

**CENTRAL INFORMATION COMMISSION**  
**Club Building (Near Post Office)**  
**Old JNU Campus, New Delhi - 110067**  
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**Decision No. CIC/SG/A/2012/000857/19484**  
**Appeal No. CIC/SG/A/2012/000857**

**Relevant Facts emerging from the Appeal:**

**Appellant** : Mr. Mukesh Agrawal  
Nr. Central Bank, Modi Dela  
Chhota Udepur, Dist. Vadodra,  
Gujarat- 391165

**Respondent** Mr. A. Udgata  
PIO & CGM  
**Reserve Bank of India**  
**Urban Bank Department**, Central Office  
1<sup>st</sup> floor, Garment house  
Worli Mumbai- 400018

**RTI application filed on** : 14/12/2011  
**PIO replied** : 10/01/2012  
**First appeal filed on** : 20/01/2012  
**First Appellate Authority order** : not enclosed  
**Second Appeal received on** : 16/03/2012

*The Appellant had sought information regarding process of taking decision to challenge the decisions RBI got stay orders against CIC decisions from Hon'ble High Court of Delhi.*

<b>Sl.</b>	<b>Information Sought</b>	<b>Reply of the Public Information Officer (PIO)</b>
3.1	Certified copies of all papers and process notes pertaining to decision process of RBI to challenge decisions in High Court.	The information sought contains legal opinion obtained from the officers of Legal Department of RBI and the disclosure of the Notings / information would prejudicially affect the cases being prosecuted by RBI before the Hon'ble High Court of Delhi. It is, therefore, exempt from disclosure under Section 8 (1) (e) and (h) of the Right to Information Act, 2005.
3.2.	Certified copies of legal opinions sought by RBI from legal experts out side RBI.	No information is available.
3.3.	Amount of fee paid to legal experts whose opinions have been sought by RBI.	No information is available.
3.4	All file notings relating to decisions to challenge above orders in High Court.	As replied to query at No. 3.1 above.
3.5	Names, designations and places of posting of officers of RBI involved in this decision to challenge CIC decisions.	What is being sought here is personal information, disclosure of which may endanger the life or physical safety of the persons whose names and details have been sought. Such personal information is exempt from disclosure under

		Section 8 (1) (g) of the Right to Information Act, 2005.
3.6	Reasons held on record justifying challenging of above orders.	As replied to query at No. 3.1 above.
3.7	Please permit me to carry out inspection of relevant records.	As replied to query at No. 3.1 above.

**Grounds for the First Appeal:**

Unsatisfactory reply by the PIO.

**Order of the First Appellate Authority (FAA):**

Not enclosed.

**Grounds for the Second Appeal:**

Unsatisfactory reply by the PIO and no reply from the FAA as well..

**Relevant Facts emerging during Hearing on 22 May 2012:**

The following were present

**Appellant:** Mr. Mukesh Agrawal on video conference from NIC-Vadodara Studio;

**Respondent:** Mr. Unni Krishnan, Assistant Legal Advisor on behalf of Mr. A. Udgata, PIO & CGM on video conference from NIC-RBI Studio;

“The PIO claims exemption in providing information in point 3.1 by claiming that advice provided by a lawyer to a customer is held by a customer in fiduciary relationship and hence is exempt under Section 8(1) (e) of the RTI Act. The PIO was referring to the Supreme Court Judgment in the CBSE case and the Commission asked the PIO to send his argument alongwith the a copy of the CIC decision referred by him on email at [rtimonitoring@gmail.com](mailto:rtimonitoring@gmail.com) on before 05.00PM on 24 May 2012.

The appellant states that after a lot of trouble he manages to get an order from the Commission ordering disclosure of information and if public authorities using Public Funds approach courts to ensure non-disclosure of information to citizens the citizens are at complete disadvantage since they are not able to afford the costs in pursuing matters in courts. The Commission explained to the Appellant that the Commission cannot do anything in this matter. The Commission is reserving the decision during the hearing and will give its decision after receiving the submissions from the PIO.”

The matter was reserved.

**Decision announced on 06 July 2012 :**

The submissions were received from the PIO by email. The main contention of the PIO was that for Queries 3.1, 3.4, 3.6 and 3.7 the Commission should accept the PIO’s claim for exemption under Section 8 (1) (e) and (h) and also the claim for exemption under Section 8 (1) (g) against disclosure of information with respect to query 3.5.

