is to be determined by the officer concerned. The learned counsel also argued that under Section 123 of the Indian Evidence Act, no public servant could be permitted to give any evidence derived from any public official or public records relating to affairs of the State except with the permission of the Head of Department. The decision to disseminate information concerning official matters, therefore, was required to be taken by the Head of Department and not by the CPIO. He submitted that disclosure of the information asked for by the appellant would be prejudicial to public interest and, therefore, attracted the bar under Section 8(1)(j) read with Sections 123, 124 and 129 of the Indian Evidence Act, 1872.

ISSUES FOR DETERMINATION:

- I. A public officer cannot be compelled to disclose a communication made to him in official confidence when he considers that the public interest would suffer by such disclosure — Whether provisions of Sections 123, 124 and 129 of the Indian Evidence Act stand overridden by non-obstante clause appearing in Section 22 of the RTI Act?
- II. Can a Public Authority claim exemption from disclosure by invoking Section 11(1) of the RTI Act?
- III. Whether a Public Authority is obliged to disclose everything even though the said disclosure is considered to be contrary to public interest?

DISCUSSIONS:

If a public authority takes a position that a certain information should be held to be non-disclosable under Section 123 and 124 of the Indian Evidence Act, it will hold good only so long as the relevant Section of the RTI Act also allows the public authority to withhold such information in public interest. In other words, if within the meaning of the RTI Act, information is to be disclosed in public interest and if the same information is held confidential in public interest within the meaning of the Indian Evidence Act, then the provisions of the Indian Evidence Act shall be inconsistent with the RTI Act. There may be circumstances, however, where, as in Section 8(1)(j) of the RTI Act, a personal information can be held to be non-disclosable unless warranted by public interest. If such personal information is also held confidential under any Section of the Indian Evidence Act on grounds of public interest, there shall be perfect compatibility / harmony between that withholding of the information or any order to withhold the information under Section 8(1)(j) of the RTI Act.

The sum-total of the respondents' arguments, therefore, is that appellant has tried to conflate his personal interest with public interest in order to force the public authority to share with him all that it knows confidentially about how it wished to defend its position in the law suit by the appellant.

The respondents have derived strength from Sections 123, 124 and 129 of the Indian Evidence Act, which authorize them under certain circumstances to withhold from public disclosure information held by the officers of the public authority in confidence, except when public interest warrants such disclosure.

This present appeal raises, apart from others, a larger issue, which is the rights and the liabilities of a public authority as a party to a litigation. If the interpretation of the RTI law by the appellant is to be accepted, it would mean that even when the Government is litigating vis-à-vis another person, that person will have the right to access all information about how the Government is seeking to defend its position in the legal proceeding without having any corresponding right to access similar information of the opposite party. On any scale of equity, this will appear to be biased against the public authority. Before the enactment of the RTI Act, such public authorities received protection to its position and the information held by it was exempt from disclosure in any suit or legal proceeding, under several provisions of the Indian Evidence Act, which have been mentioned in para 16 above. Now, with the advent of the RTI Act it is, arguably, no more possible for such public authority to hold its side of information and evidence from being directly accessed by the opposite party except for exemptions contained in RTI Act. In normal course, the Government as well as the opposite party would have produced their evidences and arguments before the court of law, who would have then decided how to allow the evidence to be shared between the parties and at what stage. Now, private litigants are choosing to invoke RTI Act in order to equip themselves in advance about the position taken or likely to be taken by the public authority in an ongoing litigation in order to counter it. It will need to be examined whether such interpretation of the RTI Act is possible – i.e. to allow a party to a litigation to access the other party's (which in this case happens to be a public authority) evidence and stated position in order to build his own case against that position.

