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Third Party under RTI

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The High Court of Delhi¹⁾ held - **“that information which involves the rights of privacy of a third party in terms of Section 8(1)(j) RTI Act cannot be ordered to be disclosed without notice to such third party. The authority cannot simply come to conclusion, that too, on a concession or on the agreement of parties before it, that public interest overrides the privacy rights of such third party without notice to and hearing such third party”.**

Section 11(1) of the [Online RTI Act](#) provides as follows:

“11. Third party information- (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 outweighs in importance any possible harm or injury to the interests of such third party.”*

How to interpret Third Party Clause

When the PIO puts in motion the third party reference, he is of a view that the information is not exempt, and is giving the chance to the third party to voice any objections which could be based on the exemptions under the Act. Only if the third party's objection is in line with one of the exemptions under Section 8 (1) or Section 9, the PIO will again examine the issue. If he is convinced that an exemption applies, he must change his earlier position to disclose. It must be stressed that the issue of a larger public interest needs to be invoked only if the exemption is established. Otherwise, no public interest in disclosure needs to be established. It is also evident that if there is no response from the third party, the information has to be disclosed since the PIO has come to the conclusion that the information is not exempt.

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)** Paragraph 16 & 17:

“.....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'



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.

In this regard, it may be worthwhile to note the observations of **Muralidhar, J. of the High Court of Delhi in Arvind Kejriwal v. CPIO W. P. (C) 6614/2008 and C. M. Appl. No. 12685/2008, W. P. (C) 8999/2008 and C. M. Appl. No. 7517/2008, W. P. (C) 8407/2009 and C. M. Appl. 5286/2009 decided on 30/07/2010**, in Paragraph 21, which are as follows: “...It requires to be noticed that under the RTI Act information that is totally exempt from disclosure has been listed out in Section 8. The concept of privacy is incorporated in Section 8(1)(j) of the RTI Act. This provision would be a defense available to a person about whom information is being sought. Such defense could be taken by a third party in a proceeding under Section 11(1) when upon being issued notice such third party might want to resist disclosure on the grounds of privacy. This is a valuable right of a third party that encapsulates the principle of natural justice inasmuch as the statute mandates that there cannot be a disclosure of information pertaining to or which ‘relates’ to such third party without affording such third party an opportunity of being heard on whether such disclosure should be ordered. This is a procedural safeguard that has been inserted in the RTI Act to balance the rights of privacy and the public interest involved in disclosure of such information. Whether one should trump the other is ultimately for the information officer to decide in the facts of a give case.”

Procedure of disclosing third party information:

Section 11(1) of the RTI Act is triggered once the PIO intends to disclose to an applicant any information which relates to or has been supplied by a third party and has been treated as confidential by that third party. Once Section 11(1) of the RTI Act is applicable, the PIO shall follow the procedure of serving a notice to the third party for seeking objections whether such information shall be disclosed or not.

On receipt of the submissions of the third party, the PIO shall keep the submissions in view and then decide whether the information sought shall be disclosed or not. If the PIO does not find any merit in the submissions of the third party, he shall disclose the information sought to the applicant. On the

other hand, where the PIO decides that the information sought shall not be disclosed then the basis for denial of information must be in accordance with Sections 8 and 9 of the RTI Act only. However (except in the case of trade or commercial secrets protected by law) even where the PIO is of the view that there is possible harm or injury to the interests of the third party, but public interest in disclosure outweighs in importance any such harm or injury, he may disclose the information. Section 11 does not give the third party a right of veto in giving information.

The Public Information Officer will have to consider the following:

1. The objections raised by the third party by claiming confidentiality in respect of the information sought for.
2. 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.
3. 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."

PIO uses Section 11 when he intends to provide information and not deny it:

"The PIO is expected to follow the procedure of Section 11 when he "intends to disclose any information or record". This means that the PIO has come to the conclusion that the information is not exempt as per the provisions of the RTI Act."

Section 11 gives only an 'opportunity' to the third party to voice its objections to disclosing information:

"Section 11 (1) clearly states that submission of third party shall be kept in view while taking a decision about disclosure of information."

The PIO will weigh the situation and make his own decision:

"The PIO will keep these in mind and denial of information can only be on the basis of exemption under Section 8 (1) of the RTI Act. As per Section 11 (3), the PIO has to determine the whether the information is exempt or not and inform the appellant and the third party of his decision. If the third party wishes to appeal against the decision of the PIO, he can file an appeal under Section 19 of the Act as per the provision of Section 11 (4)."