The PIO has stated that the exemptions are justified since “*Section 8(1)(e) and (h) of the RTI Act as the information sought contains legal opinion obtained from the officers of Legal Department of RBI and the disclosure of the notings/information would prejudicially affect the cases being prosecuted by RBI before the Hon’ble High Court of Delhi.*”

**A.** The Commission is considering the claim for exemption under Section 8 (1) (e) first.

In his submissions the PIO has mainly contended as follows:

“4. The professional communication between a lawyer and a client has always been given a special treatment of confidentiality under law and such confidentiality is attached not only to the information furnished by the client to the lawyer but also to the opinion given by the lawyer to the client. In this regard, it is relevant to refer to Section 126 of the Indian Evidence Act, 1872 which prohibits a lawyer from disclosing any communication which has been made to him by his client in the course and for the purpose of his employment as well as any advice which has been given by the lawyer to his client. Further, in terms of Section 129 of the Indian Evidence Act, 1872, no person can be compelled to disclose to the Court any confidential information which has taken place between him and his legal professional adviser. It is, therefore, respectfully submitted that legal opinion given by lawyer to the client is well recognized as confidential information on account of the fiduciary relationship between the lawyer and the client and no court or authority can compel a person to disclose a legal opinion which he has obtained from his legal counsel.

5. It is submitted that it is a privilege and right conferred by law on the client to treat as confidential, the legal opinion which has been taken by him from his lawyer. It is precisely to protect this right of the client that the Indian Evidence Act has expressly prohibited any court from compelling a client to disclose the legal opinion which he has obtained. This clearly flows from the fiduciary relationship between the lawyer and the client . However, it is always open to the client to waive his right or privilege and such an act of waiver by the client cannot lead to the conclusion that the legal opinion is not held by the client in a fiduciary relationship.

8. As regards the question whether the advice given by lawyer is held by the client in a fiduciary capacity, it is respectfully submitted that language of Section 8(1)(e) is wide enough to cover legal opinion given by the lawyer whether it is in the hands of the lawyer or it is in the hands of the client. Even though the client is free to present such opinion at any forum as he pleases to support his case, it is not correct to say that the legal opinion is not available to the client in fiduciary relationship. It is submitted that the very purpose of obtaining legal opinion could be to make use of it in support of the client’s case. However, if the client decides not to disclose an opinion which he has obtained, he cannot be compelled to disclose such an opinion even under Section 129 of the Indian Evidence Act. Therefore, it is respectfully submitted that merely because the client may present the lawyer’s advice at any forum that he chooses does not prevent the client from claiming exemption available under Section 8(1)(e) of the RTI Act.”

The Commission looks at the relevant Section of the Indian Evidence Act:

**126. Professional communications -**

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No barrister, attorney, pleader or vakil shall at any time be permitted, unless with his client’s express consent, to disclose any communication made to him in the course and for the purpose of his employment as such barrister, pleader, attorney or vakil, by or on behalf of his client, or to state the contents or condition of any document with which he has become acquainted in the course and for the purpose of his professional employment, or to disclose any advice given by him to his client in the course and for the purpose of such employment:

Provided that nothing in this section shall protect from disclosure—

(1) Any such communication made in furtherance of any <sup>1</sup>[illegal] purpose;

(2) Any fact observed by any barrister, pleader, attorney or vakil, in the course of his employment as such, showing that any crime or fraud has been committed since the commencement of his employment.

It is immaterial whether the attention of such barrister, <sup>2</sup>[pleader], attorney or vakil was or was not directed to such fact by or on behalf of his client.

Explanation

The obligation stated in this section continues after the employment has ceased.

#### 129. Confidential communication with Legal Advisers -

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No one shall be compelled to disclose to the Court any confidential communication which has taken place between him and his legal professional adviser, unless he offers himself as a witness in which case he may be compelled to disclose any such communication as may appear to the Court necessary to be known in order to explain any evidence which he has give, but not others.

Section 126 states, 'No barrister, attorney, pleader or vakil shall at any time be permitted, unless with his client's express consent to disclose any communication made to him'. Thus in this Section there is an express bar on a lawyer parting with information.

In Section 129 the statement is 'No one shall be compelled to disclose to the Court any confidential communication which has taken place between him and his legal professional adviser,'. Thus the choice of disclosure of a lawyer's communication is with the client, whereas there is an express prohibition on the lawyer from disclosing any communication of the client, without his express consent. The Indian Evidence Act clearly recognizes that the nature of information held by a lawyer is held in trust and therefore in a fiduciary relationship, whereas communications from a client to a lawyer are treated differently, since the client does not hold the communications of a lawyer in a fiduciary capacity. This is sufficient to show that though the communications of a client with a lawyer are held in a fiduciary capacity by the lawyer, a client does not hold communications from a lawyer in a fiduciary capacity. The exemption in Section 8 (1) (e) is to information held in a fiduciary capacity and it does not appear that the PIO has established that information about the advices of the lawyers or the legal department is held in a fiduciary capacity by RBI.

The Commission has been holding in various decisions as follows:

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. doctor, lawyer, financial analyst or trustee. Another important characteristic of such a relationship is that the information must be given by the holder of information who must have a choice, as when a litigant goes to a particular lawyer, a customer chooses a particular bank, or a patient goes to particular doctor. An equally important characteristic for the relationship to qualify as a fiduciary relationship is that the provider of information gives the information for using it for the benefit of the one who is providing the information. All relationships usually have an element of trust, but all of them cannot be classified as fiduciary. Information provided in discharge of a statutory requirement, or to obtain a job, or to get a license, cannot be considered to have been given in a fiduciary relationship.