The point for consideration before us is whether the public authority can hold confidentially its side of the information and the internal deliberations it may have had in order to put up its case before a court and whether it is obliged to disclose all this information to the very person whom it intends contesting in the court of law

DECISION :

In the present case, the reason offered by the public authority for not disclosing the information held by them was that they were disinclined to share with the very person they were engaged in a litigation or who seeks to engage the public authority in litigation, the information which they hold and which they have internally processed through consultations with others, such as the legal advisers, officers of the department, etc. The public authority does not want to share with the appellant any information about 'which officer of the public authority took what position in recording his notes on the file vis-à-vis the appellant's Section 80 CPC notice. They are also disinclined to disclose the advice they have received from legal sources. They doubt the motive of the appellant in seeking to access this information which they believe seeks to inflict harm on the very public authority through whose avenue the litigant is seeking the information to be disclosed. It is the claim of the public authority that under the law of the land, they are obliged to produce the evidence only before a law court and are under no obligation to share it in advance with the appellant who is seeking to engage the public authority in a legal proceeding. They have argued that if this line is accepted, serious harm shall be inflicted on the government and the public authority's ability to safeguard public interest, against intrusive action by self-seeking litigants. 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 marshalled 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 through its actions.

A public authority must not be obligated to explain its conduct by revealing the entire decision-making process to the very litigant with whom it may be engaged in a dispute – legal or otherwise. In our view, 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.

In our view, appellant has failed to cite any public interest that would commend superseding the protected interest in the matter of disclosure of the requested information, within the meaning of Section 11(1) of the RTI Act. The appeal petition, therefore, fails scrutiny and is dismissed.

(8) When investigations are in progress, documents can not be disclosed.

In the case of Dr. B.L. Malhotra Vs. The National Small Industries Corporation Ltd. (No. 783/IC(A)2007 dated 06.06.2007), the appellant asked for the information which contained material pertaining to corruption involving the appellant, some others officers of respondent and a few business concerns. The major portion of investigation were still pending/or was contemplated. The information was denied under Section 8(1)(h) by the CPIO.

DECISION:

The information sought contains the details of the individuals as well as business organizations, which are involved in the alleged corruption. The investigation process is in progress and is also contemplated against some other officers and business concern. In view of this, the exemption claimed U/S 8(1)(h) from disclosure of information is justified.

(9) Information on ongoing investigation (Sections 8(1)(g) and 8(1)(h) of the RTI Act)

In the case of Ravinder Kumar vs. B.S. Bassi, Joint Commissioner, Police (F.No. CIC/AT/A/2006/00004, dated 30.06.2006), the applicant had sought details regarding the progress of an investigation of a case by the police.

DECISION:

The CIC dismissed the appeal relating to the disclosure of information.

It ruled that the disclosure of information, in cases under investigation by the police was exempted, according to the provisions of Sections 8(1)(g) and 8(1)(h) of the RTI Act.

It is justified not to disclose information in cases of ongoing police investigations (which have not yet been completed), because such a disclosure could hamper the investigation process, the Commission held.

(10) No disclosure of third-party confidential information (Section 8(1)(j) of the RTI Act)

In the case of A.P. Singh vs. Punjab National Bank (Appeal No. 12/IC(A)/2006, dated 14.3.2006) the appellant had sought information regarding the bank account of another person with whom the applicant had no professional or business relationship.

This information was refused to the applicant by the public authority.

DECISION:

The CIC held that a bank is under duty to maintain the secrecy of accounts of its customers, who are also third party.

The CIC further held in this case that since the applicant had not established any bona fide public interest in having access to the information sought nor did he have any association or business relationship with the company (bank), his appeal can not be accepted in terms of the law as provided in Section 8 (1)(j) of the RTI Act.

(11) Disclosure in case of pending departmental enquiry (Section 8(1)(h) of the RTI Act)

In the case of Sarvesh Kaushal Vs. F.C.I and others (Appeal Nos. 243 /ICPB /2006 and 244 / ICPB /2006, dated 27.12.2006), the appellant had applied for documents relating to the departmental enquiry launched against him in a corruption case.

DECISION:

The CIC, rejecting the appeal, held that the departmental enquiry, which was in progress against him, was a pending investigation under law, and the same attracted the provisions of Section 8(1)(h).

Therefore, there is no question of disclosing any information relating to his prosecution, the CIC noted.

