

**EXECUTIVE DIRECTOR AND FIRST APPELLATE AUTHORITY
INSOLVENCY AND BANKRUPTCY BOARD OF INDIA**

2nd Floor, Jeevan Vihar Building,
Sansad Marg, New Delhi- 110 001
Dated: 3rd July, 2020

RTI Appeal Registration No. ISBBI/A/E/20/00011
RTI Appeal Registration No. ISBBI/A/E/20/00012
RTI Appeal Registration No. ISBBI/A/E/20/00013

IN THE MATTER OF

Mr. Manoj K Kamra

..... Appellant

Vs.

Central Public Information Officer

Insolvency and Bankruptcy Board of India
7th Floor, Mayur Bhawan, Shankar Market
New Delhi – 110001.

..... Respondent

ORDER

1. Multiple appeals have been filed by the appellant against various information provided by the respondent to his RTI requests pertaining to the similar issues. This common order disposes of all the appeals preferred by the appellant, details of which are under the Table below, as received by the office of this First Appellate Authority (FAA):

Sl. No.	RTI Registration No.	RTI Appeal Registration No.	Date of RTI Appeal
1.	ISBBI/R/E/20/00066	ISBBI/A/E/20/00011	4 th June 2020
2.	ISBBI/R/E/20/00068	ISBBI/A/E/20/00012	4 th June 2020
3.	ISBBI/R/E/20/00070	ISBBI/A/E/20/00013	4 th June 2020

2. The main ground for all the appeals according to the appellant is: ***Provided Incomplete, Misleading or False Information.***
3. The appellant has requested for disposal of the appeals with detailed reasons pointwise by conducting quasi-judicial hearings. For this, the appellant has relied upon the judgment of Supreme Court in *Namit Sharma v/s Union of India in Writ Petition* (Civil) No. 210 of 2012, and submitted the following -

‘In keeping with the principles of natural justice it is binding upon a First Appellate Authority to a grant of hearing to a RTI Appellant.’

4. The appellant has also requested this FAA to conduct appeal proceedings through telephonic hearing. On his request, FAA granted the opportunity to appellant to make submissions over phone in support of the afore mentioned appeals. Considering the prevailing Covid-19

pandemic conditions, travel difficulties and social distancing norms, a telephonic hearing was granted and conducted with the appellant on 2nd July 2020 at 11:00 AM. Mr. Anshul Agrawal, Assistant Manager, IBBI assisted the FAA in the telephonic hearing.

ISBBI/A/E/20/00011

5. This appeal is borne out of the application under Right to Information (RTI) Registration No. ISBBI/R/E/20/00066. The information sought by the appellant under section 6 of the Right to Information Act, 2005 (Act) and the reply given by the respondent are as under:

<i>Sl. No.</i>	<i>Information Sought</i>	<i>Reply by CPIO</i>
<i>1.</i>	<p><i>Sub-pdf of status of delivery of my email request and further forwarding till date of my 7 reminders of email sent to cbdt, IBBI, secy (finance) with copy attached on dates-(emails attached)</i></p> <p><i>Ref- Valuers Bill-2020 suggestions invited with last date of 28 May 2020 needing well timed reply to submit suggestions to Ministry of company affairs</i></p> <p><i>(1) From: manojkamra rti manojkamrarti@gmail.com Date: Tue, Dec 5, 2017 at 3:18 PM To: chairperson@ibbi.gov.in</i></p> <p><i>(2) Date: Tue, Jan 23, 2018 at 4:38 PM</i></p> <p><i>(3)Date: Date: Wed, Aug 28, 2019 at 4:35 PM To: chairperson@ibbi.gov.in , chairmancbdt@nic.in</i></p> <p><i>(4)Date: Mon, Oct 14, 2019 at 11:04 AM chairperson@ibbi.gov.in , chairmancbdt@nic.in</i></p> <p><i>(5)Date: Thu, Oct 17, 2019 at 11:44 AM To: chairperson@ibbi.gov.in , chairmancbdt@nic.in</i></p> <p><i>(6)Date: Wed, Nov 27, 2019 at 10:50 AM To: chairperson@ibbi.gov.in , chairmancbdt@nic.in Cc: secy-fs@nic.in , as-fs@nic.in</i></p> <p><i>(7)Date: Wed, Dec 11, 2019 at 6:21 PM To: chairperson@ibbi.gov.in , chairmancbdt@nic.in Cc: secy-fs@nic.in , mosfinance@nic.in</i></p> <p><i>(8)Date: Tue, Dec 24, 2019 at 4:16 PM To: chairperson@ibbi.gov.in , chairmancbdt@nic.in Cc: secy-fs@nic.in , mosfinance@nic.in</i></p>	<p><i>Vide email dated 13th December 2019, IBBI conveyed noting of the suggestion mentioned given by RTI Applicant mentioned in the email dated 17th October 2019.</i></p> <p><i>No further action has been undertaken in this regard.</i></p>