The PIO has challenged this definition of information held in a fiduciary capacity by saying that there is no element of choice in a parent child relationship. Even in this relationship the child has a choice of whether she wishes to give the information to the parent. The Commission accepts this contention and therefore modifies the definition of information held in a fiduciary capacity as follows:

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. doctor, lawyer, financial analyst or trustee. Another important characteristic of such a relationship is that the information must be given by the holder of information who must have a choice, whether to give the information or not. An equally important characteristic for the relationship to qualify as a fiduciary relationship is that the provider of information gives the information for using it for the benefit of the one who is providing the information. All relationships usually have an element of trust, but all of them cannot be classified as fiduciary. Information provided in discharge of a statutory requirement, or to obtain a job, or to get a license, cannot be considered to have been given in a fiduciary relationship.

The PIO has also quoted two decisions of the Commission which have been given earlier in support of his claim that the advice received from lawyers or legal department need not be disclosed. The PIO has referred to the Commission's decision given on 30.06.2006 in the case of Maj. J.S. Kohli (Retd.) v. Telecom Regulatory Authority of India (Appeal No. 411CPB12006) in which it was held as under:

"When a counsel is engaged, the doctrine of legal professional privilege comes into existence, automatically creating a fiduciary relationship between the client and the advocate. There is no need for a formal agreement establishing fiduciary relationship. A client has to be confident that the information shared with a lawyer and received from that lawyer shall remain confidential. Without such a confidence, there are risks of lack of openness between the client and the lawyer and threat to the administration of justice. In other words, the doctrine of legal professional privilege is sacred and as such any information given by the client and received from the counsel need not be disclosed." I note that the conclusion that in the instant decision the Honourable Information Commissioner has given no reasons for concluding that information received by a client from a counsel need not be disclosed. The Commissioner has not even claimed that the information is exempt under Section 8(1) (e) of the RTI Act or that it is held in a fiduciary relationship.

The PIO has also cited the Commission's decision dated 28.08.2007 in the case of Sanjay Kumar Gupta v. RBI (Appeal No. 849/ICPB/2007 F.No. PBA/O7/575 on the ground that it had upheld that legal advice given by In-house Counsel is entitled to exemption from disclosure under the RTI Act. This Commission had observed in the aforesaid case as under:

It is felt that the letter can be provided to the appellant excepting the legal advice given by the In-house Council. I, therefore, direct the CPIO to provide the letter which consists of the factual information regarding the appellant's account to the appellant after segregating the legal opinion under the provisions of section 10(1) of the RTI Act....". In this decision also no reasons have been provided, nor any justification that the Commission had come to the conclusion how the information was exempted by the provisions of Section 8 (1) of the RTI Act. In view of these decisions appear to be *per incuriam* and hence this bench does not agree with them.

The PIO has also claimed exemption for the information sought at Queries 3.1, 3.4, 3.6 and 3.7 under Section 8 (1) (h) of the RTI Act.

Section 8(1)(h) of the RTI Act exempts "*information which would impede the process of investigation or apprehension or prosecution of offenders;*". The PIO has admitted that there is no investigation going on but claims that the ongoing writ in the court should be treated as prosecution and thus the information should be denied. This is a very ingenious interpretation which seeks to widen the scope of the intention of the Parliament far more than the words permit. Effectively the PIO is claiming that when a matter is sub-judice the information regarding it can be denied under Section 8(1)(h). Parliament has not said this at all and it appears that the PIO is stretching this argument too far beyond what Parliament intended. The PIO has claimed that disclosure of the notings would result in affecting the judicial proceedings. The Commission does not see any validity in this argument since no argument has been advanced to show how the judicial proceedings would have an adverse bearing on judicial proceedings.

The PIO has claimed exemption under Section 8(1)(g) of the RTI Act to deny information in query 03.5 and provided the example by quoting Supreme Court Judgment in case of CBSE and Anr. V. Aditya Bandopadhyay & Ors. (reported in JT 2011(9)SC212). The PIO is claiming that the position of examiners and the CBSE exam is equal to that of Public Servants performing their normal duties. Names and designations of public servants performing their normal duties must be made available to the citizens and citizens have a right to seek accountability from such officers. The PIO's comparison of examiners with Public Servants performing their duties is not tenable and hence the Commission cannot accept the claim of protection under Section 8(1)(g) for information sought in query 03.5.

The Commission does not uphold the exemptions claimed by the PIO under Sections 8(1)(e), (g) & (h).

The Appeal is allowed.

The PIO is directed to provide the information on queries 3.1, 3.4, 3.5 and 3.6 to the Appellant before 31 July 2012.

The PIO is also directed to facilitate an inspection of the said records by the Appellant as sought in query 3.7 on a mutually convenient date and time.

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**  
**06 July 2012**

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