

**Observations of the Hon'ble Supreme Court on the
Right to Information Act:-**

"At this juncture, it is necessary to clear some misconceptions about the RTI Act. The RTI Act provides access to all information that is available and existing. This is clear from a combined reading of section 3 and the definitions of 'information' and 'right to information' under clauses (d) and (i) of section 2 of the Act. If a public authority has any information in the form of data or analyzed data, or abstracts, or statistics, an applicant may access such information, subject to the exemptions of section 8 of the Act. But where the information sought is not a part of the record of a public authority, and where such information is not required to be maintained under any law or the rules or regulations of the public authority, the Act does not cast an obligation upon the public authority, to connect or collate such non available information and then furnish it to an applicant. A public authority is also not required to furnish information which require drawing of inferences and/or making of assumptions. It is also not required to provide 'advice' or 'opinion' to an applicant, nor required to obtain and furnish any 'opinion' or 'advice' to an applicant. The reference to 'opinion' or 'advice' in the definition of 'information' in section 2 (d) of the Act, only refers to such material available in the records of the public authority. Many public authorities have, as a public relation exercise, provided advice, guidance and opinion to the citizens. But that is purely voluntary and should not be confused with any obligation under the RTI Act".



Government of Jammu and Kashmir
General Administration Department
(Administration Section)
Civil Secretariat, Srinagar/Jammu.

GAD(Adm)110/2009-V(iii)
Dated: 14-12-2011

Subject: Observations of Hon'ble Supreme Court on Right to Information Act, 2005 in Civil Appeal No.6454 of 2011, arising out of SLP[C] No.7526/2009 in the case of Central Board of Secondary Education & Anr. Vs Aditya Bandopadhyay & Ors.

The undersigned is directed to forward herewith a copy of Communication No.1/18/2011-IR, dated:16-09-2011 received from Ministry of Personnel, Public Grievances and Pensions Department of Personnel & Training, Government of India, regarding the subject cited above, to the Principal Secretary/Commissioner/ Secretary to Government, _____ and request him to kindly have the contents of the communication brought into the notice of all APIOs/PIOs and Ist Appellate Authorities.


(Tahir Mustafa Malik)

Under Secretary to Government
General Administration Department.

Principal/Commissioner/Secretary
Department.

Copy along with the aforesaid communication for similar necessary action to the:-

1. Divisional Commissioner, Srinagar/Jammu.
2. All Deputy Commissioners.
3. Secretary, Public Service Commission.
4. Secretary, State Information Commission.
- ✓ 5. Secretary, Service Selection Board.
6. Joint Director, IMFA.

1 सूचना
का अधिकार

No.1/18/2011-IR
Government of India
Ministry of Personnel, Public Grievances & Pensions
Department of Personnel & Training

North Block, New Delhi
Dated: the 16th September, 2011

Subject: Observation of Hon'ble Supreme Court on Right to Information Act, 2005 in Civil Appeal no.6454 of 2011, arising out of SLP [C] No.7526/2009 in the case of Central Board of Secondary Education & Anr. Vs. Aditya Bandopadhyay & Ors.

The undersigned is directed to invite attention to this Department's O.M. No.1/4/2009-IR dated 05.10.2009 whereby a Guide on the Right to Information Act, 2005 was circulated. Para 10 of Part I of the Guide, inter alia, stated that 'only such information can be supplied under the Act which already exists and is held by the public authority or held under the control of the public authority. The Public Information Officer is not supposed to create information; or to interpret information; or to solve the problems raised by the applicants; or to furnish replies to hypothetical questions.' The same issue has been elaborated by the Supreme Court in the matter of Central Board of Secondary Education & Anr. Vs. Aditya Bandopadhyay & Ors. (Civil Appeal No.6454 of 2011) as follows:

"At this juncture, it is necessary to clear some misconceptions about the RTI Act. The RTI Act provides access to all information *that is available and existing*. This is clear from a combined reading of section 3 and the definitions of 'information' and 'right to information' under clauses (f) and (j) of section 2 of the Act. If a public authority has any information in the form of data or analysed data, or abstracts, or statistics, an applicant may access such information, subject to the exemptions in section 8 of the Act. But where the information sought is not a part of the record of a public authority, and where such information is not required to be maintained under any law or the rules or regulations of the public authority, the Act does not cast an obligation upon the public authority, to collect or collate such non available information and then furnish it to an applicant. A public authority is also not required to furnish information which require drawing of inferences and/or making of assumptions. It is also not required to provide 'advice' or 'opinion' to an applicant, nor required to obtain and

No. 8/2/2010-IR
Government of India
Ministry of Personnel, PG & Pensions
Department of Personnel & Training

North Block, New Delhi-110001

Dated: the 27th April, 2010

OFFICE MEMORANDUM

Subject: Disclosure of third party information under the RTI Act, 2005.