ISBBI/A/E/20/00012

6. In this appeal, bearing Right to Information (RTI) Registration No. ISBBI/R/E/20/00068, the information sought by the appellant under section 6 of the Act and the reply given by the respondent are as under:

<i>Sl. No.</i>	<i>Information Sought</i>	<i>Reply by CPIO</i>
	<p><i>Sub-</i> Details of status of RTI compliance by CPIO-IBBI in the last two years and related details</p> <p><i>Ref-</i> Recent first appeal order badly violated by CPIO by giving status of <u>my pgportal complaint</u> deliberately suppression of status of my 8 email reminders in more than two years span from december 2017 to Feb 2020 EXPOSING total ignorence in view of no citation in the draft valuers bill 2020 under finalization till 28 May 2020 by IBBI - copy of email with 8 reminders attached for stopping extreme corruption of award of valuation works to single valuer in Rule-243 under company rule (2017)</p>	
1.	Copy of discretion given to CPIO IBBI to overrule his FAA order, if any (my teleconferencing hearing took place on 10 April directing CPIO to provide status of email and its 8-reminders)	Information sought is suggestive in nature. As per FAA instruction all relevant documents have been provided.
2.	If 1 is no, copy of overruling order given by competent authority to ignore FAA order.	Information sought is suggestive in nature. As per FAA instruction all relevant documents have been provided.
3.	Status of all 8 reminders of my email (total 9 emails) whether deleted or forwarded	Vide email dated 13th December 2019, IBBI conveyed noting of the suggestion mentioned in the email dated 17th October 2019. As per FAA Order all relevant noting have been conveyed.
4.	If forwarded, copy of forwarding letter of concerned authority (needing disclosure prior to 28 May 2020 for submission of suggestions)	Vide email dated 13th December 2019, IBBI has already responded to the email dated 17th October 2019. As per FAA Order all relevant noting have been conveyed.
5.	Liabile authority for ignoring such important aspect in the valuers bill 2020 (raised continuously for more than two years by email reminders)	Information sought is suggestive in nature.
6.	Copy of exemption given by DoPT, DARPG to IBBI to delete any email, reminders as per discretion, if any	Information sought is suggestive in nature.

7.	<i>Pdf of Quarterly, annually RTI return submitted by IBBI in the last two years.</i>	<i>Information sought is available at the website at https://www.ibbi.gov.in/home/rti.</i>
8.	<i>If 7 is no, copy of exemption to IBBI for submission of RTI return.</i>	<i>Information sought is available at the website at https://www.ibbi.gov.in/home/rti.</i>

7. The above being the grounds as alleged by the appellant, during the telephonic hearing, the appellant has submitted that he is pressing only the following grounds in the appeals to obtain orders from this FAA:

Information sought as per request No. 4 -

The appellant contended that the respondent has nowhere disclosed addressee of his emails to whom 7 emails out of the total 8 emails alleged to have been sent by him, were forwarded. He further contended that the respondent did not provide any information regarding these 7 emails, which, according to him is in total disregard to the provisions of the Act.

Information sought as per request No. 5 -

The appellant also alleges that the respondent has no authority to ignore the important aspects of his suggestions on the draft Valuers Bill, disclosure of which would have benefitted him, for them to be included in the draft of Valuers Bill. Moreover, he has been raising his suggestions continuously for more than two years by email reminders.

