

**CENTRAL INFORMATION COMMISSION**  
**Appeal/Complaint No. CIC/AD/C/X/2009/000031**  
**CIC/AD/A/2009/000191**  
**CIC/AD/A/2009/000358**  
**CIC/SG/A/2008/00311/AD**

**Appellant /Complainant:** Brig. (Retd.) Ujjal Dasgupta (Dr.Bandana Malhotra – Representative Appellant)

**Public Authority** : Centre for Development of Advanced Computing (CDAC);  
 (Shri Sudhir Walia, Advocate (for RAW), Smt. Sumati Kumar,  
 Director & CPIO, Cabinet Secretariat, Sh. Shriniwas S. Pownikar,  
 CPIO, Geeta Kulkarni and Sonali Navare)

**Date of Hearing** : 16/08/2010

**Date of Decision** : 29/09/2010

As directed vide the order of the High Court of Delhi in **WP(C) No.9084/2009 dated April 6, 2010** in the matter of Brig (Retd.) Ujjal Dasgupta, vs. C-DAC, Pune, the Commission heard the case the subject matter of which is the RTI request dated 30/06/2008 preferred by Brig(Retd) Ujjal Dasgupta, before the CPIO, Centre for Development of Advanced Computing(C-DAC), Pune, seeking information in respect of *Anveshak* software developed by C-DAC for R&AW as follows:-

- “4. Particulars of Information Required: Following information, / wise in detail, in respect of ANVESHAK software developed by C-DAC, Pune, may kindly be provided urgently:-
- (a) Was the software developed at the vendor’s premises? If so, was the software conveyed to the user’s premises in arrangements of the vendor?
  - (b)On what storage media, e.g., CDs/ floppy disks/pen drive was the software taken to the user’s premises?
  - (c)How many such storage media and of what capacity are needed to contain the uninstalled software?
  - (d)Which agency was responsible for installing the software as the user’s premises on the user’s options- the development agency i.e. C-DAV, or the users themselves?
  - (e)Here the storage media containing the uninstalled software handed over to the users after installation on the user’s system or at any time thereafter, or were these retained by C-DAC.
  - (f) If the software designed to work on a server-chat mode over a LAN/local area network, or is it designed to work on a stand-alone machine mode?
  - (g)If it is designed to work on a server- chat mode over a LAN, on such machine is the software installed.
  - (h)Does the software increase in size as a result of being installed? That is the size of this installed software.

- (i) What is the role of C-DAC after the software is installed at user premises? Is there any continuing responsibility, and if so what? How is the responsibility fulfilled?
5. Period of which information asked for:-2003 to mid 2006
  6. I state that the information sought does not fall within the restrictions contained in the Act. To the best of my knowledge it pertains to your office.
  7. The information being sought has a bearing on the personal liberty of the applicant. Hence your reply is requested within 48 hours of receipt of this request vide sec 7(1) of the Act.”

2. In this order, the Hon'ble High Court has observed that the matter be referred back to the CIC since:-

- “11. It is plain to this Court from a reading of Sections 11 and 19(4) of the RTI Act that once the CIC acknowledges that the information sought pertains to a third party, in this case, R&AW, then without notice to such third party and hearing its views in the matter, the CIC cannot proceed further in the matter. Whether in fact the public interest in the disclosure of the information outweighed in importance any possible harm or injury to the interest of such third party in terms of the provisions of Section 11(1) of the RTI Act, had to be decided by the CIC only after hearing such third party in terms of the provisions of Section 11(1) of the RTI Act, had to be decided by the CIC only after hearing such third party. Inasmuch as the software of the Project Anveshak has been developed exclusively for the R&AW, the question of disclosure of any such information had to be decided only after hearing the R&AW.
- “12. There is yet another ground on which the CIC erred. Section 24(1) of the RTI Act states that the Act will not apply to intelligence and security organizations specified in Second Schedule to the Act. At Serial No.2 in the Second Schedule to the RTI Act is listed “Research and Analysis Wing of the Cabinet Secretariat. In terms of the proviso to Section 24 where the information sought is in respect of allegations of violation of human rights or allegations of corruption, it is not excluded. However, this could also not be decided by the CIC without hearing the R&AW. The CIC having noted that the information pertained to Project Anveshak of the R&AW, ought to have first and foremost considered the applicability of Section 24 of the RTI Act before proceeding to consider whether the information stood exempted under any other provision of the RTI Act.
- “13. Clearly, therefore, **the CIC was in error in overlooking Section 24 of the RTI Act as well as Section 11<sup>1</sup> read with Section 19 thereof.**”

