

**CENTRAL INFORMATION COMMISSION**  
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**Decision No. CIC /AT/A/2008/01262//SG/2109**  
**Appeal No. CIC/AT/A/2008/01262/SG**

**Relevant Facts emerging from the Appeal**

Appellant : Mr. Mahesh Kumar Sharma,  
49, Maulana Azad Society,  
Near Bal Bharti Public School  
(Pushpanjali), Parwana Road,  
Pitam Pura,  
Delhi -110034.

Respondent 1 : PIO,  
Delhi Jal Board,  
**Govt. of NCT of Delhi.**  
Varunalaya Phase – II, Jhandewalan  
Karol Bagh,  
New Delhi-110005.

RTI application filed on : 23/05/2008  
PIO replied : 24/06/2008  
First appeal filed on : 04/07/2008  
First Appellate Authority order : 25/07/2008  
Second Appeal filed on : 01/08/2008

The appellant had asked in his RTI application (ID No. 2602) for copy of the documents submitted by Sh. Zile Singh for getting a water connection no. 62261K sanctioned on 07/08/2000.

**Detail of required information:-**

Please provide certified copies of the documents submitted for getting the water connection no 62261 k.

**The PIO replied.**

The required information is as under:-

1. It is third party case, under the provision of the Act a letter for NOC has been issued to Show. Zile Singh at B-497, Azad Pur vide copy enclosed as Annexure "A".
2. In response to the same, the owner Mrs. Archana Sharma has requested "not to give or allow any details through certified copies, uncertified copies of personnel inspection about the property B-497, who purchased the property from Sh. Zile Singh Ex. R.C.copy enclosed as Annexure "B"
3. This issue with the approval of Wx. Eng. (NW)-IV/Jt. Director (R) CNNW office.

**The First Appellate Authority ordered:**

“The appellant in his RTI application has sought certified copies of documents submitted in respect of water connection No. 62261K. This water connection stands at B-497, Azadpur Village, Delhi in the name of Sh. Ziley Singh and was sanctioned on 05/08/2000. On receipt of RTI application a matter was addressed to Sh. Ziley Singh, B-497, Azadpur Village, Delhi seeking his permission to give details of water connection sanctioned in his name to Sh. Mahesh Kumar Sharma, the appellant. In response to this a reply dated 31/05/2008 has been received from Mrs. Archana Sharma and Sh. Rakesh Kumar Sharma stating that they did not want to disclose any information regarding above property to anyone including Mr. Mahesh Kumar Sharma. A second letter was received from Mrs. Archana Sharma w/o Rakesh Kumar Sharma that she is the rightful owner of property No. B-497, Mandirwali Gali, Village Azadpur, Delhi. and in support of that she has submitted a Sale Deed made by Sh. Ziley Singh in favour of Smt. Archana Sharma, wherein the said property B-497 Azadpur Village has been sold to her.

The RTI Act, should be kept away from domestic squabbles and should not be used to settle personal scores in the guise of seeking disclosure of information pertaining to third party i.e. in this case the brother of the appellant. This is a case of water connection of property B-497 Azadpur Village, Delhi in the name of Sh. Ziley Singh. Sh. Ziley Singh according to the appellant has expired. However, the current owner Smt. Archana Sharma has not get the water connection mutated in her name. In view of the death of Sh. Ziley Singh brought to the notice of the appellate Authority in the RTI hearing. Mrs. Archana Sharma who claims to be the rightful owner of this property is required to submit documents to get the water connection mutated in her name. The ZRO concerned is required to thoroughly check the documents and ensure that transfer of ownership of the property is verified before the ensure that transfer of ownership of the property is verified before the mutation is allowed.”

