Right to Information and the bureaucracy

Introduction

Transparency in governance and citizen's access to information are non-negotiables for accountability of the state and ensuring rule of law. This access in the form of the right to information is an essential aspect of a civil and democratic society. The existence of legislation around freedom or right to information has a direct impact on the approach of government functionaries and potentially prevents abuse of processes by the state.

Freedom of information, broadly articulated as right to information in India was enshrined in the Universal Declaration for Human Rights as far back as 1948 where it was included as one of the facets of freedom of expression. Subsequent international instruments also recognised this particular right. After years of movement seeking legislation on right to information, the Indian government enacted the Right to Information Act in 2005.
The Right to Information Act was enacted with the objective of *"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..".*

Despite the novel intentions of the legislature, the implementation of the act has not been smooth at all. The Public Information Officers (PIOs) and the Appellate Authorities (AAs) established under the act deny information arbitrarily without any legal basis under the RTI Act. While lawyers might somehow be able to crack the flawed replies with complex legal arguments, the task is not as easy for people without a legal background. Therefore, it is necessary that legal information on tackling the illegalities of the PIOs and the AAs is accessed by a wider audience.

The current toolkit was born out of the experience of a multitude of people in civil society dealing with arbitrary and illegal actions of the PIOs and the AAs. The toolkit is simple and easy to understand, and it is recommended that you read the section on *how to use this toolkit* to better understand the complex legal arguments that go in dismantling the replies of the PIOs.

HOW TO USE THIS TOOLKIT

I) Important Provisions under the RTI Act (with case laws)
Definitions
Proactive disclosure
Section 8

II) Process and Institutional Structure

III) Format of RTI Applications (keep in mind line about proactive disclosure):

IV) Things to avoid while filing an RTI Application

V) Appeals
a) Format
b) What to include
c) Things to avoid

Fighting the Illegalities

This part of the toolkit will go deeper into tackling the replies of the PIOs. Usually, as has been stated above, the replies of the PIO while rejecting the application are based on incorrect interpretation of law and cases decided by the CIC or the Supreme Court. This is also a scare tactic utilised by them as language of the law can be daunting for people who are not accustomed to it.

Since most of the replies by the PIO are bad in law, challenging these replies is not very difficult. Appellants can refer to the RTI Act, various judgments, the lacunae in the judgments cited by the PIO, the base documents of the relevant subject matter and draft a comprehensive reply for the same. The appeal application has to be *strong in law* as the appellate authorities, like the PIOs, are looking for any reason to reject your appeal. Usually, the only thing that causes fear in them is the language of the law realising that they cannot misinterpret law and randomly cite inapplicable provisions and cases because the appellant knows how to counter each and every argument put forth.

In this part, we have tried to cover and tackle as many grounds of rejection as possible. We have further divided this part into three sections. The first section deals with proactive disclosure under section 4(1)(b). This is information that the authority is statutorily bound to disclose proactively, without any application being made. This is the greatest weapon while filing an RTI application and an appeal as well. The grounds of rejection reduce drastically if the information sought explicitly covers information to be proactively disclosed under this section. The second part deals with the rejection of the RTI application on the basis of the provisions of the RTI Act or respective RTI state rules, and arguments and cases to tackle them during appeal. The third section deals with judgments that are usually misinterpreted and used as the basis of rejection of applications.

I) Proactive disclosure under section 4(1)(b)

Section 4(1)(b) of the RTI Act lists information that the public authorities have to publish by themselves. This list contains within its ambit a vast array of information. The use of the word "shall" in the provision makes it mandatory and binding on the part of the public authorities to disclose this information on their website or make it easily accessible.