(12) Public authority to disclose information if public interest out weighs the harm to the protected interests (Section 8 (1)(g) and 8(1)(h) of the RTI Act).

In the case of S.R. Goyal vs. PIO, Services Department, Delhi (Appeal No. CIC / WB/A/20060523, dated 26.3.2007), the appellant had sought a copy of the letter received by the public authority regarding his suspension, from the CBI, which was investigating the case.

The public authority replied that the information requested by the applicant was exempted from disclosure by virtue of Section 8(1)(g) and 8(1)(h) of the RTI Act.

DECISION:

The Commission, rejecting the appeal of the applicant, held that the exemptions from disclosing information, under Section 8(1)(h) of the RTI Act as well as under the relevant provisions of the Official Secrets Act, would apply. The Commission further said that if the public authority, decides that public interest in the disclosure outweigh the harm to the protected interests, it can disclose the information, which was not the position in this case.

(13) The information seeker, being an employee of the respondent, is a part of the information provider. Under the RTI, the employees are not expected to question the decisions of the superior officers in the garb of seeking information.

In the case of Dr. K.C. Vijayakumaran Nair Vs Department of Post, the appellant had sought following information. The name of the officer who raised the query as to whether the appellant had taken permission of the respondent for joining a Ph.D. course; and The name of the officer who took the decision to relieve the appellant while he was posted at Shimla and whether the officer was competent to take such decision.

He had also sought 'file notings' with respect to the above.

The CPIO informed him that his relieving order was issued in compliance with the orders of DG (Posts). As regards disclosure of 'file notings', the information was denied u/s 8(1)(j) of the Act, on the ground that 'file notings' was confidential. The appellant made his first appeal and the appellate authority upheld the decision of the CPIO.

DECISION:

The information sought has been furnished, except the 'file notings' with regard to the official who raised the query as to whether the appellant had obtained the official permission for doing the Ph.D course. The part of 'file notings' containing the orders of the DG (Posts) for relieving him from the post, the then held by the appellant has been similarly denied. The 'file notings' in the instant case, contain information relating to transfer/posting. The competent authority of the respondent may have taken the decision keeping in view of the overall interests of the respondent. It is, therefore, not for any employee, how-so-ever he may be affected, to know as to why or how the decision was taken by the competent authority. The disclosure of such information is not in the public interest as the appellant has asked for the information for promotion of his personal interest. Therefore, the CPIO is justified in denying the information sought, u/s 8(1)(j) of the Act.

The information seeker, being an employee of the respondent, is a part of the information provider. Under the RTI, the employees are not expected to question the decisions of the superior officers in

the garb of seeking information. Such employees have access to internal mechanisms for redressal of their grievances. Unfortunately, a large number of the government employees are seeking information for promotion of their personal interest. This is done on the pretext of serving the public cause, without realizing the extent of distortions that it causes in use of public resources due to putting up frivolous applications by them for self-interest. This appeal is in no way exception.

In the instant case, the information seeker and the provider being part of the same system should work together for evolving approaches to remove irritants in their mutual interaction, as a lot of public resources devoted to provide service to the entire Indian community is thus un-productively used. They ought to exercise restraints in misusing the Act, lest they should dilute the mandate of RTI Act to empower the common man.

(14) Disclosure of personal information of employee are exempt under Section 8(1)(j) of the RTI Act, 2005.

In the case of Shri Vibhor Dileep Barla Vs. Brig. S.C. Nair, DDGPI & CPIO & Lt. Gen. I.J. Koshy, Appellate Authority, Army Headquarters, New Delhi-110011, the appellant sought details about a certain Lt. Col. Kishore Chandrakant Gupte who allegedly claimed to be a Retired Lieutenant Colonel and, as stated by the appellant, "dealt in sale of Plot No.63, located at Survey No.244, Pathardi, Nashik, Maharashtra and completed the sale without the permission of the Collector which is a requisite for a sale of the said-plot." The appellant believes that there is no Lt. Col Kishore Chandrakant Gupte and the transaction conducted in his name was a benami one. He contends that 'Gupte' and 'Gupta' are often used inter-changeably in Maharashtra Region as surnames. It is the information of the appellant that there is an officer answering to the name Kishore Chandrakant Gupte in Army records. The appellant would like to confirm whether he is the same person as Lt.Col Kishore Chandrakant Gupta. The appellant aims to unearth whether there was any attempt at impersonation in the matter of land transaction by certain Army personnel.

