

**CENTRAL INFORMATION COMMISSION**  
**Club Building (Near Post Office)**  
**Old JNU Campus, New Delhi - 110067**  
**Tel: +91-11-26161796**

**Decision No. CIC/SM/C/2011/000129/SG/13251**  
**Complaint No. CIC/SM/C/2011/000129/SG**

**Relevant facts emerging from the Complaint:**

**Complainant** : Mr. S.S. Ranawat,  
Behind Bara Mandir,  
Bahala, Bhilwara- 311001 (Rajasthan)

**Respondent** : Mr. Ashwani Kumar  
CPIO & SSP (HQ),  
(HQ)/CBI, Administrative Division,  
5-B, 7<sup>th</sup> Floor, CGO Complex,  
Lodhi Road, New Delhi- 110003

RTI application filed on : 04.08.2010  
PIO replied to application on : 22.10.2010  
Complaint filed on : 07.02.2011

S.No.	Information Sought	Reply of the PIO
1.	File notings of the appointment as Director, CBI, New Delhi, of the existing and the then Director of CBI.	Information not provided.
2.	List of existing CBI officials working in New Delhi & Mumbai with their permanent & existing addresses and their movable and immovable property with sources of earning during last ten years	Copy of list of officers working in New Delhi and Mumbai along with their place of posting provided to the applicant. Information about permanent address of officers based at Delhi and Mumbai not provided on ground of Section 8 (1) (g) of RTI Act.

**Grounds for Complaint:**

Misleading and incomplete information provided by the CPIO. No grounds provided for denying information on basis of Section 8 (1)(g) of RTI Act.

**Relevant Facts emerging during Hearing held on July 1, 2011:**

The following were present:

**Complainant:** Mr. S. S. Ranawat on video conference from NIC- Bhilwara Studio;

**Respondent:** Mr. U. K. Chaudhary, Inspector of Police on behalf of Mr. Ashwani Kumar, CPIO & SSP (HQ).

The Respondent stated that since a notification had been issued by DOPT on 09/06/2011 placing CBI at serial no. 23 of the Second Schedule to the RTI Act, pending appeals should be considered infructuous. The PIO has not provided the permanent addresses of the officers and the details of the assets. The Respondent stated that the custodian of information regarding the assets of the officers was AIG (P-II) and the RTI application had been transferred to him by AIG (P-I) on 10/09/2010. The Appellant stated that he had not received any information from PIO & AIG (P-II).

The Commission reserved the order during the hearing held on 01/07/2011.

**Decision announced on 4 July 2011:**

The Respondent has argued that as per the notification dated 09/06/2011 (the “**Notification**”) of the Department of Personnel and Training (“**DOPT**”), Ministry of Personnel, Public Grievances and

Pensions, CBI was included in the Second Schedule of the RTI Act at Serial No. 23 and, in accordance with Section 24 of the RTI Act, the provisions of the RTI Act would not apply to CBI (except allegations of corruption and human rights violation) and therefore, all pending appeals should be considered infructuous.

Section 24(1) of the RTI Act stipulates *inter alia* that nothing contained in the RTI Act shall apply to the intelligence and security organisations specified in the Second Schedule, being organisations established by the Central Government or any information furnished by such organisations to that Government. Further, Section 24(2) of the RTI Act provides *inter alia* that the Central Government may, by notification in the Official Gazette, amend the Second Schedule by including therein any other intelligence or security organisation established by that Government and on the publication of such notification, such organisation shall be deemed to be included in the Second Schedule.