#### **Relevant Facts emerging during Hearing on 2 January 2009:**

The following were present

Appellant: Mr. Mahesh Kumar

Respondent: Dr. Bipin Behari representing Santosh D. Vaidya PIO

Third party: Mr. Rakesh Kumar Sharma on behalf of Archana Sharma

The PIO has denied information saying it is third party information and the ‘third party’ Archana Sharma has objected. The appellant has pointed out that the information he is seeking is with regard to a meter of his deceased father Shri Zile Singh. Besides the PIO has advanced no reasons under Section 8 (1) to deny the information. Mere refusal of a ‘third party’ without any exemption clauses of Section 8 (1) being applicable cannot be a ground for refusal.

The First appellate authority instead of restricting himself to deciding the matter on basis of the proviso of the RTI act has chosen to give gratuitous advice of how RTI should be used. The PIO has advanced no exemption under Section 8 (1) of the RTI Act, hence the denial of information is without any basis in law. During oral arguments the PIO claims exemption under Section 8 (1) (j) of the Act

The appellant represents that he is seeking documents of his deceased father’s application, and therefore he has as much right to these documents as any one else. The third party seeks time to submit his written arguments as to why the information should not be given to the appellant.

The Commission agrees that the third party must be given a chance to give his arguments. The third party will send his written submissions to the appellant and the Commission before 21 January 2009. The final hearing will held on 2 February 2009 at 5.00pm

### **Relevant facts emerging at Hearing on 2 February 2009:**

Present on 2 February 2009

Appellant: Mr. Mahesh Kumar Sharma

Respondent: Mr. Paras Ram PIO

Third Party: Mr. Gaurav Kumar Mehta on behalf of Archana Sharma

Mr. Gaurav Kumar contends that he has the prerogative to decide whether to provide information as he is third party. He says that he feels that the order of the PIO and the First appellate authority is correct and his submissions made to the Commission on 21 January 2009 must be taken into account when deciding the matter. The information sought by the appellant has no relationship to Public interest. The credentials of the information-seeker must be ascertained.

The respondent contends that the information is provided by the consumer in a fiduciary relationship and hence cannot be given.

The appellant contends that the connection was of his father and he has equal right to get the information and that nobody can claim exclusive third party rights for this information. The aim of transparency needs to be achieved, which will be achieved if information is made available. There is no violation of privacy, nor are the documents in what could be called private.

The decision is reserved.

### **Order pronounced on 27 February:**

The Commission has recorded the oral contentions of the appellant and the third party. It is now addressing the issues presented by the third party in its written submissions.

In paragraph 14 of the written submissions by the third party it has been claimed that Parliament/State Legislature can be denied information relating to a 'third party'. This claim has no basis and is a clear misinterpretation of the law. At paragraph 15 it further states that disclosing the information has no relationship to public activity or interest and that giving the information would result in unwarranted invasion of her privacy given under Article 21 of the Constitution.

In paragraph 16 and 17 of the written submissions the appellant has cited a judgment of the Hon'ble High Court of Gujarat in the Special Civil Application nos. 16073 & 17067 of 2007 decided on 16/8/2007 (2008(2) RTI 461).

The appellant quotes from the judgment, *".....looking to the provision of Section 11(1) of the Act, 2005, the words, the information 'relating to or is supplied by the third party' are such that it is for the third party to point out to the Public Information Officer sought for, to be disclosed supplied is treated as confidential but, third party can make a submission that now it is treating the said information as confidential. More so, when information is 'relating to third party' it may not be even know to that third party when and what information relating to third party, was collected by public body..... What is confidential to the third party is known to the third party alone. There may not be a rubber stamp upon the information that this is confidential information. It is right vested in the third party to treat any information 'relating to or supplied by the third party' as confidential."*

The said judgment also says, *"What satisfaction must be arrived at, prior to disclosure of information about satisfaction must be arrived at, prior to the Act especially Section 8(d), 8(j) and proviso to Section 11(1) and looking to the process of disclosing information to the appellant 'relating to or supplied by the third party and treated as confidential by the third party', the Act imposes a duty upon Public Information Officer to arrive at a conclusion that public interest in disclosure outweighs, harm or injury, to the protected interest of such third party, or larger public interest warrants, disclosure of such information, in considering whether the*