The appellant's plea was turned down by both the AA and the CPIO on the ground of it attracting the exemption of Section 8(1)(j) of the RTI Act. According to them, it is not the Army's business to confirm or deny the appellant's suspicion about the true identity of a person who enters into some land deal somewhere in the country. The appellant countered the reasoning of the AA and the CPIO by saying that the information he has sought has nothing to do with any invasion of privacy of any

individual. What he has attempted to elicit is whether the Kishore Chandrakant Gupte or Kishore Chandrakant Gupta is actually the Army officer who entered into the alleged land deal in Nashik.

DECISION:

The appellant has sought to put the RTI 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.

The type of information the appellant has solicited, reduced to the norms of the RTI Act, amounts to disclosing to him particulars of the employment of a specific officer of the Army, serving or retired. The short-point for consideration before the Commission is whether Section 8(1)(j) is attracted to this type of information.

In the present case, 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.

In case the appellant feels that a fraud has really been committed or the Army was derelict in matters of strict observance of the Conduct Rules, he may approach the forums which have been statutorily assigned with the task of addressing such allegations.

In my view, there is no infirmity in the interpretation of Section 8(1)(j) by the AA and the CPIO. The orders of the subordinate authorities are upheld.

(15) There is no justification at this stage to interfere with the process of Disciplinary Proceedings, which is a quasi-judicial function. The denial of information sought under Section 8(1)(h) of the RTI Act, 2005 is therefore justified.

In the case of Shri B.S. Manian Vs. Department of Posts, (Decision No. 92/IC(A)/2007 F. No.CIC/PB/A/2007/00405 dated, 20.06.2007, the appellant who was the main offender in the fraud case sought certain information regarding Disciplinary Proceedings initiated against him.

The CPIO refuse to provide the documents asked for under Section 8(1)(h) & (g) of the RTI Act, 2005. He has however informed the appellant that all the copies of the documents on the basis of which chargesheet memo was prepared would be furnished as per the provision laid down under the CCS (CCA) Rules.

DECISION:

A disciplinary action against the appellant is contemplated on the basis of the chargesheet memo issued to him under the CCS (CCA) Rules. Under the relevant provision, he is entitled for all the documents that are favourable to him for effective defense. There is therefore no justification at this stage to interfere with the process of disciplinary proceedings, which is a quasi-judicial function. The denial of information sought, u/s 8(1) (h) of the Act is therefore justified.

(16) RTI cannot be turned into tool for Vendetta by an employee against organization for some grievances.

In the case of Smt. Uma Kanti & Shri Ramesh Chandra Vs. Navodaya Vidhyalaya (No. CIC/OK/C/2007/00362 & 367 dated 5.01.2008). The appellant sought information/documents on 375 items regarding various issues pertaining to the Department. No information was furnished by the CPIO.

DECISION:

The Appellant moved the Information Commission in a complaint that his RTI-application of 19 March 2007 had not been responded to. During the hearing, the Respondents stated that although the Appellant had moved the Commission with a single appeal, the RTI-application referred to by him had not been received by them nor had they received the prescribed fees. However, there were a number of other cases filed by the couple. These applications, filed by him and his wife, ran into over 188 pages which contained 375 items on which information was sought. In addition, they had enclosed 141 pages of proforma in which they wanted the information to be supplied. The

Respondents during the hearing brought to the notice of the Commission these various RTI-applications which the Commission noticed were actually thick piles of papers containing questions and proforma. Moreover, the information sought by the Appellants was spread over 20 years and concerned thousands of employees. Thus, for instance, they had asked for disclosure of ACRs of an entire group of staff members, and things like scooter advances, allotment of staff quarters, time-tables of various schools, details of the court cases since 1996, details of payments made to officers since 1996, etc.