SECTION 4(1)(b) OF THE ACT

Every public authority shall publish within one hundred and twenty days from the enactment of this Act,—
(i) the particulars of its organisation, functions and duties;
(ii) the powers and duties of its officers and employees;
(iii) the procedure followed in the decision making process, including channels of supervision and accountability;
(iv) the norms set by it for the discharge of its functions;
(v) the rules, regulations, instructions, manuals and records, held by it or under its control or

used by its employees for discharging its functions;
(vi) a statement of the categories of documents that are held by it or under its control;
(vii) the particulars of any arrangement that exists for consultation with, or representation by, the members of the public in relation to the formulation of its policy or implementation thereof
(viii) a statement of the boards, councils, committees and other bodies consisting of two or more persons constituted as its part or for the purpose of its advice, and as to whether meetings of
those boards, councils, committees and other bodies are open to the public, or the minutes of such
meetings are accessible for public;
(ix) a directory of its officers and employees;
(x) the monthly remuneration received by each of its officers and employees, including the system of compensation as provided in its regulations;
(xi) the budget allocated to each of its agency, indicating the particulars of all plans, proposed expenditures and reports on disbursements made;
(xii) the maimer of execution of subsidy programmes, including the amounts allocated and the details of beneficiaries of such programmes;
(xiii) particulars of recipients of concessions, permits or authorisations granted by it;
(xiv) details in respect of the information, available to or held by it, reduced in an electronic form;
(xv) the particulars of facilities available to citizens for obtaining information, including the working hours of a library or reading room, if maintained for public use;
(xvi) the names, designations and other particulars of the Public Information Officers;
(xvii) such other information as may be prescribed; and thereafter update these publications every year;

Section 4 requires every public authority (definition of term 'public authority' is given under Section 2(h)) to provide all the information that is mentioned in Section 4(1)(b) to the public suo moto (that is, without any request by any individual) through various means of communication at regular intervals. This needs to be done in order to promote transparency and accountability in the working of every public authority and to contain corruption.

In any instance when information is denied by the public authority, along with countering their arguments we also try to show how the information has to be disclosed under S. 4. For example - refer.

II) Rejection of Applications on flawed interpretation of legal provisions

1.

Provision of RTI Act under which application rejected by the PIO	*Section 8(1)(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;*
Cases usually cited	
Argument against the reply of the PIO	The arguments will depend on the facts and circumstances of the case. Usually information which relates closely to trade secrets or might reveal details of the intellectual property right held are rejected at the outset. Arguments : No such information has been sought by the applicant which reveals the trade secrets of the intellectual property of the applicant. It does not endanger commercial interests of the third party either. Furthermore, it is in the interest of the larger public that the information sought is revealed as it relates to transparency and accountability of the government. The appellant will then specifically need to argue pointwise as to how the information sought does not harm the competitive position of a third party - does not concern commercial confidence, IPR and trade secrets.
Cases to be cited: Facts and applicability	1) If the information sought is regarding a contract or agreement entered into by the state with companies, and such information has been rejected on the ground of section 8(1)(d), then the following case can be cited. Gita Dewan Verma v. Additional Secretary (UD) Govt. of NCT Delhi *"Any agreement entered into by the Government is an agreement deemed to have been entered into on behalf of the and in the interest of "We the people" hence if any citizen wants to know the contents of such an agreement he is in the position of a principal asking his agent to disclose to him the terms of the agreement entered into by the agent on behalf of the principal. No agent can refuse to disclose any such information to his principal. Hence it is inconceivable that the Government should deny a citizen's request for disclosure of an agreement entered into by the Government. Such a denial goes against the established constitutional principles apart from being untenable under the provisions of the Right to Information Act, 2005."*

2.

Provision of RTI Act under which application rejected by the PIO	*Section 7(9) :An information shall ordinarily be provided in the form in which it is sought unless it would disproportionately divert the resources of the public authority or would be detrimental to the safety or preservation of the record in*

	question. This section is erroneously cited by the PIO to reject the application on the grounds that information is not kept in the format as requested by the applicant. It is also used to state that the information sought is voluminous and divert the resources of the public authority.
Cases usually cited	
APPEAL	
Argument against the reply of the PIO	The denial of information on the basis of Section 7 (9) of the Act does not have any basis in law. Denial of information can only be under Section 8 (1) or Section 9. Section 7(9) can be invoked only to state that information in the format demanded by the appellant is not possible. According to the section, if the PIO thinks that substantial resources will be diverted if the information is provided in the format sought, the PIO is bound to provide information in the format that is present with them.
Cases to be cited: Facts and applicability	**1) <u>The reason stated for denying information is diversion of resources.</u>** CIC/OK/A/2008/01256/SG/0937 is strongly relied on. The relevant portion is produced below:- "The denial of information on the basis of Section 11 and Section 7 (9) of the Act was without any basis in law. Denial of information can only be under Section 8 (1) or Section 9." Section 11 sets out a procedure for giving the opportunity to a third party to give his objections and Section 7 (9) can be invoked only to state that information in the format demanded by the appellant is not possible. However the PIO would have to offer the information in an alternate format when invoking Section 7 (9). 2) For information being voluminous <u>Ms. Bincy Thomas v. East Coast Railway, Waltair(2010):</u> *"As for information having been denied since it is voluminous, the Commission holds that Section 7(9) of the Act does not allow denial of information but denial of providing the same in the form in which it has been sought in the event this leads to disproportionate diversion of resources of the Public Authority."*