*public interest in disclosure outweighs in importance any possible harm or injury to the interest of such third party, the Public Information Officer will have to consider the following: (i) The objections raised by the third party by claiming confidentiality in respect of the information sought for. (ii) Whether the information is being sought by the applicant in larger public interest or to wreak vendetta against the third party. In deciding that the profile of person seeking information and his credentials will have to be looked into. If the profile of the person seeking information, in light of other attending circumstances, leads to the construction that under the pretext of serving public interest, such person is aiming to settle personal score against the third party, it cannot be said that public interest warrants disclosure of the information solicited. (iii) The Public Information Officer, while dealing with the information relating to or supplied by the third party, has to constantly bear in mind that the Act does not become a tool in hands of a busy body to settle a personal score.”*

To summarize the contentions of the third party for not disclosing the information:

1. The information has been given in a fiduciary relationship.
2. Disclosing it would be an intrusion on his privacy.
3. Third party has the right to refuse to divulge with information relating to him and unless a large Public interest can be established, the information will not be disclosed.

The third party has also sought to justify his claim for denial of information by taking support from the judgment of Hon'ble High Court of Gujarat, which has been quoted above. The main points which appear to arise out of the said judgment are:

- a) It is necessary that a larger Public interest must be justified and the purpose of the applicant and his profile and credentials looked at.
- b) The Public information officer is charged with the duty to ensure that the Right does not become a tool in the hands of a busy body.

Before we look at these objections and claim of exemption it will be worthwhile to look at some of the provisions of the RTI act relevant to this case:

The preamble which defines the purpose and essence of the Act:

*‘WHEREAS the Constitution of India has established democratic Republic;*

*AND WHEREAS democracy requires an informed citizenry and transparency of information which are vital to its functioning and also to contain corruption and to hold Governments and their instrumentalities accountable to the governed;*

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

*AND WHEREAS it is necessary to harmonise these conflicting interests while preserving the paramountcy of the democratic ideal;*

*NOW, THEREFORE, it is expedient to provide for furnishing certain information to citizens who desire to have it’.*

Section 3 of the Act defines the purpose of the Act very succinctly:

*‘Subject to the provisions of this Act, all citizens shall have the right to information.’*

With a great economy of words this section is perhaps the most important section of the RTI Act 2005. The Sovereign Citizen of India has the right to access all

information since he owns it, and this right may be curtailed only by the limited provisions of this Act.

Section 4 imposes a duty on all Public Authorities to declare most information *Suo moto*:

**‘4. (1) Every public authority shall**

- (a) *maintain all its records duly catalogued and indexed in a manner and form which facilitates the right to information under this Act and ensure that all records that are appropriate to be computerised are, within a reasonable time and subject to availability of resources, computerised and connected through a network all over the country on different systems so that access to such records is facilitated;*
- (b) *publish within one hundred and twenty days from the enactment of this Act,-*
  - (i) *the particulars of its organisation, functions and duties;*
  - (ii) *the powers and duties of its officers and employees;*
  - (iii) *the procedure followed in the decision making process, including channels of supervision and accountability;*
  - (iv) *the norms set by it for the discharge of its functions;*
  - (v) *the rules, regulations, instructions, manuals and records, held by it or under its control or used by its employees for discharging its functions;*
  - (vi) *a statement of the categories of documents that are held by it or under its control;*
  - (vii) *the particulars of any arrangement that exists for consultation with, or representation by, the members of the public in relation to the formulation of its policy or implementation thereof;*
  - (viii) *a statement of the boards, councils, committees and other bodies consisting of two or more persons constituted as its part or for the purpose of its advise, and as to whether meetings of those boards, councils, committees and other bodies are open to the public, or the minutes of such meetings are accessible for public;*
  - (ix) *a directory of its officers and employees;*
  - (x) *the monthly remuneration received by each of its officers and employees, including the system of compensation as provided in its regulations;*
  - (xi) *the budget allocated to each of its agency, indicating the particulars of all plans, proposed expenditures and reports on disbursements made;*
  - (xii) *the manner of execution of subsidy programmes, including the amounts allocated and the details of beneficiaries of such programmes;*
  - (xiii) *particulars of recipients of concessions, permits or authorisations granted by it;*
  - (xiv) *details in respect of the information, available to or*