This is perhaps the worst case to have come to this bench showing the worst misuse of the RTI-Act. The Commission directs the Respondents not to consider the RTI-applications filed by this Appellant and his wife since the RTI cannot be turned into a tool for vendetta of an employee against his Organisation for some grievance that one harbours against it. The present case is an example to the ridiculous length to which a person can take a beneficial piece of legislation and make a mockery of it.

The Commission feels that this case together with some others like *Shri Faqir Chand Vs. North Western Railway, Bikaner (No.CIC/OK/A/2007/00951)* show the necessity of some provision in the RTI-Act for taking punitive action against the Appellants who seek to misuse the RTI-Act in such a blatant fashion.

(17) Disclosure of information to a person involved and responsible for contributing to the fraud is exempt under Section 8(1)(h) of the RTI Act, 2005.

In the case of Mr. M.B.S. Manian Vs. Department of Posts the appellant sought information regarding frauds committed by one Shri Ravanan SPM, Uttukottai SO, and nature of action taken against all identified subsidiary offenders figuring in the fraud.

The CPIO informed the appellant that information sought could not be complied as they are exempted from the RTI Act since the matter is sub-judice. The Appellate Authority also supported the decision of the SPOs.

DECISION:

Documents requested by the appellant in fact relate to the investigation of the fraud case, in which the appellant has been identified as one of the subsidiary offender responsible for contributing to the fraud. I find that the CPIO & AA have rightly denied the information by invoking provision of Sec. 8 (1) (h). I also hold that the disclosure of this information would impede the process of investigation and the information need not be disclosed to the appellant. Accordingly I see no merit in the second appeal filed before the Commission and is the same is rejected.

(18) Frivolous applications not to be entertained

In the case of S.K. Lal vs. Ministry of Railways (Appeal No. CIC /OK /A / 2006 /00268-272, dt: 29.12.2006) the applicant had filed five applications to the railway authorities asking for “ all the records” regarding various services and categories of staff in the Railways. The public authority, however, did not provide him with the information requested.

DECISION:

The Central Information Commission observed that though the RTI Act allows citizen to seek any information other than the 10 categories exempted under Section 8, it does not mean that the public authorities are required to entertain to all sort of frivolous applications.

The CIC held that asking for “all the records” regarding various services and categories of staff in the railways, “only amounts to making a mockery of the Act.”

(19) Can the CPIO appeal against the First Appellate Authority?

In the case of Sh. V.R. Eliza, CPIO Vs Central Board of Excise & Customs (Decision no. CIC/AT/A/2008/00291 dt. 05.03.2008) the CPIO filed an appeal in the Commission against the order passed by First Appellate Authority of his own department. The interesting issue as to

whether the CPIO can go in appeal against his FAA was considered by the Commission and a decision given that 'Yes' he can.

DECISION:

Commission observed that Section 19 of the Act provides for an appeal by a person who is aggrieved with the decision of a CPIO. The first appeal is to be preferred to an officer senior in rank to the CPIO in the official hierarchy in the same Public Authority. Apparently, this right of appeal can be availed only by a citizen making an application seeking certain information or by another person who is aggrieved with the decision of the CPIO concerning disclosure of information. Such an aggrieved person may be a third party. Section 19(2) makes an explicit mention of an appeal by the concerned third party. Technically speaking, even a Public Authority can also be aggrieved with the decision of the PIO and can appeal against the decision of the CPIO as u/s 2(n) of the RTI Act, "third party" includes "Public Authority".

Section 19(3) of the RTI Act deals with a second appeal Sub Section (3) of Section 19 of the RTI Act reads as under Section 19(3):

A second appeal against the decision under sub-section (1) shall lie within ninety days from the date on which the decision should have been made or was actually received, with the Central Information Commission or the State Information Commission: Provided that the Central Information Commission or the State Information Commission, as the case may be, may admit the appeal after the expiry of the period of ninety days if it is satisfied that the appellant was prevented by sufficient cause from filing the appeal in time.