Under Section 24(2) of the RTI Act, the DOPT, Ministry of Personnel, Public Grievances and Pensions has, vide the said notification stated as follows:

*“G. S. R. 442 (E).- In exercise of the powers conferred by sub- section (2) of Section 24 of the Right to Information Act, 2005 (22 of 2005), the Central Government hereby makes the following further amendments in the Second Schedule to the said Act, namely:-*

*In the Second Schedule to the Right to Information Act, 2005, after serial number 22 and the entry relating thereto, the following serial numbers and entries shall be added, namely:-*

- 23. Central Bureau of Investigation.*
- 24. National Investigation Agency.*
- 25. National Intelligence Grid.” ” (Emphasis added)*

It follows from the above that CBI has been brought within the Second Schedule of the RTI Act thereby exempting it from the application of the RTI Act in accordance with Section 24 of the RTI Act. However, on a plain reading of the Notification, it does not appear to have a retrospective effect. Reliance may be placed upon the decision of the Supreme Court of India in P. Mahendran v. State of Karnataka AIR 1990 SC 405 wherein it observed as follows:

*"It is well- settled rule of construction that every statute or statutory Rule is prospective unless it is expressly or by necessary implication made to have retrospective effect. Unless there are words in the statute or in the Rules showing the intention to affect existing rights the Rule must be held to be prospective. If a Rule is expressed in language which is fairly capable of either interpretation it ought to be construed as prospective only. In the absence of any express provision or necessary intendment the rule cannot be given retrospective effect except in matter of procedure."*

The Notification was issued on 09/06/2011 and there is no express stipulation whatsoever that the Notification shall come into force with effect from any date prior to 09/06/2011. Moreover, the Notification does not appear to indicate any intention of affecting existing rights and therefore, must be construed as prospective in nature. **Hence, information sought in any RTI application filed prior to 09/06/2011 with CBI must be provided in accordance with the provisions of the RTI Act.**

Having established the above, the Commission shall now examine whether the Notification itself is within the letter and spirit of the RTI Act. As mentioned above, under Section 24(2) of the RTI Act, the Central Government has been given the power to include any other intelligence or security organizations,-apart from the eighteen in the original list,- within the Second Schedule by way of a notification. This power does not appear to have been extended to any other body, and is restricted to only intelligence or security organisations. In view of the same, it becomes pertinent to understand whether CBI qualifies as “intelligence or security organisation” as per Section 24(2) of the RTI Act.

The Commission has perused the CBI website and the relevant extracts thereof have been reproduced below:

*“The Central Bureau of Investigation traces its origin to the Special Police Establishment (SPE) which was set up in 1941 by the Government of India. The functions of the SPE then were to investigate cases of bribery and corruption in transactions with the War & Supply Deptt. Of India during World War II. Even after the end of the War, the need for a Central Government agency to investigate cases of bribery and corruption by Central Government employees was felt. The **Delhi Special Police Establishment Act** was therefore brought into force in 1946. The CBI's power to investigate cases is derived from this Act.” (Emphasis added)*

The Delhi Special Police Establishment acquired its popular current name, CBI through a Home Ministry resolution dated 01/04/1963. The relevant provisions of the Delhi Special Police Establishment Act, 1946, which describe the powers of CBI are provided as follows:

*“2. Constitution and powers of police establishment- (1) Notwithstanding anything in the Police Act, 1861 (5 of 1861), the Central Government may constitute a special police force to be called the Delhi Special Police Establishment 2[\*\*\*] for the investigation 3 [in any 4 [Union territory]] of offences notified under section 3.*

*(2) Subject to any order which the Central Government may make in this behalf, Members of the said police establishment shall have throughout 5 [any 4 [Union territory]] in relation to the investigation of such offences and arrest of persons concerned in such offences, all the powers, duties, privileges and liabilities which police officers of 6 [that Union territory] have in connection with the investigation of offences committed therein.*

...