- held by it, reduced in an electronic form;*
- (xv) *the particulars of facilities available to citizens for obtaining information, including the working hours of a library or reading room, if maintained for public use;*
  - (xvi) *the names, designations and other particulars of the Public Information Officers; ,*
  - (xvii) *such other information as may be prescribed;*
- and thereafter update these publications every year;*
- (c) *publish all relevant facts while formulating important policies or announcing the decisions which affect public;*
  - (d) *provide reasons for its administrative or quasi judicial decisions to affected persons;*
- (2) *It shall be a constant endeavour of every public authority to take steps in accordance with the requirements of clause (b) of sub-section (1) to provide as much information suo moto to the public at regular intervals through various means of communications, including internet, so that the public have minimum resort to the use of this Act to obtain information.*
- (3) *For the purposes of sub-section (1), every information shall be disseminated widely and in such form and manner which is easily accessible to the public.*
- (4) *All materials shall be disseminated taking into consideration the cost, effectiveness, local language and the most effective method of communication in that local area and the information should be easily accessible, to the extent possible in electronic format with the Central Public Information Officer, or State Public Information Officer, as the case may be, available free or at such cost of the medium or the print cost price as may be prescribed.*

*Explanation: For the purposes of sub-sections (3) and (4), "disseminated" means making known or communicated the information to the public through notice boards, newspapers, public announcements, media broadcasts, the internet or any other means, including inspection of offices of any public authority.'*

It will be important to note that in Subsection 1 (b) (xii) & (xiii) the Act mandates that Public authorities will *Suo Moto* declare details of beneficiaries of subsidy programs as well as particulars of recipients of concessions, permits or authorisations granted by it.

Section 6 (2) states, '*An applicant making request for information shall not be required to give any reason for requesting the information or any other personal details except those that may be necessary for contacting him.*'

Section 8 (1) specifies the information which is exempted. The relevant provisions in this case are '*Notwithstanding anything contained in this Act, there shall be no obligation to give any citizen,-*

(e) *information available to a person in his fiduciary relationship, unless the competent authority is satisfied that the larger public interest warrants the disclosure of such information;* and

(j) *information which relates to personal information the disclosure of which has no relationship to any public activity or interest, or which would cause unwarranted invasion of the privacy of the individual unless the Central Public Information Officer or the State Public Information Officer or the appellate authority, as the case may be,*

*is satisfied that the larger public interest justifies the disclosure of such information:’*

Parliament has clarified the exemptions of Section 8 (1) with the proviso,

***‘Provided that the information, which cannot be denied to the Parliament or a State Legislature shall not be denied to any person.’***

With this sentence Parliament has recognized that the individual Citizen,- the sovereign of this democracy,- gives it legitimacy, and therefore its right to get information cannot exceed the right of its master.

In Section 8 (2) it states, *‘Notwithstanding anything in the Official Secrets Act, 1923 nor any of the exemptions permissible in accordance with sub-section (1), a public authority may allow access to information, if public interests in disclosure outweighs the harm to the protected interests.’*

Even if the exemptions of Section 8 (1) apply in a particular matter, if there is larger public interest, information shall be disclosed. It is useful to comment here that an applicant does not have to show any public interest for disclosure of any information, unless a specific exemption under Section 8 (1) is established.