Provision of RTI Act under which application rejected by the PIO	*Rule 3 of Chhattisgarh RTI Rules, 2009 and Rule 3A of Maharashtra RTI Rules:* *Request relate only to single subject matter :- A request in writing for information under Section 6 of the Act shall relate to one subject matter and it shall not ordinarily exceed one hundred and fifty words. If an application wishes to seek information on more than one subject matter, he shall make separate applications.* *Provided that in case, the request made relates to more than one subject matter, the Public Information Officer may respond to the request relating to the first subject matter only and may advise the applicant to make separate application for each of the other subject matters.* This reason is used by the PIOs to reject the information when more than one question is asked even if the questions are regarding one subject matter and less than 150 words.
Cases usually cited	
APPEAL	
Argument against the reply of the PIO	Nowhere is it mentioned in Section 6 which deals with 'Request for obtaining information' that the application needs to be restricted to one subject matter and Section 7(1) of the Act clearly states that requests for information can only be rejected for any of the reasons specified in sections 8 and 9. It is further stated that the provision stating information sought has to be regarding only one subject matter, **does not mean one query is equal to one subject** and **multiple information regarding the same subject matter can be asked**. The provision states that questions regarding only one subject matter can be asked, and the applicant has made sure that the information is only regarding one subject matter. Again, the PIO did not take into consideration the fact that **"multiple information can be asked regarding one subject matter so long as the application is ordinarily under 150 words."** **Note :** This argument is valid only when the number of words in your RTI query is less than 150 words.
Cases to be cited: Facts and applicability	1) ***Sh. Ram Prakash Choudhary v. Public Information Officer Ministry of Health & Family Welfare Health Department (CIC/SG/A/2011/002312/15906)***

	"From a plain reading of Sections 6(1) and 7(1) of the RTI Act, there does not appear to be any embargo on the scope of such request or application. In other words, there is no legal requirement on an applicant's part to restrict the scope of her RTI application to only one subject matter. What constitutes a 'single subject matter' has neither been defined in the RTI Act, the rules and regulations framed thereunder. In the absence of any means to determine what tantamounts to 'one subject matter', the PIO can, at his discretion, furnish part information claiming that the remaining information sought in the RTI application pertains to a different subject matter for which a separate RTI application is required to be filed. The exercise of such discretion by the PIO is likely to be subjective resulting in arbitrary curtailment of the fundamental right to information of citizens and unnecessary expenditure of money. In the absence of any clear definition of what 'one category of request' means it would only lead to arbitrary refusals of information under the RTI Act, leading to clogging of the appellate mechanisms. In view of the above, the contention of the Respondents is rejected."

3.

Provision of RTI Act under which application rejected by the PIO	Section 8(1)(e): *Notwithstanding anything contained in this Act, there shall be no obligation to give any citizen 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.* The information is usually rejected on the grounds that the Information sought for by the applicant is available to the concerned authority in fiduciary relationship.
Cases usually cited	
Argument against the reply of the PIO	The strongest argument against rejection under this provision can be made by citing section 4(1)(b) which is proactive disclosure. If the information sought comes under any of the clauses mentioned in the section, the argument of