8. The Appellant has further submitted that the respondent has failed to reply within requested time limit prior to the last date of submission of suggestions to the Valuers Bill-2020, which according to him, has affected his life and liberty and that the respondent was under obligation to provide information within 48 hours of receipt of RTI request in terms of proviso to sub-section (1) of section 7 of the Act. This FAA takes cognizance that the information requested by the appellant in the RTI Registration No. ISBBI/R/E/20/00068 (**ISBBI/A/E/20/00012**) does not fall within the scope of “*information concerning the life or liberty of a person*” under Section 7(1) of the Act. For this purpose, the FAA relied on Central Information Commission observation in *N.N. Kalia v. University of Delhi* (vide order dated 3rd September 2009) wherein it was stated that,

“Proviso of Section 7(1) states that where the information sought concerns the life and liberty of a person, the same shall be provided within forty-eight hours of the receipt of the request. This provision has to be applied only in exceptional cases and the norm is that information should be provided within thirty days from the receiving date. Whether the information sought concerns the life and liberty of a person has to be carefully scrutinized and only in a very limited number of cases this ground can be relied upon. The government machinery is not designed in a way that responses to all RTI Applications can be given within forty-eight hours. A broad interpretation of 'life and liberty' would result in a substantial diversion of manpower and resources towards replying to RTI Applications which would be unjustified. Parliament has made a very special exception for cases involving 'life and liberty' so that it would be used only when an imminent threat to life or liberty is involved.

*The life and liberty provision can be applied only in cases where there is an imminent danger to the life and liberty of a person and the non-supply of the information may either lead to death or grievous injury to the concerned person. Liberty of a person is threatened if she or he is going to be incarcerated or has already been incarcerated and the disclosure of the information may change that situation. If the disclosure of the information would obviate the danger then it may be considered under the proviso of Section 7(1). The imminent danger has to be demonstrably proven. The Commission is well aware of the fact that when a citizen exercises his or her fundamental right to information, the information disclosed may assist him or her to lead a better life. **But in all such cases, the proviso of Section 7(1) cannot be invoked unless imminent danger to life and liberty can be proven.***

9. Since there was no imminent danger to the life and liberty of the appellant, this FAA is convinced that the respondent was not under the obligation to respond within forty-eight hours of the receipt of the request of the appellant.

10. It is alleged by the appellant that he had sent the following e-mails to IBBI:

Sl. No.	E-mail Dated	Addressed authority in IBBI	CC to in IBBI
1.	December 5, 2017 (3:18 PM)	Chairperson, IBBI	-
2.	January 23, 2018 (4:38 PM)	Chairperson, IBBI	-
3.	August 28, 2019 (4:35 PM)	Chairperson, IBBI	-
4.	October 14, 2019 (11:04 AM)	Chairperson, IBBI	-
5.	October 17, 2019 (11:44 AM)	Chairperson, IBBI	-
6.	November 27, 2019 (10:50 AM)	Chairperson, IBBI	-
7.	December 11, 2019 (06:21 PM)	Chairperson, IBBI	-
8.	December 24, 2019 (04:16 PM)	Chairperson, IBBI	-
9.	February 06, 2020 (08:54 AM)	Chairperson, IBBI	complaintsandgrievances@ibbi.gov.in

11. The above being the contentions of the appellant, the respondent has submitted that *vide* email dated 13th December 2019, IBBI has already responded to the email dated 17th October 2019. According to him, every other information sought by the appellant was either suggestive in nature or that the relevant information was already available on the website of the IBBI. The respondent also submitted that, as per FAA Order dated 10th April, 2020, all relevant noting have been conveyed to appellant (refer FAA in Appeal No. ISBBI/A/E/20/00002), and as such,

the order of the FAA has already been complied with. As regards suggestive nature of RTI request and the nature of question/opinions expected from the CPIO, the respondent contended that he is not under obligation to express opinions in any matter. In this connection, the order of the Hon'ble High Court of Bombay, in the matter of *Dr. Celsa Pinto, Ex-Officio Joint Secretary (School Education) vs The Goa State Information Commission* on 3rd April, 2008 (2008 (110) Bom L R 1238) is relevant for consideration. It was held that:

“Section 2(f) - Information means any material in any form, including records, documents, memos e-mails, opinions, advices, press releases, circulars, orders, logbooks, contracts, reports, papers, samples, models, data material held in any electronic form and information relating to any private body which can be accessed by a public authority under any other law for the time being in force;

