

CENTRAL INFORMATION COMMISSION

(Room No.315, B-Wing, August Kranti Bhawan, Bhikaji Cama Place, New Delhi 110 066)

File No.CIC/DS/A/2013/001788-SA

(Sh.Om Prakash Vs. Land & Building Dept, GNCTD)

Appellant : **Shri Om Prakash**

Respondent : **Land & Building Dep
GNCTD, Delhi**

Date of hearing : **21-08-2014**

Date of decision : **29-08-2014**

Information Commissioner : **Prof. M. Sridhar Acharyulu
(Madabhushi Sridhar)**

Referred Sections : **Sections 3, 19(3) of the RTI
Act**

Result : **Appeal allowed/
Disposed of**

Observation : **“Case of Missing File”**

Summary:

Unless proved that record was destroyed as per the prescribed rules of destruction/ retention policy, it is deemed that record continues to be held by public authority. Claim of file missing or not traceable has no legality as it is not recognized as exception by RTI Act. By practice ‘missing file’ cannot be read into as exception in addition to exceptions prescribed by RTI Act. It amounts to breach of Public Records Act, 1993 and punishable with imprisonment up to a term of five years or with fine or both. Public

Authority has a duty to initiate action for this kind of loss of public record, in the form of 'not traceable' or 'missing'. The Public Authority also has a duty to designate an officer as Records Officer and protect the records. A thorough search for the file, inquiry to find out public servant responsible, disciplinary action and action under Public Records Act, reconstruction of alternative file, relief to the person affected by the loss of file are the basic actions the Public Authority is legitimately expected to perform.

The appellant is present. The Public Authority is represented by Mr. Prakash Chand Meena, Head Clerk, Land and Building Department, GNCTD, Delhi.

FACTS

2. The appellant submitted that through his RTI application dated 4-7-2012, he is seeking information regarding allotment of alternative plot with reference to the respondent authority file No.F-31(12)/2/2002/7075 in lieu of the land acquired by the Government. The PIO has given reply by his letter dated 13-12-2012. The appellant made first appeal before the FAA. Claiming that no information was received from the respondent authority, the appellant has filed 2nd appeal before the Commission.

Decision:

3. Heard the submissions made by both the parties. The respondent officer says that the relevant file is missing and he could not trace it even though he personally inspected the record room of the Lands & Building Department, after receiving the RTI application and also says that there is no possibility of retrieving the missing record.

4. The Commission is of the view that, prima facie, Public Authority cannot deny the right of the appellant to get an alternative plot, by putting forward an excuse of missing the file. The defense of missing file cannot be accepted even under the RTI Act. If the file is really not traceable, it reflects the inefficient and pathetic management of files by the Public Authority. If the file could not be traced in spite of best efforts, it is the duty of the respondent authority to reconstruct the file or develop a mechanism to address the issue raised by the appellant.

5. The Commission feels that lodging of FIR is not the remedy in such cases, as one cannot expect the Police to come to the office and trace the file. According to law, Police does not have any responsibility to trace the missing files, as they will come into picture only when there is theft of the files. It cannot be said that police should come to office and search for the files or things misplaced by negligence or deliberate action or by mistake etc. It is the duty of the PIO to make necessary efforts to trace the file and inform the same to the appellant in the form of an affidavit.

Duty of the public authority

6. The public authority has a duty to designate "Public Records Officer" as per **Public Records Act 1993**. This Act is made to regulate the management, administration and preservation of public records of the Central Government, Union Territory Administrations, public sector undertakings, statutory bodies and corporations, commissions and committees constituted by the Central Government or a Union Territory Administration and matters connected therewith or incidental thereto.

7. The definition of “**Public Records**” U/S 2(e) of Public Records Act, 1993 (PRA 1993) is almost identical with the definition of Records under the RTI Act 2005. These Records can be sought under the RTI Act, 2005 as “Information” through RTI Application.

S 5 (1) Every records creating agency shall nominate one of its officers as **records officer** to discharge the functions under this Act.