	fiduciary relationship cannot stand. For example if information regarding budget disclosure of a particular department is rejected with the reason that it is against public interest, the applicant can sight section 4(1)(b)(xi) which states that, the authority is bound to publish *"the budget allocated to each of its agency, indicating the particulars of all plans, proposed expenditures and reports on disbursements made".*
Cases to be cited: Facts and applicability	**Rakesh Kumar Singh and others versus Harish Chander, Assistant Director and others Central Information Commission held that-** *"The word fiduciary is derived from the Latin fiducia meaning "trust, a person (including a juristic person such as Government, University or bank) who has the power and obligation to act for another under circumstances which require total trust, good faith and honesty. The most common example of such a relationship is the trustee of a trust, but fiduciaries can include business advisers, attorneys, guardians, administrators, directors of a company, public servants in relation to a Government and senior managers of a firm/company etc. The fiduciary relationship can also be one of moral or personal responsibility due to the superior knowledge and training of the fiduciary as compared to the one whose affairs the fiduciary is handling. In short, it is a relationship wherein one person places complete confidence in another in regard to a particular transaction or one's general affairs of business."* It is only if the relationship is of the nature as described above can the information be declined under section 8(1(e). If the relationship does not fulfil the above criteria, then section 8(1)(e) cannot be invoked. In the case of **Reserve Bank of India vs. Jayantilal N. Mistry ,** the CIC held that, *"The exemption contained in Section 8(1)(e) applies to exceptional cases and only with regard to certain pieces of information, for which disclosure is unwarranted or undesirable. If information is available with a regulatory agency not in fiduciary relationship, there is no reason to withhold the disclosure of the same. However, where information is required by mandate of law to be provided to an authority, it cannot be said that such information is being provided in a fiduciary relationship."*

4.

Provision of RTI Act under which application rejected by the PIO	*Section 8(1)(j): Notwithstanding anything contained in this Act, there shall be no obligation to give any citizen, 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.* Usually this section is cited when information regarding a third party is sought. Bear in mind that this section only emphasises that "*personal information"* having no relationship with a public activity cannot be sought.
Cases usually cited	
Argument against the reply of the PIO	Applications seeking 'personal information' cannot be rejected outrightly. For the exemption in section 8(1)(j) to apply, three conditions must be met: 1. The information must be personal third-party information 2. It must have no relationship to any public activity or interest, and 3. Disclosure of the information must cause an unwarranted invasion of the privacy of a third party. ● The appellant can then explain the current fact scenario and how the information sought does not fulfil the ingredients of this section. Furthermore, according to section 11, if the part of the information does involve some personal information which might violate privacy of an individual, the same can be severed under section 10 of the Act, and the rest has to be provided.
Cases to be cited: Facts and applicability	Conditions as laid out in Union Public Service Commission v R.K. Jain(2012) *"(i) The information sought must relate to "Personal Information". Therefore, if the information sought does not qualify as personal information, the exemption would not apply;* *(ii) Such personal information should relate to a third person, i.e., a person other than the information seeker or the public authority; AND* *(iii) (a) The information sought should not have a relation to any public activity qua such third person, or to public interest. If the information sought relates to public activity of the third party, i.e., to his activities falling within the public domain, the exemption would not apply. Similarly, if the disclosure of the personal information is found justified in public interest, the exemption would be lifted, otherwise not; OR (b) The disclosure of the information would cause unwarranted invasion of the privacy of the*

	individual, and that there is no larger public interest involved in such disclosure." Conditions as laid out in Mr. Sujit Kumar Mazumder Advocate vs CBI (2011) *1. It must be personal information: Words in a law should normally be given the meaning 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. Therefore, it flows that 'personal' cannot be related to institutions, organisations or corporates. Hence Section 8(1)(j) of the RTI Act cannot be applied when the information concerns institutions, organisations or corporates.* *2. 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. Public activities would typically include situations wherein 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 authorisation, or provides information in discharge of a statutory obligation.* *3. The disclosure of the information would lead to unwarranted invasion of the privacy of the individual. 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 relation to a public activity and will not be an intrusion on privacy.*

5.

6.