2. The words "for the State of Delhi" omitted by Act 26 of 1952, sec. 3, (w.e.f. 6-3-1952).

3. Subs. by Act 26 of 1952, sec. 3 for "in that state" (w.e.f. 6-3-1952).

4. Subs. by A.L.O. 1956, for "Part C State".

5. Subs. by A.L.O. 1956, for "the State of Delhi".

6. Subs. by A.L.O. 1956, for "that State". (Emphasis added)

The Mission and Vision of CBI in its Annual report of 2010 have been provided as follows:

### **“Mission**

*To uphold the Constitution of India and law of the land through in-depth investigation and successful prosecution of offences; to provide leadership and direction to police forces and to act as the nodal agency for enhancing inter-state and international cooperation in law enforcement.*

### **Vision**

*Based on its motto, mission and the need to develop professionalism, transparency, adaptability to change and use of science and technology in its working, the CBI will focus on*

- 1. Combating corruption in public life, curb economic and violent crimes through meticulous investigation and prosecution.*
- 2. Evolve effective systems and procedures for successful investigation and prosecution of cases in various law courts.*
- 3. Help fight cyber and high technology crime.*
- 4. Create a healthy work environment that encourages team-building, free communication and mutual trust.*
- 5. Support state police organizations and law enforcement agencies in national and international cooperation particularly relating to enquiries and investigation of cases.*
- 6. Play a lead role in the war against national and transnational organized crime.*
- 7. Uphold Human Rights, protect the environment, arts, antiques and heritage of our civilization.*

8. *Develop a scientific temper, humanism and the spirit of inquiry and reform.*
9. *Strive for excellence and professionalism in all spheres of functioning so that the organization rises to high levels of endeavor and achievement.” (Emphasis added)*

Further, the FAQs on the CBI website provide an insight on the functioning and mandate of the CBI. The relevant portions have been reproduced below:

**“1. Please give brief background of CBI.**

*During the period of World War II, a Special Police Establishment (SPE) was constituted in 1941 in the Department of War of the British India to enquire into allegations of bribery and corruption in the war related procurements. Later on it was formalized as an agency of the Government of India to investigate into allegations of corruption in various wings of the Government of India by enacting the Delhi Special Police Establishment (DSPE) Act, 1946. In 1963, the Central Bureau of Investigation (CBI) was established by the Government of India with a view to investigate serious crimes related to Defence of India, corruption in high places, serious fraud, cheating and embezzlement and social crime, particularly of hoarding, black-marketing and profiteering in essential commodities, having all-India and inter-state ramifications. CBI derives its legal powers to investigate crime from the DSPE Act, 1946.*

...

**5. What types of Crimes CBI investigate today?**

*CBI has grown into a multidisciplinary investigation agency over a period of time. Today it has the following three divisions for investigation of crime:-*

*(i) **Anti-Corruption Division** - for investigation of cases under the Prevention of Corruption Act, 1988 against Public officials and the employees of Central Government, Public Sector Undertakings, Corporations or Bodies owned or controlled by the Government of India - it is the largest division having presence almost in all the States of India.*

*(ii) **Economic Offences Division** - for investigation of major financial scams and serious economic frauds, including crimes relating to Fake Indian Currency Notes, Bank Frauds and Cyber Crime.*

*(iii) **Special Crimes Division** - for investigation of serious, sensational and organized crime under the Indian Penal Code and other laws on the requests of State Governments or on the orders of the Supreme Court and High Courts.*

*The laws under which CBI can investigate Crime are notified by the Central Government under section 3 of the DSPE Act.*

**6. What is the difference between the nature of the cases investigated by the National Investigation Agency (NIA) and the CBI?**

*The NIA has been constituted after the Mumbai terror attack in November 2008 mainly for investigation of incidents of terrorist attacks, funding of terrorism and other terror related crime, whereas CBI investigates crime of corruption, economic offences and serious and organized crime other than terrorism.*

**29. Does CBI perform any other important function other than investigation of crime?**

*Yes. CBI has been notified as the Interpol of India. CBI has a training academy in Ghaziabad, where it organizes training courses in various subjects not only for its own officers but for officers from other countries as well as from State & UT police organizations, vigilance officers of Public Sector Undertakings, Banks etc.” (Emphasis added)*

On a careful perusal of the material, it can be ascertained that CBI was established for the purposes of investigation of specific crimes including corruption, economic offences and special crimes. It continues to discharge its functions as a multi- disciplinary investigating agency and evolve more effective systems for investigation of specific crimes. Members of CBI have all the powers, duties, privileges and liabilities which police officers have in connection with the investigation of offences. There is no claim in its mandate and functions, as described above, that CBI is involved in intelligence gathering or is a security organisation. Even the additional functions performed by CBI other than investigation of crimes do not include any function which would lend it the character of an intelligence or security organisation. In view of the same, CBI does not appear to fit the description of an “intelligence or security organisation” under Section 24(2) of the RTI Act.

