

CENTRAL INFORMATION COMMISSION
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Decision No. CIC/SM/A/2011/000956/SG/15239
Appeal No. CIC/SM/A/2011/000956/SG

Relevant Facts emerging from the Appeal

Appellant : Mr. Debashish Dutta, Scientific Officer-D
II, Van de Graff Bldg., LEHIPA Project,
Physics Group, B.A.R.C., Trombay,
Mumbai-400 085

Respondent : Mr. S. G. Rao,
PIO & Head Personnel Division
Bhabha Atomic Research Centre
Central Complex 3rd Floor, B.A.R.C.,
Trombay, Mumbai - 400085

RTI application filed on : 07/12/2010
PIO replied : 23/12/2010
First appeal filed on : 30/12/2010
First Appellate Authority order : 07/01/2011
Second Appeal received on : 21/03/2011

Information Sought:

Q. Please provide me the ACRs of the employees whose Emp. numbers (and CC numbers) are mentioned under RTI Act, 2005.

A-The information requested by you relates to personal information the disclosure of which has relationship to any public activity or interest, therefore exempted under clause 8 (1)(d) of the RTI Act, 2005. Moreover the information available to a personal in his fiduciary relationship, therefore exempted under Clause 8(1)(e) of the RTI Act. Therefore information requested by you cannot be provided.

Grounds for the First Appeal:

Information was not furnished

Order of the First Appellate Authority (FAA):

Agreed with reply of PIO

Grounds for the Second Appeal:

Information denied

Relevant Facts emerging during Hearing:

The following were present

Appellant: Mr. Debashish Dutta on video conference from NIC-Mumbai Studio;

Respondent: Mr. N. N. G. Krishnan, PIO & Dy. Establishment Office on behalf of Mr. S. G. Rao, PIO & Head Personnel Division on vide conference from NIC-Mumbai Studio;

The appellant has sought the ACRs of 03 employees and the PIO has refused to give this information claiming exemption under Section 8(1)(j) & (c) of the RTI Act. The FAA has also upheld the decision of the PIO.

Under Section 8 (1) (j) of the RTI Act, 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 the exemption under Section 8(1)(j) of the RTI Act, the information must satisfy the following criteria:

1. It must be personal information: Words in a law should normally be given the meaning 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. Therefore, it flows that 'personal' cannot be related to institutions, organisations or corporates. Hence Section 8(1)(j) of the RTI Act cannot be applied when the information concerns institutions, organisations or corporates.
2. 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. Public activities would typically include situations wherein 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, or provides information in discharge of a statutory obligation.
3. The disclosure of the information would lead to unwarranted invasion of the privacy of the individual. 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.

Certain human rights such as liberty, freedom of expression or right to life are universal and therefore would apply uniformly to all human beings worldwide. However, the concept of 'privacy' is a cultural notion, related to social norms, and different societies would look at these differently. Therefore referring to the Data Protection Act, 1988 of U. K. or the laws of other countries to define 'privacy' cannot be considered a valid exercise to constrain the citizen's fundamental right to information in India. Parliament has not codified the right to privacy 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.

In the instant case, there is no doubt that the information sought is "personal" information inasmuch as it is the Annual Confidential Report of a government officer. The ACR is a report that evaluates the work and performance of a public servant. The public authority concerned, must necessarily have this information so to make an assessment of its officers' performance. The ACR, containing certain information about the officer is disclosed by the officer to the public authority and such report is prepared by the public authority. This is necessarily done in the course of a public activity. Disclosure of such information cannot be construed as unwarranted invasion of privacy of the officer concerned as it concerns issues raised in the exercise of his public activity as a public servant. Moreover, a public servant is accountable to the public and therefore, every citizen has the right to obtain information that may assess his credibility, integrity and performance.

It is pertinent to mention that the Supreme Court of India in *Union of India v. AER* in Appeal (Civil) 178 of 2001 and W. P. (Civil) 294 of 2001 decided on 02/05/2002, observed that persons who aspire to be public servants by getting elected have to declare *inter alia* their property details, any conviction/ acquittal

of criminal charges, etc. It follows that persons who are *already* public servants cannot claim exemptions from disclosure of charges against them or details of their assets. Given our dismal record of misgovernance and rampant corruption which colludes to deny citizens' their essential rights and dignity, it is imperative for achieving the goal of democracy that the citizens' right to information is given greater primacy with regard to privacy.

Therefore, disclosure of information such as property details, any conviction/ acquittal of criminal charges, etc of a public servant, which is routinely collected by the public authority and provided by the public servants, cannot be construed as an invasion of the privacy of an individual and must be provided an applicant under the RTI Act. Similarly, citizens have a right to know about the strengths and weaknesses as well as performance evaluation of all public servants. The government is elected by the citizens of India and it is the duty of such government through its officers to protect the rights of the citizens. The salary of such government officers is also paid from the public exchequer. For these reasons, every citizen has the right to know and obtain information about the performance of every public servant or government officer to ascertain whether the duties entrusted to such public servant or government officer are being carried out.

It would not be out of place to mention that the terminology "Annual Confidential Report" has been used since the British times when 'secrecy' was the guiding notion for the government and consequently, the work done by the latter was not for the citizens' perusal and kept confidential. This was evidenced by the enactment of the Official Secrets Act, 1923. Over the years, this trend has undergone a drastic change inasmuch as the Indian judiciary recognised the citizen's right to have access to information under the control of government entities in order to bring about transparency and accountability in the functioning of every government department. This was given a statutory ratification by way of the Right to Information Act, 2005, which recognised the citizen's fundamental right to information. The RTI Act endeavors to do away with the notion of 'secrecy' which was prevalent in the British era and carried forwarded thereafter inasmuch as Section 22 of the RTI Act specifically provides that the RTI Act shall override the Official Secrets Act, 1923 irrespective of any inconsistency contained in the latter.

In view of the foregoing arguments this Commission holds that performance appraisals,- known as annual confidential reports since the days of British Raj,- are not covered by Section 8(1)(j) of the RTI Act and disclosure of these cannot be construed as invasion on the privacy of an individual.

Decision:

The Appeal is allowed.

The PIO is directed to provide the information sought by the Appellant to him before 10 November 2011.

This decision is announced in open chamber.

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

Any information in compliance with this Order will be provided free of cost as per Section 7(6) of RTI Act.



Shailesh Gandhi
Information Commissioner

20 October 2011



(In any correspondence on this decision, mention the complete decision number.)PG