Provision of RTI Act under which application rejected by the PIO	*Section 11. Third party Information —* *(1) Where a Central Public Information Officer or a 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 outweighs 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, tinder 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.* Usually, this section is cited by the PIO when the information sought is about a third party. This entire process of serving notice to the third person is rarely followed. Despite the section clearly stipulating the procedure, the PIOs tend to outrightly reject the application under section 11 read with section 8 (1)(j)
Cases usually cited	
Argument against the reply of the PIO	In such cases, PIO is required to follow the procedure laid down in Section 11 of the RTI Act (that is, give the third-party time and opportunity to raise objections if he/she has any and consider the same before taking any decision). The final decision with regards to disclosure lies with the Public Information Officer and

	not the third party. It has been provided that except in the case of trade or commercial secrets protected by law, disclosure may be allowed if the public interest in disclosure outweighs any possible harm or injury to the interests of a third party. If the third party is aggrieved by the decision arrived at by the PIO, it can prefer an appeal against the decision under Section 19. Furthermore, it can also be shown that the information relates to a larger public interest and hence, it is needed to be disclosed.
Cases to be cited: Facts and applicability	Mrs Anita Singh Vs. Ministry of External Affairs (2012): *"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 an 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."* Mahesh Kumar Sharma, Vs. PIO, Delhi Jal Board, Govt. of NCT of Delhi(2009): *"If the third-party objects to giving the information, the Public Information Officer must take his objections and see if any of the exemption clauses of Section 8 (1) apply. If any of the exemption clauses apply, the PIO is then obliged to see if there is a larger public interest in disclosure. If none of the exemption clauses apply, information has to be given."*

III) When PIO rejects information through flawed interpretation of landmark judgments

CASES CITED BY PIO TO REJECT THE APPLICATION

1. **CBSE vs. Aditya Bandopadhyay [CIVIL APPEAL NO.6454 OF 2011 (Supreme Court)]**

"*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."

Argument against the reply of the PIO:

The judgments cited by the PIO such as *CBSE vs. Aditya Bandopadhyay* would be applicable only if there is **no obligation** to collect, collate or create any such information. Relevant portion of this case states that "*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*."

The judgment does not apply in the present case as the public authority concerned was under an obligation to maintain the information the applicant is seeking. Firstly, the information sought is covered by section 4(1)(b) and by virtue of section 4(2) of the RTI Act the authority is duty bound to disclose it. Furthermore, section 7(9) clearly stipulates that the information shall ordinarily be provided in the form in which it is with the authority if the authority finds it is difficult or impossible to collect or collate data in the format that it has been sought in.

For example, in one particular case, Public Information Officer of a District Legal Services Authority cited this judgment to deny information that it was required to maintain as per 'National Legal Services Authority's Standard Operating Procedure for Under Trial Review Committees' (find appeal petition attached here)

2. **CBSE vs. Aditya Bandopadhyay [CIVIL APPEAL NO.6454 OF 2011 (Supreme Court)]**

"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."

Argument against the reply of the PIO

The definition of the word 'information' is given in Section 2(f) of the Act and it does include opinion and advice. The PIO has selectively quoted the paragraph from the judgment. The entire quote is, *"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." Therefore, it is clear that advice and opinion, if available in the records of the public authority, is information and the PIO is statutorily bound to supply such information.

Moreover, A perusal of the application will convince the Appellate Authority that the applicant is not seeking opinion or advice from the authority concerned but information that it was under an obligation to maintain under either Section 4 or as per guidelines issued by a particular authority (here you can cite the base document or the sub-clause under section 4(1)(b) that is applicable or both.).

3. **Vidyadhar Mishra v. State of Chhattisgarh [WPC No. 997 of 2019 (Chhattisgarh HC)]**

"The information which was sought for by the petitioner was in nature of questionnaire meaning thereby in order to provide the information, the office of Sub-Registrar was required to make a search on behalf of the petitioner and thereafter take out the information and then supply it to petitioner."

Arguments against the reply of the PIO

The applicant would like to humbly submit that the judgment stated in the RTI response does not apply in the present case as the information sought by the applicant is not in the nature of questionnaire but data that the concerned authority was either required to proactively disclose under Section 4 of the Act or was under a mandate to maintain as per the guidelines issued by a particular authority.

In the particular case cited by the PIO, the petitioner wanted the officers to make an enquiry and figure out how many parts of a land measuring 2.02 acres were sold and to whom in between the period of 1935-1943 and provide him with the certified copies of recovered sale deeds.

The current application does not purport the PIO to go to such lengths at all. Furthermore, the judgment is very specific to the particular case and does not hold any value in terms of principle established.