*The definition cannot include within its fold answers to the question “why” which would be the same thing as asking the reason for a justification for a particular thing. **The Public Information Authorities cannot expect to communicate to the citizen the reason why a certain thing was done or not done in the sense of a justification because the citizen makes a requisition about information. Justifications are matter within the domain of adjudicating authorities and cannot properly be classified as information.**”*

Further, in the Guide on Right to Information Act, 2005 issued vide OM No. 1/32/2013-IR dated 28th November, 2013 of DoPT, it is stated that:

“The Public Information Officer is not supposed to create information that is not a part of the record of the public authority. The Public Information Officer is also not required to furnish information which require drawing of inference and/or making of assumptions; or to interpret information; or to solve the problems raised by the applicants; or to furnish replies to hypothetical questions.”

The observations of the Hon'ble Supreme Court in the matter of *CBSE & Anr. Vs. Aditya Bandopadhyay & Ors.*, SLP(C) NO. 7526/2009 is also relevant, wherein it was held that:

*“35. At this juncture, it is necessary to clear some misconceptions about the RTI Act. The RTI Act provides access to all information that is available and existing. This is clear from a combined reading of section 3 and the definitions of ‘information’ and ‘right to information’ under clauses (f) and (j) of section 2 of the Act. If a public authority has any information in the form of data or analysed data, or abstracts, or statistics, an applicant may access such information, subject to the exemptions in section 8 of the Act. But where the information sought is not a part of the record of a public authority, and where such information is not required to be maintained under any law or the rules or regulations of the public authority, the Act does not cast an obligation upon the public authority, to collect or collate such non-available information and then furnish it to an applicant. **A public authority is also not required to furnish information which require drawing of inferences and/or making of assumptions. It is also not required to provide ‘advice’ or ‘opinion’ to an applicant, nor required to obtain and furnish any ‘opinion’ or ‘advice’ to an applicant. The reference to ‘opinion’ or ‘advice’ in the definition of ‘information’ in***

section 2(f) of the Act, only refers to such material available in the records of the public authority. Many public authorities have, as a public relation exercise, provide advice, guidance and opinion to the citizens. But that is purely voluntary and should not be confused with any obligation under the RTI Act.”

12. The above being the position, this FAA is convinced that the respondent was not under obligation to express any opinion or provide suggestive assumption or provide any answer to any question posed by the appellant and also that he was not required to provide any information which is already available in public domain. At the best, he could telescope the source of information, which he has done in the matter when he provided the link to the information. The appellant has no case that the link provided by the respondent was wrong or that he misguided the appellant. However, the FAA notes that the appellant is basically seeking information on the forwarding status of his aforesaid 9 e-mails. Although in respect of appeal No. **ISBBI/A/E/20/00011**, the respondent has informed that “no further action has been undertaken in this regard”, if the emails sent by the appellant were forwarded to any authority, he has a right to know about the same. This status of e-mails falls within the definition of ‘information’ which is defined as “*means any material in any form, including records, documents, memos, e-mails, opinions, advices, press releases, circulars, orders, logbooks, contracts, reports, papers, samples, models, data material held in any electronic form and information relating to any private body which can be accessed by a public authority under any other law for the time being in force*” under Section 2(f) of the Act. Accordingly, this casts an obligation under the Act on the respondent to provide information, if available, as to whether (i) the emails sent by the appellant were forwarded to any other authority; and (ii) if these were forwarded, the name of the authority and the date and time of such forwarding along with the copy of the forwarding emails, shall be provided to the appellant. Accordingly, this FAA directs the respondent-CPIO to provide the appellant with the details in terms of (i) and (ii) above, within 10 days from the date of receipt of this order.

13. In terms of paragraph 12, appeals **ISBBI/A/E/20/00011** and **ISBBI/A/E/20/00012** are disposed of.

ISBBI/A/E/20/00013

14. This appeal is in pursuance of RTI Registration No. ISBBI/R/E/20/00070. The information sought by the appellant under section 6 of the Act and the reply given by the respondent are as under:

<i>Sl. No.</i>	<i>Information Sought</i>	<i>Reply by CPIO</i>
1.	<i>Sub-</i> Details of private app launched to receive suggestions on draft valuers bill 2020 for legislative work and related details	Reply 1-4, information sought is not available.