Even by virtue of the fact that certain organisations such as CBI, during the course of investigation, may touch upon terrorist- related crimes or matters that may have an impact on the security of the nation, the same cannot be a reason for classifying such an organisation as intelligence or security organisation. If such a claim was to be accepted, it would mean that every organisation which is involved in some investigation or the other, including the police, would come within the realm of Section 24(2) of the RTI Act. The absurdity of this proposition may be seen from an instance where terrorists launch bomb attacks in trains, the Ministry of Railways and other local authorities may obtain certain information which can be classified as ‘intelligence’ or such information may have an impact on the security of the nation. However, that cannot be a reason for bringing the Ministry of Railways or such other local authorities within the Second Schedule of the RTI Act. It is pertinent to note that on the CBI website, in response to FAQ 6, it has been clearly stated that the CBI investigates crimes of corruption, economic offences, and serious and organized crimes *other than terrorism*.

Even where organisations such as CBI may obtain certain information that can be classified as ‘intelligence’ or may have an impact on the security of the nation, the same may be sought to be exempted from disclosure under Section 8(1) of the RTI Act. The Right to Information is a fundamental right of the citizens embedded in Article 19(1) of the Constitution of India. When Parliament codified the said right in the form of the RTI Act, it took care to lay down 10 exemption clauses in Section 8(1) on the basis of which information may be denied to citizens, unless there was a larger public interest. The exemptions contained in Section 8(1) of the RTI Act are adequate and comprehensive to ensure that disclosure of information does not *inter alia* compromise national security or impede the process of investigation or apprehension or prosecution or endanger the life or physical safety of any individual. It may be worthwhile to list the exemptions under Section 8(1) of the RTI Act, which are as follows:

**“8. Exemption from disclosure of information.-** (1) *Notwithstanding anything contained in this Act, there shall be no obligation to give any citizen,-*

- (a) *information, disclosure of which would prejudicially affect the sovereignty and integrity of India, the security, strategic, scientific or economic interests of the State, relation with foreign State or lead to incitement of an offence;*
- (b) *information which has been expressly forbidden to be published by any court of law or tribunal or the disclosure of which may constitute contempt of court;*
- (c) *information, the disclosure of which would cause a breach of privilege of Parliament or the State Legislature;*
- (d) *information including commercial confidence, trade secrets or intellectual property, the disclosure of which would harm the competitive position of a third party, unless the competent authority is satisfied that larger public interest warrants the disclosure of such information;*
- (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;*
- (f) *information received in confidence from foreign government;*
- (g) *information, the disclosure of which would endanger the life or physical safety of any person or identify the source of information or assistance given in confidence for law enforcement or security purposes;*
- (h) *information which would impede the process of investigation or apprehension or prosecution of offenders;*

- (i) *cabinet papers including records of deliberations of the Council of Ministers, Secretaries and other officers:*

*Provided that the decisions of Council of Ministers, the reasons thereof, and the material on the basis of which the decisions were taken shall be made public after the decision has been taken, and the matter is complete, or over:*

*Provided further that those matters which come under the exemptions specified in this section shall not be disclosed;*

- (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:*

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

Further, as mentioned above, it is established that the right to information is a fundamental right of the citizens. However, when the fundamental right to information was being codified by way of the RTI Act, the Parliament felt that certain “intelligence and security organisations” may require greater protection from disclosure of information and therefore stipulated Section 24(1) of the RTI Act. Therefore, even at the cost of abridging the fundamental right to information of citizens, the Parliament identified certain bodies as “intelligence and security organisations” that required to be protected from disclosure of information to serve a greater purpose. These organisations were consequently included in the Second Schedule.