4. **Khanapuram Gandaiah V. Administrative Officer & Ors [SPECIAL LEAVE PETITION (CIVIL) NO.34868 OF 2009 (Supreme court)]**

"No litigant can be allowed to seek information as to why and for what reasons the judge had come to a particular decision or conclusion."

Effective Response

The applicant would like to state that the PIO has cited the judgment (in that particular case, petitioner filed an application under Section 6 of the RTI Act to know why and for what reasons the appellate court had come to a particular conclusion) without perusing the RTI application with objectivity.

5. **Vinubhai Haribhai Patel vs Assistant Commissioner of Income Tax [R/LPA No. 1169/2016 (Gujarat HC)]**

"In order to check the abuse and misuse of the purpose and procedure enacted in the RTI Act, it is very essential to keep out the applicants and persons who approach the Authorities concerned except for bona fide reasons. The existence of bona fide reasons is a question of fact, which has to be established by the Applicant with relevant material and not just empty and hollow words to be used. In the background of the case which we have in hand, we see only the private interest of the Applicant petitioner and not even a semblance of public interest in the same."

Effective Response

It is clearly stated in Section 6(2) of the Right to Information Act that 'an applicant making a request for information shall not be required to give any reason for requesting the information'. Moreover, as per Section 7(1), a request can be rejected only for any of the reasons specified in Section 8 and 9. 'Public Interest' is not one of the reasons specified therein and *"the Act gives no scope to the adjudicating authorities to import new exceptions other than those that have been provided under the Act and thereby deny information."*

Moreover, the judgement of Gujarat High Court in Vinubhai Patel's case cannot be relied on because in that particular case, the petitioner had requested for access to Income Tax Returns to settle a private dispute between the petitioner and the third party in question. Disclosure of information by the concerned authorities would not have served any public interest and also caused an unwarranted invasion of privacy.

6. **A.Kanagaraj vs The Principal Commissioner [*WP(MD) No. 2268 of 2010*(Madras HC)]**

"The object of the Right to Information Act is salutary and the same serves the avowed object of transparency in public offices. At the same time, the said Act should not be allowed to be abused or misused by any unscrupulous parties. For example, suppose an information relating to several decades, running to several pages, is sought for, the Public Information Officer may have to depute several persons to collect those particulars and then to count the pages and calculate the fee to be paid by the party concerned. All these exercises should be done at the cost of Rs. 10/- paid by the applicant. After that, the applicant should be informed by the Public

Information Officer to pay the required amount. For example, suppose the Public Information Officer directs the applicant to pay a sum of Rs.5,00,000/-, the applicant may not pay the amount, in which case the entire exercise done in collecting the information, running to several pages, relating to several decades, would be a wasteful exercise. Assuming that the applicant is prepared to pay the money thereafter, the entire office machinery should be focused only in preparing the copies of the documents and furnishing the same to the applicant, leaving behind the regular work of the office. By only taking all these into account, the Hon'ble Supreme Court has held that if the request is made in respect of indiscriminate and impractical demands or directions under the Right to Information Act for disclosure of all and sundry information unrelated to transparency and accountability in the functioning of public authorities and eradication of corruption, it would be counterproductive and it will adversely affect the efficiency of the administration and result in the executive getting bogged down with the non-productive work of collecting and furnishing information. The Act should not be allowed to be misused or abused!"

Effective Response

The denial of information on the basis of Section 7 (9) of the Act does not have any basis in law. Denial of information can only be under Section 8 (1) or Section 9. Section 7(9) can be invoked only to state that information in the format demanded by the appellant is not possible. However, the PIO would have to offer the information in an alternate format when invoking Section 7 (9) of the Act.

Moreover, the decision of the Madras High Court in Kanagaraj's case cannot be relied upon to deny information that is focused, time-bound and has a direct nexus with the transparent functioning of a public authority because in that particular case, the information sought was vast, relating to several decades and historical records and had no immediate implications for the functioning of any public authority. The petitioner had sought *"records pertaining to the Estates in the entire Theni and Dindigul Districts, relating to the pre-independence period as well as post-independence period. Without specifying the particular record, the petitioner has asked for information relating to the registers maintained under the Estates Land Act, 1908 and and Estate Abolition and Conversion into Ryotwari Act, 1948, Pimash Registers, names and other details of the Estate holders and some more details"*.