Sec 6(1) The records officer shall be responsible for -

- proper arrangement, maintenance and preservation of public records under his charge;
- periodical review of all public records and weeding out public records of ephemeral value;
- appraisal of public records which are more than twenty-five years old in consultation with the National Archives of India or, as the case may be, the Archives of the Union territory with a view to retaining public records of permanent value;
- destruction of public records in such manner and subject to such conditions as may be prescribed under sub-section (1) of section 8;
- compilation of a schedule of retention for public records in consultation with the National Archives of India or, as the case may be, the Archives of the Union Territory;
- periodical review for downgrading of classified public records in such manner as may be prescribed;
- adoption of such standards, procedures and techniques as may be recommended from time to time by the National Archives of India for improvement of record management system and maintenance of security of public records;
- compilation of annual indices of public records;
- compilation of organizational history and annual supplement thereto;
- assisting the National Archives of India or, as the case may be, the Archives of the Union territory for public records management;
- submission of annual report to the Director General or, as the case may be head of the Archives in such manner as may be prescribed;
- transferring of records of any defunct body to the National Archives of India or the Archives of the Union Territory, as the case may be, for preservation.

Sec 7(1) The records officer shall, in the event of any unauthorized removal, destruction, defacement or alteration of any public records under his charge, forthwith take appropriate action for the recovery or restoration of such public records.

S 9. Whoever contravenes any of the provisions of section 4 or section 8 shall be punishable with **imprisonment for a term which may extend to five years or with fine which may extend to ten thousand rupees or with both.**

The public records act and rules ban government departments from destroying documents that are more than 25 years old, unless they have been “appraised”.

8. The National Archives of India, under the Culture Ministry, and similar bodies at the State level are required to keep tabs on “public records”, and help government departments separate worthless files from those that must be saved.

9. The documents considered to be of “permanent nature” — but no longer required by the department which created them — are then shifted to the archives for safekeeping. There, they can be seen by research scholars.

10. Loss of records that are required to be kept and maintained permanently, if considered as evidence in a case, its missing should invite criminal complaint against officials under sections 201 of IPC (punishable with imprisonment which is directly proportional to seriousness of offence charged from 7 years to 10 years and for life).

11. If these files are part of public record and forms evidence in any case, its destruction would be a serious crime of destruction of evidence. Otherwise also it brings in the liability under Public Records Act 1993 which can extend to imprisonment up to five years and up to fine of Rs 10,000. Reading Right to Information Act, 2005 with Public Records Act, 1993 and Indian Penal Code, will lead to serious consequences for those who lose the records, besides the disciplinary action from the top administration.

12. Hon’ble Delhi High Court in **Union Of India Vs. Vishwas Bhamburkar [2013(297)ELT500(Del.)]** with regard to the plea of the Respondent authority of record being not traceable, has observed as follows :

“5. The Right to Information Act is a progressive legislation aimed at providing, to the citizens, access to the information which before the said Act came into force could not be claimed as a matter of right. The intent behind enactment of the Act is to disclose the information to the maximum extent possible subject of course to

certain safeguards and exemptions. **Therefore, while interpreting the provisions of the Act, the Court needs to take a view which would advance the objectives behind enactment of the Act, instead of taking a restrictive and hyper-technical approach which would obstruct the flow of information to the citizens.**

6. This can hardly be disputed that if certain information is available with a public authority, that information must necessarily be shared with the applicant under the Act unless such information is exempted from disclosure under one or more provisions of the Act. It is not uncommon in the government departments to evade disclosure of the information taking the standard plea that the information sought by the applicant is not available. **Ordinarily, the information which at some point of time or the other was available in the records of the government, should continue to be available with the concerned department unless it has been destroyed in accordance with the rules framed by that department for destruction of old record. Therefore, whenever an information is sought and it is not readily available, a thorough attempt needs to be made to search and locate the information wherever it may be available. It is only in a case where despite a thorough search and inquiry made by the responsible officer, it is concluded that the information sought by the applicant cannot be traced or was never available with the government or has been destroyed in accordance with the rules of the concerned department that the CPIO/PIO would be justified in expressing his inability to provide the desired information. Even in the case where it is found that the desired information though available in the record of the government at some point of time, cannot be traced despite best efforts made in this regard, the department concerned must necessarily fix the responsibility for the loss of the record and take appropriate departmental action against the officers/officials responsible for loss of the record.** Unless such a course of action is adopted, it would be possible for any department/office, to deny the information which otherwise is not exempted from disclosure, wherever the said department/office finds it inconvenient to bring such information into public domain, and that in turn, would necessarily defeat the very objective behind enactment of the Right to Information Act.