Parliament envisaged that during the course of time, there may be certain additions as well as omissions to the Second Schedule. Therefore, under Section 24(2) of the RTI Act, the Central Government was given the power to *inter alia* amend the Second Schedule by notification in the Official Gazette by including therein any other intelligence or security organisation established by that Government, or by omitting therefrom such organisation which is already specified. Given the stature and mandate of CBI, it does not seem plausible that the Parliament could have inadvertently omitted to include CBI in the Second Schedule when the RTI Act was being enacted. In fact, it may be inferred that it was certainly not the intent of the Parliament to include investigating agencies within the purview of Section 24(1) of the RTI Act. If it was intended that Parliament be given the power to include even investigating agencies in the Second Schedule subsequently, then Section 24(2) of the RTI Act would have expressly provided for the same.

By enacting the Notification and bringing CBI within the Second Schedule, the Government appears to have increased the scope of Section 24(2) of the RTI Act, which was not envisaged by the Parliament. Given the fact that the Right to Information is a fundamental right, any provision by which the said right is sought to be curtailed must be strictly construed. The Government, however, appears to have stretched the interpretation of Section 24(2) of the RTI Act far beyond what Parliament had intended, by including an investigating agency such as CBI within the Second Schedule, which was envisaged exclusively for intelligence or security organisations. The Government has read additional qualifications into Section 24(2) of the RTI Act which were hitherto not contemplated. By this method the Government could keep adding organisations to the Second Schedule, which do not meet the express criteria laid down in Section 24(2) of the RTI Act and ultimately render the RTI Act ineffective. The Government cannot frustrate a law made by the Parliament by resorting to such colourable administrative fiat.

In this context, it is relevant to mention the observations of Mathew, J. in *State of Uttar Pradesh v. Raj Narain* (1975) 4 SCC 428 that, “*In a government of responsibility like ours, where all the agents of the public must be responsible for their conduct, there can be but few secrets. The people of this country have a right to know every public act, everything that is done in a public way by their public functionaries. They are entitled to know the particulars of every public transaction in all its bearing. Their right to know, which is derived from the concept of freedom of speech, though not absolute, is a factor which should make one wary when secrecy is claimed for transactions which can at any rate*

have no repercussion on public security". This notion has also been reflected in the Preamble of the RTI Act, which stipulates as follows:

*"An Act to provide for setting out the practical regime of right to information for citizens to secure access to information under the control of public authorities, in order to promote transparency and accountability in the working of every public authority, the constitution of a Central Information Commission and State Information Commissions and for matters connected therewith or incidental thereto.*

*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; ..." (Emphasis added)*

Therefore, by enacting the Notification and placing CBI in the Second Schedule, the Government appears to be claiming absolute secrecy for CBI without the sanction of law. The RTI Act was a promise to Citizens by Parliament of transparency and accountability. Given that the previous year has been characterized by unearthing of various scams in the Government which are being investigated by CBI, inclusion of CBI in the Second Schedule by the Government would be considered to be a step to avoid the gaze and monitoring of Citizens in matters of corruption.

Furthermore, under Section 4(1)(d) of the RTI Act, it is mandated that every public authority shall provide reasons for its administrative or quasi judicial decisions to affected persons. Even in the absence of the said provision, it is a basic tenet of democracy that where the Government takes any major decision which would affect the citizens, it must inform the citizens of the reasons for its actions. It is incumbent on the Government to provide the reasons for constricting the citizen's fundamental right to information. In the instant case, the Commission has noted that neither in the Notification nor on its website or otherwise, the DOPT or the Ministry of Personnel, Public Grievances and Pensions has provided any reasons for including CBI in the Second Schedule. Such an administrative decision has a profound impact on the citizens of India inasmuch as it restricts their fundamental right to information. Therefore, the DOPT/ Ministry of Personnel, Public Grievances and Pensions ought to have communicated the reasons for this sudden decision to include CBI within the Second Schedule.