The undersigned is directed to say that the Government, in a number of cases makes inter departmental consultations. In the process, a public authority may send some confidential papers to another public authority. A question has arisen whether the recipient public authority can disclose such confidential papers under the RTI Act, 2005. If yes, what procedure is required to be followed for doing so.

2. Section 11 of the Act provides the procedure of disclosure of 'third party' information. According to it, if a Public Information Officer (PIO) intends to disclose an information supplied by a third party which the third party has treated as confidential, the PIO, before taking a decision to disclose the information shall invite the third party to make submission in the matter. The third party has a right to make an appeal to the Departmental Appellate Authority against the decision of the PIO and if not satisfied with the decision of the Departmental Appellate Authority, a second appeal to the concerned Information Commission. The PIO cannot disclose such information unless the procedure prescribed in section 11 is completed.

3. As defined in clause (n) of Section 2 of the Act, 'third party' includes a public authority. Reading of the definition of the term, 'third party' and Section 11 together makes it clear that if a public authority 'X' receives some

furnish any 'opinion' or 'advice' to an applicant. The reference to 'opinion' or 'advice' in the definition of 'information' in section 2(f) of the Act, only refers to such material available in the records of the public authority. Many public authorities have, as a public relation exercise, provide advice, guidance and opinion to the citizens. But that is purely voluntary and should not be confused with any obligation under the RTI Act."

3. This may be brought to the notice of all concerned.



(K.G. Verma)

Joint Secretary(RTI)

Tel: 23092158

1. All the Ministries / Departments of the Government of India
2. Union Public Service Commission/Lok Sabha Sectt./Rajya Sabha Secretariat/ Cabinet Secretariat/ Central Vigilance Commission/ President's Secretariat/ Vice-President's Secretariat/ Prime Minister's Office/ Planning Commission/Election Commission.
3. Central Information Commission/State Information Commissions.
4. Staff Selection Commission, CGO Complex, New Delhi
5. O/o the Comptroller&Auditor General of India, 10, Bahadur Shah Zafar Marg, New Delhi.
6. All officers/Desks/Sections, DOP&T and Department of Pension & Pensioners Welfare.

Copy to: Chief Secretaries of all the States/UTs.

No.10/2/2008-IR
Government of India
Ministry of Personnel, Public Grievances & Pensions
Department of Personnel & Training

North Block, New Delhi
Dated: the 12th June, 2008

OFFICE MEMORANDUM

Subject: RTI applications received by a public authority regarding information concerning other public authority/authorities.

It has been brought to the notice of this Department that requests are made to the public authorities under the Right to Information Act for pieces of information which do not concern those public authorities. Some times, such an information is sought, a part or no part of which is available with the public authority to which the application is made and remaining or whole of the information concerns another public authority or many other public authorities. A question has arisen as to how to deal with such cases.

2. Section 6(1) of the RTI Act, 2005 provides that a person who desires to obtain any information shall make a request to the public information officer (PIO) of the concerned public authority. Section 6(3) provides that where an application is made to a public authority requesting for any information which is held by another public authority or the subject matter of which is more closely connected with the functions of another public authority, the public authority to which such application is made, shall transfer the application to that other public authority. A careful reading of the provisions of sub-section (1) and sub-section(3) of Section 6, suggests that the Act requires an information seeker to address the application to the PIO of the 'concerned public authority'. However, there may be cases in which a person of ordinary prudence may believe that the piece of information sought by him/her would be available with the public authority to which he/she has addressed the application, but is actually held by some another public authority. In such cases, the applicant makes a bonafide mistake of addressing the application to the PIO of a wrong public authority. On the other hand where an applicant addresses the application to the PIO of a public authority, which to a person of ordinary prudence, would not appear to be the concern of that public authority, the applicant does not fulfill his responsibility of addressing the application to the 'concerned public authority'.