After twenty years have elapsed, Parliament has whittled down the ten exemptions of Section 8 (1) to just three with the proviso 8 (3), *‘ Subject to the provisions of clauses (a), (c) and (i) of sub-section (1), any information relating to any occurrence, event or matter which has taken place, occurred or happened twenty years before the date on which any request is made under section 6 shall be provided to any person making a request under that section:’*

Section 11 of the RTI act, which is the basis on which the information is sought to denied to the appellant in the present case lays down:

*‘11. (1) Where a Central Public Information Officer or the State Public Information Officer, as the case may be, intends to disclose any information or record, or part thereof on a request made under this Act, which relates to or has been supplied by a third party and has been treated as confidential by that third party, the Central Public Information Officer or State Public Information Officer, as the case may be, shall, within five days from the receipt of the request, give a written notice to such third party of the request and of the fact that the Central Public Information Officer or State Public Information Officer, as the case may be, intends to disclose the information or record, or part thereof, and invite the third party to make a submission in writing or orally, regarding whether the information should be disclosed, and such submission of the third party shall be kept in view while taking a decision about disclosure of information:*

*Provided that except in the case of trade or commercial secrets protected by law, disclosure may be allowed if the public interest in disclosure out weighs in importance any possible harm or injury to the interests of such third party.*

- (2) Where a notice is served by the Central Public Information Officer or State Public Information Officer, as the case may be, under sub-section (1) to a third party in respect of any information or record or part thereof, the third party shall, within ten days from the date of receipt of such notice, be given the opportunity to make representation against the proposed disclosure.*
- (3) Notwithstanding anything contained in section 7, the Central Public*

*Information Officer or State Public Information Officer, as the case may be, shall, within forty days after receipt of the request under section 6, if the third party has been given an opportunity to make representation under sub-section (2), make a decision as to whether or not to disclose the information or record or part thereof and give in writing the notice of his decision to the third party.*

- (4) *A notice given under sub-section (3) shall include a statement that the third party to whom the notice is given is entitled to prefer an appeal under section 19 against the decision.'*

There are some peculiar matters in the present case. The information belongs to the late Mr. Zile Singh not to Ms. Archana Sharma who has objected. Besides the appellant claims to be the son of the late Mr. Zile Singh, which is contested by the third party. The Commission does not find it necessary to rule on these matters.

The Commission will first deal with the contentions of the third party:

1. The information has been given in a fiduciary relationship.

The third party is invoking the protection of Section 8 (1) (e) of the RTI act.

A fiduciary relationship is one where the key element is that the relationship is principally characterized by trust and the information is given for use only for the benefit of the giver. Here the information has been given as per the rules to get an authorization to get a water connection, from the Public authority. The traditional definition of a fiduciary is a person who occupies a position of *trust* in relation to someone else, therefore requiring him to act for the latter's benefit within the scope of that relationship. In business or law, we generally mean someone who has specific duties, such as those that attend a particular profession or role, e.g., financial analyst or trustee. In the instant case a key element of the relationship between the applicant for a water connection and the Delhi Jal Board certainly cannot be said to be primarily of trust by the applicant in the Public authority, nor can it be said that the information was given for the benefit of the giver. The information was provided to get an authorization for a water connection.

2. Disclosing it would be an intrusion on his privacy.

The third party is invoking the protection of Section 8 (1) (j) of the RTI act.

Under Section 8 (1) (j) information which has been exempted is defined as:

"information which relates to personal information the disclosure of which has no relationship to any public activity or interest, or which would cause unwarranted invasion of the privacy of the individual unless the Central Public Information Officer or the State Public Information Officer or the appellate authority, as the case may be, is satisfied that the larger public interest justifies the disclosure of such information:"

To qualify for this exemption the information must satisfy the following criteria:

1. It must be personal information.

Words in a law should normally be given the meanings given in common language. In common language we would ascribe the adjective 'personal' to an attribute which applies to an individual and not to an Institution or a Corporate. From this it flows that 'personal' cannot be related to Institutions, organisations or corporates. ( Hence we could state that Section 8 (1) (j) cannot be applied when the information concerns institutions, organisations or corporates.).