From the above, it is clear that a 2nd appeal is against the decision under Sub- Section 1 and any person who is aggrieved with this decision can approach the Commission and submit an appeal. This aggrieved person could be a PIO or a 3rd party or even a Public Authority as 3rd party. The Act does not debar a 2nd appeal either by the PIO or by a Public Authority.

(20) Decision, whether or not to disclose this report can be best taken by the higher formation and not the officers below.

In the case of Shri Rajesh Mannalal Katariya Vs. Addl. Commissioner of Income Tax, Pune, the appellant sought information regarding confidential reports submitted by lower formations to higher formations, which was denied by the respondent to the appellant. The appellant approach the CIC for seeking the information.

DECISION:

Commission finds merit in the submission of the respondents. It is admitted that a report as mentioned by the appellant was submitted by the Commissioner of Income Tax to the Chief Commissioner of Income Tax, which along with the CCIT's covering note, is held by the CBDT (under Section 2(j) of the RTI Act). The decision whether or not to disclose this report and the reasons thereof can be best taken by the CBDT and not the officers below, viz. C.I.T. and C.C.I.T. Pune, who submitted their report to the CBDT.

In view of the above, it is held that the decision of the respondents not to disclose the requested information valid under the provisions of the RTI Act. The appellant may, should be wish, approach the CBDT for the information, who will no-doubt process the case under the provisions of the RTI Act for a decision about disclosure or otherwise.

(21) Several queries of the appellant are in the nature of seeking explanations from the respondents about why they acted in a certain manner and not the other and why they never acted when according to the appellant they ought to have.

In the case Shri Gautam Mukherjee V/s DGCEI No. CIC/AT/A/2009/000077 dated 28-1-2010 the Commission held that even a brief look at the appellant's RTI-application leaves one in no doubt that in a single application, not only he has included queries pertaining to different public authorities, his queries are also various. It is also found, that from his appeal petition, it is not possible to glean as to what precise objection he has to the replies with he has received from the respondents.

The provisions of Section 6(1) of the RTI Act, which authorizes him to ask either one or one set of query through a single petition. He may refer to CIC decision in Rajendra Singh Vs. CBI; Complaint No.CIC/WB/C/2007/00967; Date of Decision: 19.06.2009, where it has been held that the RTI Act did not authorize a petitioner to ask multiple queries in a single petition. He may also refer to CIC Full Bench decision in Ketan Kantilal Modi Vs. Central Board of Excise & Customs (CBEC); Appeal No.CIC/AT/A/2008/01280; Date of Decision: 22.09.2009, in which it was held that it was a petitioner's duty to file his request for information before the 'concerned public authority' and only if it is established that information-request has been filed before the 'concerned public authority' that the provision of Section 6(3) came into operation and not otherwise. Appellant had enclosed with his RTI-application a number of proformae, in which he had called upon various public authorities to tabulate the information required by him and to provide it to him. CPIO quite understandably declined to do so as under the provisions of the RTI Act, information could be supplied only if the request met the definition of information under Section 2(f) and not otherwise.

DECISION:

Public authorities were not obliged to create information to generate data for a petitioner's convenience. This has been endorsed in several decisions of the Commission (Kamal C. Tiwari Vs. Ministry of Defence; Appeal No.CIC/AT/A/2006/00360; Date of Decision: 23.11.2006 and Subhash Chandra Vs. Income Tax Department; Appeal Nos.CIC/AT/A/2007/00190 & F.No.CIC/AT/A/2007/00291; Date of Decision: 8.6.2007).

"In spite of the above infirmities in the RTI-application of the appellant, I was still inclined to go through each one of his request in order to establish how much information could be given to him corresponding to each of his queries. Despite my repeated urging, appellant was unwilling to make a proper response during hearing. His long-winded and rambling rejoinders do not lead to any tangible conclusion about what information could really be identified for disclosure to him. I notice that a significant amount of information has been disclosed to the appellant by various CPIOs already.