3. For the aforementioned reasons, the order of the Commission dated 04/05/2009, **no. CIC/AD/A/2009/000358; CIC/AD/A/2009/000191; CIC/SG/A/2008/00311/AD; & CIC/AD/C/X/2009/000031** was set aside with the directions that ***“The appeal of Respondent No.1 is revived before the CIC which will proceed in accordance with law.***

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<sup>1</sup> Emphasis added

***Notice will be issued by the CIC to the R&AW and it shall be given an opportunity to file a reply and of being heard before the final orders can be passed in the Respondent No.1's appeal by the CIC. The CIC is requested to dispose of the appeal of Respondent No.1 within a period of four months from the date of receipt of a copy of this order."***

4. Accordingly, the case was heard by the Bench of Smt. Sandhu on 08/07/2010 and disposed of vide order of even No. dated 08/07/2010 through which the matter was referred to the full bench of the Commission consisting of Chief Information Commissioner Shri Wajahat Habibullah, Information Commissioner Ms Annapurna Dixit and Information commissioner Ms Deepak Sandhu to be heard on 16/08/2010.

5. The respondent and representative of the appellant were present in person as above. The appellant Brig Das Gupta was heard through video conference.

6. **Statement of the R&AW:-**

The Full Bench of the Commission heard the submissions of the representatives of the Research & Analysis Wing, who had already submitted their written submissions under covering letter dated 23/07/2010. They averred that the information sought by the applicant related to a highly sensitive and classified project "Anveshak" which was developed by C-DAC on behalf of the Research & Analysis Wing, and pertained to the data base management system used for storage and retrieval of sensitive data collected by the R&AW on such issues as may be construed as being highly sensitive and which are connected with the security and defence of the country. They further argued that the information sought with regard to project "Anveshak" – its working, storage, platform, capacity, etc., cannot be provided as it would result in putting sensitive information in the public domain thereby jeopardizing national security as this information could well be used by India's adversaries. This fact must be seen along with the provisions of the RTI Act as defined u/s 24(1), which specifically holds that the intelligence and security organisations specified in the Second Schedule are outside the pale of the RTI Act, 2005 with the exception that the information pertaining to allegations of corruption and Human Rights violations shall not be excluded under this sub section.

7. Respondent, with a view to establishing that there was no valid allegation of human rights violations committed in the extant case emphasised that the applicant had been jailed in pursuance of registration of an FIR by the Special Cell, Delhi Police. Subsequently, the applicant had filed bail applications which have been rejected by the competent courts of law and, therefore, allowing him the full benefit of legal remedy, and thus would not attract the proviso to section 24(1).

8. Respondent invited the attention of the Commission to the fact that the RTI application preferred by Brigadier (Retd.) Ujjal Dasgupta was rejected by the CPIO of C-DAC on the ground that project *Anveshak* was developed under a contract with the Govt. Of India and, as per the terms of the contract, C-DAC was bound to maintain total confidentiality in respect of all aspects relating to the said project.

### 9. Arguments of Appellant:-

The appellant through his arguments sought to question the very premise that R&AW is, in fact, a third party and qualifies as such for notice u/s 19(4). He also put forth arguments to challenge the fact that R&AW was the originator/owner of the information sought by him. He has argued along these lines in paras 10, 11, 12&13 of his rejoinder to the comments of R&AW forwarded to the Commission vide his letter of 11/08/2010.

10. The second argument made by the appellant was that the onus of proof that denial of request is justified shall be on the CPIO who has denied the request. Here the appellant has quoted the provisions of section 19(5) of the Act at para 17 of his rejoinder and buttressed his arguments further by quoting from orders of the Commission and the Hon'ble High Court of Delhi – (CIC's order **No.CIC/WB/A/2008/00385** dated 18/02/2008 and the High Court of Delhi in **W.P. (C) No.3114/2007 – Bhagat Singh Vs. Chief Information Commissioner and Ors.**). The appellant summed up his arguments questioning the omnibus description of diverse types of information as “highly sensitive and classified” as being contrary to the RTI Act and not qualifying as legitimate grounds for exemption. Appellant also stated that the CPIO was bound to adhere to the cardinal principle of fulfilment of the “onus to prove that denial of a request was justified” which, as per appellant, the CPIO had failed in fulfilling.