Springing such a Notification to shroud CBI with an armour of opacity without giving any reasons, is violative of the promise made by the Parliament in Section 4(1)(d) of the RTI Act. No urgency or emergency appears to have been claimed to justify the inclusion of CBI into the Second Schedule. Since no reasons have been advanced, citizens are likely to deduce that the purpose of including CBI in the Second Schedule was to curb transparency and accountability from the investigations of several corruption cases against high- ranking Government officers. In the absence of any reasons, the Government's move appears to be arbitrary in nature. It appears an attempt is being made to slip in the CBI with National Investigation Agency and the National Intelligence Grid into Schedule two.

In view of the foregoing reasons, the Commission is of the view that the Notification is not in consonance with, either the letter or spirit of the RTI Act,- in particular Section 24,- for the following reasons:

1. As observed above, CBI is not an "intelligence or security organisation", which requirement needs to be satisfied in order for it to be covered under Section 24 of the RTI Act and therefore, it cannot be included in the Second Schedule.
2. No reasons have been provided by the DOPT or the Ministry of Personnel, Public Grievances and Pensions, as required under Section 4(1)( d) of the RTI Act, to justify the inclusion of CBI in the Second Schedule. In the absence of reasons, inclusion of CBI in the Second Schedule along with National Intelligence Agency and National Intelligence Grid appears to be an arbitrary act. The promise made to Citizens under Section 4 (1) (d) of the RTI Act must be fulfilled.

This Commission rules that the said notification of 9/6/2011 is not in consonance with the letter or spirit of Section 24 of the RTI Act, since it constricts the Citizen's fundamental right in a manner not sanctioned by the law.

On perusal of the papers, the Commission noted that information about permanent address of officers based at Delhi and Mumbai was not provided on the basis that it was exempted under Section 8 (1)(g) of the RTI Act. Given the nature of the functions carried out by CBI, disclosure of permanent address of officers may endanger the life or physical safety of such officer. Therefore, the Commission is of the view that the information regarding permanent address of officers based at Delhi and Mumbai was rightly denied by the PIO on the basis of Section 8(1)(g) of the RTI Act. The list of officers working in Delhi and Mumbai along with their place of posting has already been provided to the Complainant.

The Commission further noted that information regarding assets of the officers was held by AIG (P-II). The RTI application was transferred to AIG (P-II) by AIG (P-I) on 10/09/2010. However, no information has been received by the Complainant till date. Moreover, no information regarding query 1 has been provided by the CPIO till date. The PIO has also claimed no exemption under Section 8 (1) for denying this information. Hence it appears to be denial of information without any reason.

**The Complaint is allowed.**

The Commission hereby directs CPIO & SSP (HQ) to provide the complete information to the Complainant in relation to query 1 before **30 July 2011**.

The Commission further directs PIO & AIG (P- II) to provide the details of movable and immovable property of existing CBI officials working in Delhi and Mumbai to the Complainant before **30 July 2011**.

Furthermore, the Commission hereby directs Mr. Ashwani Kumar, CPIO & SSP (HQ) and the PIO & AIG (P- II) to appear before the Commission on **1 August 2011 at 4:00 pm** along with their written submissions to show cause why penalty should not be imposed on them under Section 20 of the RTI Act for failure to provide the complete information to the complainant within the 30 days. They will also bring proof of having sent the information to the appellant. They are directed to produce before the Commission any relevant document(s) that they may have relied on in their written submissions. If there are other persons responsible for not complying with the provisions of the RTI Act, and who have not been included in this show cause notice, Mr. Ashwani Kumar, CPIO & SSP (HQ) and the PIO & AIG (P- II) are directed to serve this show cause to them and direct them to appear before the Commission on 1 August 2011 at 5.00pm.

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**  
**04 July 2011**

**CC: PIO & AIG (P- II) (through Mr. Ashwani Kumar, CPIO & SSP (HQ))**

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