<p>Ref- As per DEITY (email policy of govt of india 16pp), DARPG (indian govt website policy 132 pp) , NIC server is to be used for govt work and email ID used must be of nic.</p> <p>(1) Copy of exemption given to IBBI from complying DEITY, DARPG rulings for using private app for receiving suggestion of draft valuers bill 2020.</p> <p>(2) Copy of inability expressed by DEITY to prepare such app for receiving suggestion for draft valuers bill 2020 (compelling IBBI to use private app on govt website for legislative work)</p> <p>(3) Copy of notesheets of decision taken to launch such private app for legislative work</p> <p>(4) Legal validity of use of such private app for legislative work</p> <p>The email policy of the government of India The government of India does have a very specific email policy. The policy puts out some stringent rules while using emails at government offices and also by employees outside. The objective of the policy was to ensure secure access and usage of Government of India e-mail services by its users. It is recommended for users working in sensitive offices to use VPN/OTP for secure authentication as deemed appropriate by the competent authority. It is recommended that GoI officials on long deputation/stationed abroad and handling sensitive information should use (VPN)/ (OTP) for accessing GoI e- mail services as deemed appropriate by the competent authority. Use of Digital Signature Certificate (DSC) and encryption shall be mandatory for sending e-mails deemed as classified and sensitive, in accordance with the relevant policies of Ministry of Home Affairs. Users shall not download e-mails from their official e-mail account, configured on the GoI mail server, by configuring POP or IMAP on any other e-mail service provider. This implies that users should not provide their GoI e-mail account details (id and password) to their accounts on private e-mail service providers. Any e-mail addressed to a user, whose account has been deactivated /deleted, shall not be redirected to another e- mail address. Such e-mails may contain contents that belong to the Government and hence no e-mails shall be redirected.</p>	
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15. The appellant has submitted that respondent outrightly refused RTI request by stating that the requisite information was unavailable, without specifying any relevant section empowering him to make such refusal. It has also been agitated by him that the respondent has not made any diligent effort to identify closely related authority with whom the information must be lying as mandated under the Act and DoPT Circulars, Guidelines for FAA (2008), Section 19(5) of Act. It is also alleged by the appellant that the respondent has failed to timely transfer

this application under section 6(3) to the closely related authority, which according to the appellant is the Deputy Secretary, Ministry of Corporate Affairs, who permitted the use of such private app.

16. In this regard, the respondent has submitted that IBBI had not devised any private computer application for inviting suggestions from the public on the Valuers Bill and that he has accordingly informed the appellant. He further submitted that information as to exemption given to IBBI from complying DEITY, DARPG rulings for using private app for receiving suggestion of draft Valuers Bill 2020; Copy of inability expressed by DEITY to prepare such app for receiving suggestion for draft Valuers Bill 2020 (compelling IBBI to use private app on govt website for legislative work); Copy of note-sheets of decision taken to launch such private app for legislative work; Legal validity of use of such private app for legislative work; Email policy of the Government of India, were all unavailable with IBBI and hence, reply to that effect was provided to the appellant. He contended that he could have given only such information as were available with IBBI. In *Khanapuram Gandiah v. Administrative Officer and Ors.*, SLP (C) 34868 of 2009 (Decided on January 4, 2010), it was held by the Supreme Court that:

“ . . . the Public Information Officer is not supposed to have any material which is not before him; or any information he could have obtained under law. Under Section 6 of the RTI Act, an applicant is entitled to get only such information which can be accessed by the “public authority” under any other law for the time being in force. The answers sought by the petitioner in the application could not have been with the public authority nor could he have had access to this information and Respondent No. 4 was not obliged to give any reasons as to why he had taken such a decision in the matter which was before him. ”

From the above, it is found that the responded was justified in not providing information which was not available with him. The respondent-CPIO has not outrightly rejected the request of the appellant.

17. Accordingly, appeal **ISBBI/A/E/20/00013** has no merits and is thus dismissed. The appeals **ISBBI/A/E/20/00011** and **ISBBI/A/E/20/00012** are disposed of in terms of para 12 above.

(Sd/-)

(K. R. Saji Kumar)

Executive Director and First Appellate Authority

Copy to:

1. Appellant, Mr. Manoj K Kamra.
2. CPIO, Insolvency and Bankruptcy Board of India, 7th Floor, Mayur Bhawan, New Delhi.