

CENTRAL INFORMATION COMMISSION

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Decision No. CIC/SG/A/2012/000879/18681

Appeal No. CIC/SG/A/2012/000879

Relevant Facts emerging from the Appeal:

Appellant : Mrs Anita Singh
w/o Sh Ajeet Pratap Singh
Danda Village , Indranagar
Galjwadi , Gadi cant.
Dehradoon

Respondent : Public Information Officer
Passport office
Ministry of External Affairs
Vikas jyoti Commercial Complex
2nd and 3rd floor BDA bldg
Priyadarshini Nagar, Bareilly
Uttarpradesh

RTI application filed on : 08/08/2011
PIO replied : 07/09/2011
First Appeal : 03/10/2011
First Appellate Authority order : Not mentioned
Second Appeal received on : 29/03/2012

S.no	Queries	Reply
1	Provide the photocopy of the passport with complete details of Sh Ajeet Singh S/o Sh Ram Bahadur Singh . 496 and 498 , dandi gadi cantt Dehradoon. It was issued in 1997-98	Exempted u/s 8 (1)(j) of the RTI act. This is third party information.
2	Provide the certified Xerox copy of the date of birth certificate , education documents and residential proof certificates	Do

Grounds for the First Appeal:

Information has been denied.

Order of the FAA:

Not mentioned

Grounds for the Second Appeal:

Information has been denied seeking exemption under section 8 (1) (j) of the RTI Act

Relevant Facts emerging during Hearing:

The following were present:

Appellant: Mr. Narender Kumar representing Mrs Anita Singh;

Respondent: Mr. P. Roychaudhuri, Advocate representing The PIO, Passport Office Bareilly;

The PIO has refused to give the information claiming exemption under Section 8(1)(j) of the RTI Act. The respondent states that third party information cannot be disclosed without taking the views of the third party and relied upon the case of Suhash Chakma Vs. CIC in W.P.(C) No. 9118 of 2009. The

respondents also states that the present whereabouts of the third parties are not maintained by the Ministry. The Commission rules that if the third party's address is not located it does not mean the citizen's right to information would disappear. Section-11 is a procedural requirement that gives third party an opportunity to voice and objection in releasing the information.

Section 11 of the RTI act, which is the basis on which the information is sought to be 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.'*

It is evident that 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. 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. The information which relates to or has been supplied by a third party and has been treated as confidential by that third party*'. Thus the procedure of Section 11 comes into effect if the PIO believes that the information exists and is not exempt, and the third party has treated it as confidential. The PIO must send a letter to the third party within 5 days of receipt of the RTI application. 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. 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).

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 a 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.

The Commission however examines whether the information is exempt under 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 *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' 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.

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.

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 UK Data protection act 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. The Supreme 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 misgovernance 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 view of this the Commission does not accept the PIO's contention that information provided by an applicant when applying for passport is exempt under Section 8(1)(j) of the RTI Act.

Decision:

The Appeal is allowed.

The PIO is directed to provide the complete information as per available records to the Appellant before 15 May 2012

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
01 May 2012

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