In view of the above, I am not in a position to allow this appeal, which is closed."

(22) The CPIO should be responsible to furnish information only that is available in his office.

In the case of Shri Jai Kishan Vs. Reserve Bank of India, Mumbai, (F. No. 216/IC/(A)/2006-F. No. CIC/MA/A/2006/00608 dated 31.08.2006) the appellant sought information relating to payment of allowance to several officers for ten years, i.e. 1995 to 2005. The CPIO provided the information to the appellant but could not provide the information which was not available with his office. The appellant filed his first appeal with the appellate authority of the RBI who observed that the appellant desires to have the information for the entire period of 10 years, i.e. even while they were working outside the Mumbai Regional Office, it needs to be collected and given to him, to the extent available in the records of the Bank without waiting for the response of CPIO the appellant filed second appeal before the Commission in which he has prayed for Penal Action against the CPIO of RBI.

DECISION:

Transparency in functioning of public authorities is expected to be ensured through the exercise of right to know, so that a citizen can scrutinize the fairness the objectivity of every public action. This objective cannot be achieved unless the information that is created and generated by the public bodies is disclosed in the form in which it exists with them. Therefore, an information is to be provided in the form in which it is sought, u/s 7(9) of the Act. And, if it does not exist in the form in which it is asked for and provided to the applicant, there is no way that proper scrutiny of public action could be made to determine any deviations from the established or accepted policies. The CPIO should be responsible to furnish information that are available in his office. The public authorities should follow the principle of maximum disclosure to allow to scrutiny of public action in the form in which it is available with them.

(23) The information contained in the file which is unconnected with the applicant can be withheld from disclosure by applying the severability clause under Section 10(1) of the RTI Act, 2005.

In the case of Shri R.B. Sharma Vs. DGCEI, New Delhi, (No. CIC/AT/A/2007/00949 dated 09.10.2007) the appellant sought all document including file noting pertaining to sanction of reward to the applicant. The CPIO denied the information under Section 8(1) (g) of the RTI Act, contending

that the disclosure would expose the source of information and also endanger the life and physical safety of the officers who handled and processed the matter. The appellate authority upheld the decision of the CPIO.

DECISION:

The appellant may be allowed inspection of the relevant file by the respondent with the proviso that the respondents shall be free to apply the severability clause under Section (10) (1) of the RTI Act withhold from disclosure that part of the information in the file which is unconnected with the appellant.

(24) Reasons for rejection of requests for information must be clearly provided (Section 8(1) of the RTI Act)

In the case of Dhananjay Tripathi vs. Banaras Hindu University (Decision No. CIC/ OK / A/ 00163, dated 7.7.2006), the applicant had applied for information relating to the treatment and subsequent death of a student in the University hospital due to alleged negligence of the doctors attending him.

The appellant was, however, denied the information by the PIO of the University saying that the information sought could not be provided under Section 8(1)(g) of the RTI Act. No further reasons as to how the information sought could not be provided under the RTI Act was given.

DECISION:

The Commission held that quoting the provisions of Section 8(1) of the RTI Act to deny the information without giving any justification or grounds as to how these provisions are applicable is simply not acceptable, and clearly amount to malafide denial of legitimate information.

The public authority must provide reasons for rejecting the particular application. The Commission further held that not providing the reasons of how the application for information was

rejected according to a particular provision of the Act would attract penalties under Section 20(1) of the Act.

(25) No Imagined Exemptions other than grounds available in Section 8 of RTI Act.