The phrase 'disclosure of which has no relationship to any public activity or interest' must be interpreted means that the information must have some relationship to a Public activity.



Various Public authorities in performing their functions routinely ask for 'personal' information from Citizens, and this is clearly a public activity. When a person applies for a job, or gives information about himself to a Public authority as an employee, or asks for a permission, licence or authorisation, all these are public activities.

We can also look at this from another aspect. The State has no right to invade the privacy of an individual. There are some extraordinary situations where the State may be allowed to invade on the privacy of a Citizen. In those circumstances special provisos of the law apply, always with certain safeguards. Therefore it can be argued that where the State routinely obtains information from Citizens, this information is in relationship to a public activity and will not be an intrusion on privacy.

Certain human rights such as liberty, freedom of expression or right to life are universal and therefore would apply uniformly in all Countries uniformly. However, the concept of 'privacy' is related to the society and different societies' would look at these differently. India has not codified this right so far, hence in balancing the Right to Information of Citizens and the individual's Right to Privacy the Citizen's Right to Information would be given greater weightage.

Therefore we can accept that disclosure of information which is routinely collected by the Public authority and routinely provided by individuals, would not be an invasion on the privacy of an individual and there will only be a few exceptions to this rule which might relate to information which is obtained by a Public authority while using extraordinary powers such as in the case of a raid or phone-tapping.

3. Third party has the right to refuse to divulge with information relating to him, and unless a large Public interest can be established, the information will not be disclosed.

No legal provision has been cited.

We will now look at the main contentions relied upon by the third party from the judgement of the Hon'ble Gujarat High Court:

- a) It is necessary that a larger Public interest must be justified and the purpose of the applicant and his profile and credentials looked at.
- b) The Public information officer is charged with the duty to ensure that the Right does not become a tool in the hands of a busy body.

The Right to Information is a fundamental right of Citizens. The Act has elegantly and crisply defined its objective in Section 3 where it states '*Subject to the provisions of this Act, all citizens shall have the right to information.*'

The test of public interest is to be applied to give information, only if any of the exemptions of Section 8 apply. Even if the exemptions apply, the Act enjoins that if there is a larger Public interest, the information would still have to be given. There is no requirement in the Act of establishing any public interest for information to be obtained by the sovereign Citizen; nor is there any requirement to establish larger Public interest, unless an exemption is held to be valid. Insofar as looking at the credentials of the applicant are concerned, the lawmaker has categorically stated that

in Section 6 (2) , '*An applicant making request for information shall not be required to give any reason for requesting the information or any other personal details except those that may be necessary for contacting him.*' Since the law categorically states that no information shall be required be supplied by the applicant except those that may be necessary for contacting him, it is clear that the credentials of the applicant are of no relevance, and are not to be taken into account at all when giving the information. Truth remains the Truth and it is not important who access it. If there is a

larger Public interest in disclosing a Truth, it is not relevant who gets it revealed. Hence we respectfully disagree with the contention of the Hon'ble Gujarat High Court.

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 the rule of law. The Citizen needs to give no reasons nor are his credentials to be checked for giving the information. If the third party objects to giving the information, the Public Information Officer must take his objections and see if any of the exemption clauses of Section 8 (1) apply. If any of the exemption clauses apply, the PIO is then obliged to see if there is a larger Public interest in disclosure. If none of the exemption clauses apply, information has to be given.

The third party's objections made before the Commission about the exemptions of Section 8 (1) (e) & (j) are disallowed. Hence the information would have to be given.

**Decision :**

The Appeal is allowed.

The PIO will give the information to the appellant before 15 March 2009.

Notice of this decision be given free of cost to the parties.

**Shailesh Gandhi**  
**Information Commissioner**  
**27 February 2009**

*(In any correspondence on this decision, mentioned the complete decision number.)*