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3. Given hereinafter are some situations which may arise in the matter and action required to be taken by the public authorities in such cases:

- (i) A person makes an application to a public authority for some information which concerns some another public authority. In such a case, the PIO receiving the application should transfer the application to the concerned public authority under intimation to the applicant. However, if the PIO of the public authority is not able to find out as to which public authority is concerned with the information even after making reasonable efforts to find out the concerned public authority, he should inform the applicant that the information is not available with that public authority and that he is not aware of the particulars of the concerned public authority to which the application could be transferred. It would, however, be the responsibility of the PIO, if an appeal is made against his decision, to establish that he made reasonable efforts to find out the particulars of the concerned public authority.
- (ii) A person makes an application to a public authority for information, only a part of which is available with that public authority and a part of the information concerns some 'another public authority.' In such a case, the PIO should supply the information available with him and a copy of the application should be sent to that another public authority under intimation to the applicant.
- (iii) A person makes an application to a public authority for information, a part of which is available with that public authority and the rest of the information is scattered with more than one other public authorities. In such a case, the PIO of the public authority receiving the application should give information relating to it and advise the applicant to make separate applications to the concerned public authorities for obtaining information from them. If no part of the information sought, is available with it but is scattered with more than one other public authorities, the PIO should inform the applicant that information is not available with the public authority and that the applicant should make separate applications to the concerned public authorities for obtaining information from them. It may be noted that the Act requires the supply of such information only which already exists and is held by the public authority or held under the control of the public authority. It is beyond the scope of the Act for a public authority to create information. Collection of information, parts of which are available with different public authorities, would amount to creation of information which a public authority under the Act is not required to do. At the same time, since the information is not related to any one particular public authority, it is not the case where application should be transferred under sub-section (3) of Section 6 of the Act. It is pertinent to note that sub-section (3) refers to 'another public authority' and not 'other public authorities'. Use of singular form in the Act in this regard is important to note.

- (iv) If a person makes an application to a public authority for some information which is the concern of a public authority under any State Government or the Union Territory Administration, the Central Public Information Officer (CPIO) of the public authority receiving the application should inform the applicant that the information may be had from the concerned State Government/UT Administration. Application, in such a case, need not be transferred to the State Government/UT Administration.
4. Contents of this OM may be brought to the notice of all concerned.



(K.G. Verma)
Director

1. All the Ministries / Departments of the Government of India
2. Union Public Service Commission/ Lok Sabha Sectt./ Rajya Sabha Secretariat/ Cabinet Secretariat/ Central Vigilance Commission/ President's Secretariat/ Vice-President's Secretariat/ Prime Minister's Office/ Planning Commission/Election Commission.
3. Central Information Commission/State Information Commissions.
4. Staff Selection Commission, CGO Complex, New Delhi
5. Office of the Comptroller & Auditor General of India, 10, Bahadur Shah Zafar Marg, New Delhi.
6. All officers/Desks/Sections, Department of Personnel & Training and Department of Pension & Pensioners Welfare.

Copy to: Chief Secretaries of all the States/UTs.

No.1/14/2008-IR
Government of India
Ministry of Personnel, Public Grievances & Pensions
Department of Personnel & Training

North Block, New Delhi
Dated: the 28th July, 2008

OFFICE MEMORANDUM

Subject: Clarification regarding Sub-sections (4) and (5) of Section 5 of the Right to Information Act, 2005.

Sub-sections (4) and (5) of section 5 of the Right to Information Act, 2005 provide that a Public Information Officer (PIO) may seek the assistance of any other officer for proper discharge of his/her duties. The officer, whose assistance is sought, shall render all assistance to the PIO and shall be treated as a PIO for the purpose of contravention of the provisions of the Act. It has been brought to the notice of this Department that some PIOs, using the above provision of the Act, transfer the RTI applications received by them to other officers and direct them to send information to the applicants as deemed PIO. Thus, they use the above referred provision to designate other officers as PIO.

2. According to the Act, it is the responsibility of the officer who is designated as the PIO by the public authority to provide information to the applicant or reject the application for any reasons specified in sections 8 and 9 of the Act. The Act enables the PIO to seek assistance of any other officer to enable him to provide information to the information seeker, but it does not give him authority to designate any other officer as PIO and direct him to send reply to the applicant. The import of sub-section (5) of section 5 is that, if the officer whose assistance is sought by the PIO, does not render necessary help to him, the Information Commission may impose penalty on such officer or recommend disciplinary action against him the same way as the Commission may impose penalty on or recommend disciplinary action against the PIO.

3. Contents of this OM may be brought to the notice of all concerned.



(K.G. Verma)
Director

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2. Union Public Service Commission/ Lok Sabha Sectt./ Rajya Sabha Secretariat/ Cabinet Secretariat/ Central Vigilance Commission/ President's