## DECISION NOTICE

### 11. Discussion & Analysis

Having heard the arguments presented by both sides and examined the record, the Commission notes that the CPIO in his order of 11/09/2008 has decided as follows:-

“the information asked by you relates to “Anveshak” software developed by C-DAC under a contract with Govt. of India.

Since C-DAC is bound to maintain total confidentiality of all information regarding the said project, it is regretted that information asked by you cannot be disclosed by C-DAC.”

12. In his order, the CPIO had made a reference to the contract signed between the assignor of the project, in this case R&AW and the agency, namely, C-DAC who was assigned to develop the software. With reference to the said contract, the CPIO has stated that C-DAC is bound to maintain total confidentiality of all information pertaining to the project and denied information on this ground. It is pertinent at this stage to highlight the fact that the ‘confidentiality clause’ as contracted in the contract between C-DAC and RAW was never brought to the notice of the Commission which led to the erstwhile decision directing C-DAC to furnish the information. Even at this stage, i.e. during the present hearing, the Commission was not informed about the confidentiality clause in the body of the Contract.

13. With reference to the argument made by the appellant questioning the legitimacy of giving third party status to R&AW in this case, the fact of the contract being signed between R&AW and C-DAC which governs all aspects of the Anveshak project and, unquestionably, establishes co-ownership of the project jointly by C-DAC and R&AW more than establishes the position of R&AW as third party in this case.

14. After hearing representatives of R&AW and keeping in view the arguments made before the Commission by the appellant and the representatives of C-DAC, the Commission dwelt on the fact that the entire edifice of project *Anveshak* rested on the terms and conditions of the contract signed between the assignee of the project, namely, R&AW and the agency assigned to develop the software. It is this contract, which, in the view of the Commission, would hold the key to the critical issue of the ownership of the software *Anveshak* and the terms and conditions under which this software was to be developed and protected. It established that the information sought was owned by R&AW, an agency listed at S. No. 2 of the Second Schedule, it would place this information, even if held by C-DAC as information access to which would be determined by Sec 2(j) and thus covered by Sec 24(1)

15. **Decision.**

Accordingly, it was felt imperative for the Commission to examine the contract before reaching a decision regarding the disclosability of any matter pertaining to project *Anveshak*. Being a confidential document, the copy of the contract was available with C-DAC at their Head Office, Pune. Through our letter No.CIC/AD/A/2009/000358-DS dated 24/08/2010, C-DAC was directed to produce the contract before the Commission, which was complied with and the contract under *sealed cover* was submitted to the Commission through *special messenger* on 01/09/2010. A perusal of this confidential document clearly brings out the fact that the software *Anveshak* is jointly owned by C-DAC and R&AW. The contract also very clearly states that all aspects pertaining to this software would be secret and no information whatsoever pertaining to the said software will be given out by the officials of C-DAC who are dealing with this project. As per the contract, all officials of C-DAC dealing with this project would sign independent undertakings swearing themselves to secrecy. This leaves no doubt that all aspects pertaining to project *Anveshak* including the software and hardware are covered by the secrecy clause in the contract signed between C-DAC and R&AW and that the CPIO in his order dated 18/10/2008 has rightly alluded to this contract while denying disclosure. This will bring the matter within the exemption from disclosure mandated u/s 8(1) (a)

16 Moreover, the fact that is amply established in the confidential contract between C-DAC and R&AW is that of ownership of *Anveshak* software vests jointly with the two organisations with the CDAC committed by contract to subserve the interest of R&AW, and squarely brings the matter u/s 24(1) and the 2<sup>nd</sup> Schedule referred to therein at which R&AW is listed at Sl.2 clearly indicating that the information sought is covered by Sec 24(1), apart from being exempt u/s of the Act. The complaint and appeals are hereby dismissed.

17. Reserved in the hearing, this Decision is announced in open chambers on this the twenty-ninth day of September 2010. Notice of this decision be given free of cost to the parties.

(Wajahat Habibullah)  
Chief Information Commissioner

(Annapurna Dixit)  
Information Commissioner

(Deepak Sandhu)  
Information Commissioner

Authenticated true copy

(T.K.Mohapatra)  
Deputy Registrar

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