Mangla Ram Jat vs. PIO, Banaras Hindu University, Decision No. CIC / OK / A 2008 / 00860 / SG / 0809, dated 31.12.2008. In this case Commission explained its role, ambit and scope of exemptions and the context of Right to Information. The Commission is conscious of the fact that it has been established under the Act and being an adjudicating body under the Act, it cannot take upon itself the role of the legislature and import new exemptions hitherto not provided. The Commission cannot of its own impose exemptions and substitute their own views for those of Parliament. The Act leaves no such liberty with the adjudicating authorities to read law beyond what it is stated explicitly. There is absolutely no ambiguity in the Act and tinkering with it in the name of larger public interest is beyond the scope of the adjudicating authorities. Creating new exemptions by the adjudicating authorities will go against the spirit of the Act. Under this Act, providing information is the rule and denial an exception. Any attempt to constrict or deny information to the Sovereign Citizen of India without the explicit sanction of the law will be going against rule of law.

DECISION:

Right to Information as part of the fundamental right of freedom of speech and expression is well established in our constitutional jurisprudence. Any restriction on the Fundamental Rights of the Citizens in a democratic polity is always looked upon with suspicion and is invariably preceded by a great deal of thought and reasoning. Even the Parliament, while constricting any fundamental rights of the citizens, is very wary. Therefore, the Commission is of the view that the Commission, an adjudicating body which is a creation of the Act, has no authority to import new exemptions and in the process curtail the Fundamental Right of Information of citizens.

(26) It would be inappropriate and even injurious, to on-going investigations if informers are allowed to intrude into the investigative progress under RTI Act.

In the case of Sh. S.K. Agarwalla Vs. Directorate General of Central Excise Intelligence (F. No. CIC/AT/A/2007/01455 dated 25.04.2008), appellant (informer) asked for information relating to the progress of the case under investigations which was denied by the CPIO and the FAA. The appellant filed appeal before Information Commission against the decision of CPIO and FAA.

DECISION:

CIC felt that although speedy investigations in matters of revenue-evasion is salutary goal, it would be inappropriate and even injurious, to on-going investigations if informers are allowed to intrude into the investigative progress all in the name of enforcing a Right to Information. Intrusive supervision of investigation 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 are to be conducted. Commission also felt that there is no reason why officers of public authorities should space their investigations to benefit informants. Intrusive interference in investigation work is not conducive to such investigations and, in that sense, impedes it.

(27) Copy of SP, CBI's report (Sections 8(1)(g), 8(1)(j), 8(1)(h) and 10 (1) of the RTI Act)

In the case of D.P. Maheshwari vs. CBI (Appeal No. CIC / WB / A /2008 /0269 and 270, dated 25.8.2009), the appellant sought the copy of the SP, CBI's report. In response to the application, SP, CBI responded that SP's report is an confidential document and hence exempted under 8(1)(h) of the RTI Act. The first appellate authority rejected the appeal on the ground that the matter is pending trial and supply of SP's report at this stage would impede the prosecution of offenders. First appellate authority also mentioned that the document is confidential held under

fiduciary relationship and its contents shall not be accessed by any one not authorized to access them.

CBI also took the plea that the SP's report being sought is connected to the high profile scam in the State of Bihar amounting to Rs.200 crores. Disclosing the enquiry report itself will expose the pros and cons of the case and will give undue advantage to those who intend to exploit. Moreover the appellant is not an accused in the case. Disclosure of the information sought will accordingly be not in the public interest. The appellant however mentioned that the investigation report has discussed his role in the scam and he was exonerated of the charges thereafter. He requires to know about his exoneration in the enquiry report so as to obviate further harassment and enquiry in the matter.

CBI argued that the investigation report have details of personal information of many persons and its disclosure would amount to invasion of privacy and thus qualify for exemption under Section 8(1)(j).

DECISION:

The plea of exemption under Section 8(1)(j) cannot be applied as the appellant is asking for information about his own case. Even if the report contains personal information about others, the principle of severability under Section 10 (1) can be applied. The Commission agreed that disclosure of complete report may impede the process of investigation and amount to invasion of privacy of the persons mentioned in the report. As such Section 8(1)(g) is applicable. However, since the appellant is not the accused the information regarding him can not be held to be such as to impede the process of investigation or prosecution. Accordingly part of information exonerating the appellate may be provided as per Sub Section 1 of Section 10 of the RTI Act.