7. Since the Commission has the power to direct disclosure of information provided, it is not exempted from such disclosure, it would also have the jurisdiction **to direct an inquiry into the matter wherever it is claimed by the PIO/CPIO that the information sought by the applicant is not traceable/readily traceable/currently traceable.** Even in a case where the PIO/CPIO takes a plea that the information sought by the applicant was never available with the government but, the Commission on the basis of the material

available to it forms a prima facie opinion that the said information was in fact available with the government, it would be justified in directing an inquiry by a responsible officer of the department/office concerned, to again look into the matter rather deeply and verify whether such an information was actually available in the records of the government at some point of time or not. After all, it is quite possible that the required information may be located if a thorough search is made in which event, it could be possible to supply it to the applicant. Fear of disciplinary action, against the person responsible for loss of the information, will also work as a deterrence against the willful suppression of the information, by vested interests. It would also be open to the Commission, to make an inquiry itself instead of directing an inquiry by the department/office concerned. Whether in a particular case, an inquiry ought to be made by the Commission or by the officer of the department/office concerned is a matter to be decided by the Commission in the facts and circumstances of each such case.”

13. Based on the above discussion, the Commission thus holds: Unless proved that record was destroyed as per the prescribed rules of destruction/ retention policy, it is deemed that record continues to be held by public authority. Claim of file missing or not traceable has no legality as it was not recognized as exception by RTI Act. By practice ‘missing file’ cannot be read into as exception in addition to exceptions prescribed by RTI Act. It amounts to breach of Public Records Act, 1993 and punishable with imprisonment up to a term of five years or with fine or both. Public Authority has a duty to initiate action for this kind of loss of public record, in the form of ‘not traceable’ or ‘missing’. The Public Authority also has a duty to designate an officer as Records Officer and protect the records. A thorough search for the file, inquiry to find out public servant responsible, disciplinary action and action under Public Records Act, reconstruction of alternative file, relief to the person affected by the loss of file are the basic actions the Public Authority is legitimately expected to perform.

14. The Commission, therefore, deems Public Authority as continuously holding the information, until and unless they prove that the information was destroyed in accordance with the existing rules provided for the same. Any claim of defense that the file is missing without

any efforts to trace the same, would amount to denial of information which can be dealt with as per Section 20 of Right to Information Act, 2005.

15. It is the duty of the Public Authority to find out the alternative, if the file could not be traced even after thorough search and to provide necessary relief to the appellant who is seeking information about his right to get alternative plot, in lieu of the land acquired by the Government during 1986-87, Shapur Village, Kapashera Revenue District, Delhi.

16. The Commission therefore directs the PIO to file an affidavit with the Commission, regarding the time and date of efforts made to trace the files, fact of fixing responsibility for the missing file, and what relief is proposed to be given to the appellant etc. within 15 days from the date of receipt of this order, by endorsing a copy to the appellant. The Commission also directs the PIO concerned to **show cause** why maximum penalty cannot be imposed against him for not responding properly to the RTI application within the time period. His explanation should reach the Commission within 3 weeks from the date of receipt of this letter.

17. The Commission also recommends to the Public Authority to consider this issue seriously, as this Commission has been hearing excuse of missing files on many occasions and also to initiate action under Public Records Act 1993 against responsible persons. The Public Authority should see that the main purpose of RTI Act to facilitate the appellant to get information, is not defeated by this kind of excuses.

18. The Commission orders accordingly.

(M. Sridhar Acharyulu)
Information Commissioner

Authenticated true copy

(Babu Lal)
Deputy Registrar

Address of the parties:

1. The CPIO under RTI, Govt. Of NCT of Delhi,
Lands and Building Department (Alternative Branch),
Vikas Bhawan, IP Estate, NEW DELHI-110002

2. Shri Om Prakash

H.No.133, Sector-04,

Gurgaon, HARYANA

3. The Additional Secretary (Lands & Buildings) and First

Appellate Authority under RTI, Lands and Building Department

B-Block, Vikas Bhawan,

IP Estate, New Delhi-110002