The third party's denial cannot be the last word:

"Section 11 does not give a third party an unrestrained veto to refuse disclosing information. It clearly anticipates situations where the PIO will not agree with the claim for non-disclosure by a third party and provides for an appeal to be made by the third party against disclosure, which would have been

unnecessary, if the third party had been given a veto against disclosure. Thus the PIO is expected to follow the procedure of Section 11, when he intends to disclose the information but has some reason to believe that the third party treats it as confidential. If the third party sends an objection, the PIO has to determine whether the information is exempt under the provisions of the Act.”

PIO can take the shelter of Section 8 (1) (j) for declining information only if it is a purely personal information.

States Mr Gandhi's order: “To qualify for this exemption the information must satisfy the following criteria: 1. It must be personal information... 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 Section 8 (1) (j) cannot be applied when the information concerns institutions, organisations or corporates.”

What is Public Activities performed by Public Authorities?

Public authorities in routine course take personal information of citizens: “The phrase 'disclosure of which has no relationship to any public activity or interest' means that the information must have been given in the course of 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 authorization or passport, all these are public activities. Also when a citizen provides information in discharge of a statutory obligation this too is a public activity.”

Citizen's right to information is given priority with regard to privacy:

“The Supreme Court of India has ruled that citizens have a right to know about charges against candidates for elections as well as details of their assets, since they desire to offer themselves for public service. It is obvious then that those who are public servants cannot claim exemption from disclosure of charges against them or details of their assets. Given our dismal record of mis-governance and rampant corruption which colludes to deny citizens their essential rights and dignity, it is in the fitness of things that the citizen's right to information is given greater primacy with regard to privacy.” In extraordinary situations there are other laws which apply to secure privacy of information: “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 the privacy of a citizen. In those circumstances special provisions of the law apply; usually with certain safeguards. Therefore 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. ”

What does exemption of information under Section 8(1) (j) of the RTI Act mean?

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” (Reference: [Third party clause of the RTI Act: Should denial of information be accepted by the PIO?- MoneyLife](#))

It is clearly stated at Section 11 (1) that

Submission of third party shall be kept in view while taking a decision about disclosure of information. Section 11 does not give a third party an unrestrained veto to refuse disclosing information. It only gives the third party an opportunity to voice its objections to disclosing information. The PIO will keep these in mind and denial of information can only be on the basis of exemption under Section 8 (1) of the RTI act.

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 accesses it. If there is a larger Public interest in disclosing a Truth, it is not relevant who gets it revealed.

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.

Is another Public authority third party under RTI Act

The third party has to be someone apart from the applicant and the Public authority from whom the information is sought. However, another public authority would also be considered as a third party.

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.

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, a second appeal to the concerned Information Commission. The PIO cannot disclose such information unless the procedure prescribed in section 11 is completed. As defined in clause (a) 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 information from another public authority 'Y' which that public authority has treated as confidential, then 'X' cannot disclose the information without consulting 'Y', the third party in respect of the information and without following the procedure prescribed in Section 11 of the Act. Is it a statutory requirement, non-compliance of which may make the PIO liable to action.²⁾

1. [Mr. S. K. Kalra Vs Ministry Of External Affairs](#) File No: CIC/AD/A/2011/001494/SG/14922 dated 21.09.2011
2. [Reliance Industries Ltd. vs Gujarat State Information](#)
3. [Smt.Anita Singh vs Ministry Of External Affairs](#)1 May, 2012, Decision No. CIC/SG/A/2012/000879/18681
4. [Mahesh Kumar Sharma v. PIO, Delhi Jal Board Decision](#)File No: No. CIC /A T/A/2008/01262//SG/2109

More Common terms under RTI

- [Annual Confidential Report](#)
- [Citizenship under RTI Act 2005](#)
- [Competent Authority under RTI Act](#)
- [Composite Petition under RTI Act](#)
- [Deemed PIO](#)
- [Disproportionate Diversion of Resources](#)
- [What is Fiduciary Relationship](#)
- [File Notings under RTI Act](#)
- [Grounds for Rejection](#)
- [What is Information under RTI Act](#)
- [Investigation/Inquiry reports under RTI](#)
- [Justification for Denial of Information is mandatory](#)
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- [Privacy Rights of Public Servants](#)
- [What is Privacy under RTI](#)
- [Public Authority](#)
- [What is Public Interest](#)
- [Refund of Fees](#)
- [RTI Act or Statutory Rules for giving information under RTI Act 2005](#)
- [Severability](#)
- [Substantially Financed](#)
- [Suo Moto Disclosure under RTI](#)
- [Third Party under RTI](#)
- [Transfer of Application to other PIO](#)

- [Vicarious Liability](#)

~~DISCUSSION~~

1)

Delhi High Court Decision: Suhas Chakma v. CIC & Ors. W. P. (C) No. 9118/2009 dated 22/01/2010

2)

Another Public Authority is Third Party, DOPT OM

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