In the current application, such extravagant data has not been sought and only information that pertains to the official functioning of the authority which they are statutorily bound to maintain has been sought.

7. Registrar General Vs. K.Elango and Anr (Division Bench of Madras High Court)

"Therefore, some self restrictions are to be imposed in regard to the supply of informations in this regard. As a matter of fact, the Notings, Jottings, Administrative Letters, Intricate Internal Discussions, Deliberations etc. of the

Petitioner/High Court cannot be brought under Section 2(j) of the Right to Information Act, 2005,

Paragraph 61… If the information sought for is divulged for, furnished by the Office of the High Court (on administrative side), internal working process may get jeopardized."

This case is notoriously misused often by PIOs to brush off information requests in the guise of "internal matter" or "internal functioning" or something along these lines.
This case is often used to say that the information requested for is "purely internal correspondence", that it would jeopardise the workings of the public authority, that it cannot be considered as "information" under Sec. 2(j) of the RTI Act and that it cannot be provided.

This judgement is of no relevance when the information request leads to no privacy violations; and especially in matters which are carried out by a public authority using public taxpayers money, there should be proactive disclosure. In these circumstances, the PIO simply cannot raise the argument of privacy and secrecy apart from the strictures of Sec.8 of the RTI Act.

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To be added:

PIO or the Appellate authority cannot merely quote a section, but has to provide a reasoned order on how the section is applicable to the facts of the particular case. The need to give meaningful justification for arriving at that reason for denial has been upheld in various decisions.

Decisions of CIC [Central Information Commission]:

- Order in CIC/OK/A/2006/00163 dated 7 July, 2006 (https://righttoinformation.wiki/_media/explanations/decision_07072006_1.pdf):

"Through this Order the Commission now wants to send the message loud and clear that quoting provisions of Section 8 of the RTI Act ad libitum to deny the information requested for, by CPIOs/Appellate Authorities without giving any justification or grounds as to how these provisions are applicable is simply unacceptable and clearly amounts to malafide denial of legitimate information attracting penalties under section 20(1) of the Act.".

- CIC/OK/C/2006/00010 dated 7 July, 2006 (https://righttoinformation.wiki/_media/explanations/decision_30082006_1.pdf)

"The PIO has to give the reasons for rejection of the request for information as required under Section 7(8)(i). Merely quoting the bare clause of the Act does not imply that the reasons have

been given. The PIO should have intimated as to how he had come to the conclusion that rule 8(1)(j) was applicable in this case."

- CIC/BS/A/2013/000681/4968 dated 24-04- 2014 (https://righttoinformation.wiki/_media/explanations/cic_bs_a_2013_000681_4968_m_130757.pdf)

"Access to information, under Section 3 of the Act, is the rule and exemptions the exception. The information can be denied only if it is exempt as per the provisions of Section 8 or Section 9 of the RTI Act. Further, while denying information the authority withholding the information must show satisfactory reason and such reason should be germane and based on some material. Sans this consideration the information cannot be denied……"

- Hon'ble HIGH COURT OF DELHI in W. P. (C) 12428/2009 & CM APPL 12874/2009 DEPUTY COMMISSIONER OF POLICE versus D.K.SHARMA –Judgement dated 15-12-2010

"6. This Court is inclined to concur with the view expressed by the CIC that in W.P. (Civil) 12428/2009 order to deny the information under the RTI Act the authority concerned would have to show a justification with reference to one of the specific clauses under Section 8 (1) of the RTI Act. In the instant case ……."

Also to read and add from - https://cic.gov.in/sites/default/files/Disclosure%20vs.%20Non%20Disclosure%20of%20Information%20Under%20RTI%20Act%2C%202005%20by%20Nikhil%20Goel.pdf

Further, in Office Memorandum No. 20/10/23/2007-IR dated 09.07.2009, while elaborating on the duties and responsibilities of the FAA, it was stated that:

"Deciding appeals under the RTI Act is a quasi-judicial function. It is, therefore, necessary that the appellate authority should see that the justice is not only done but it should also appear to have been done. In order to do so, the order passed by the appellate authority should be a speaking order giving justification for the decision arrived at."

Thus, the reasons for rejection mean that the FAA or the PIO has to give a well-reasoned order and not just merely cite provisions.