

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

Decision No. CIC/SG/A/2012/001023/19365
Appeal No. CIC/SG/A/2012/001023

Relevant Facts emerging from the Appeal

Appellant : Mr. Venkatesh Nayak
B-117, 2nd Floor, Sarvodaya Enclave
New Delhi- 110017

Respondent Mr. A. Anandraju,
PIO & OSD(ER)
Department of Atomic Energy
Officer on special duty (ER) & CPIO
Anushakti Bhawan
Chtrapati Shivaji maharaj Marg
Mumbai- 400001

RTI application filed on : 20/01/2012
PIO replied : 31/01/2012 and 07/02/2012
First appeal filed on : 24/02/2012
First Appellate Authority order : 16/03/2012
Second Appeal received on : 27/03/2012

Sl.	Information Sought
1.	A clear photocopy of the Cabinet Note prepared by your department seeking approval of the Union Cabinet for introducing The Nuclear Safety Regulatory Authority Bill, 2011 in the Lok Sabha along with all annexures. This Bill was introduced in the Lok Sabha on 07 September, 2011;
2.	The total number of records and live files held by the DAE Secretariat and its units that have been assigned the security classification: 'top secret', 'secret' and 'confidential' as on the date of this application. I wish to clarify that (would like to know only the total number of records and files marked with each type of security classification mentioned above but not the total number of pages in each file. I also wish to clarify that I do not want information about any public sector undertaking or aided institution under CM;
3.	The subject matter or topic of each record and live file that has been assigned the security classification 'top secret', 'secret' and 'confidential' as on the date of this application; and
4.	A clear photocopy of the information submitted by DAE to the Central Information Commission under Section 25(3) of the RTI Act for the period: 1' April 2010 —31" March 2011

Reply of the Public Information Officer (PIO) (Mr. Dayalan)

- 1 Point No.1: A copy of the RTI application is being forwarded to PIO/OSD(ER) for furnishing a reply to you as the subject matter is dealt by ER Section, DAE.
2. Point No.2 The information requested for is not available as no records are kept regarding the total number of such files centrally.
3. Point No.3 The information requested are exempted from disclosure under Section

8(a) of the RTI Act, 2005.

4. An extract of Annual return for the year 2010-II submitted by DAE to CIC under Section 25(3) of the RTI Act is enclosed

Reply of the Public Information Officer (PIO) (Mr. O.T.G.Nair)- query 1

You are informed that the information sought by you as above is exempted from disclosure under Section 8(l) (i) of the RTI Act.

Grounds for the First Appeal:

PIO refused to reply as sought information is exempted under sec 8 (1) (i) of RTI Act, without explaining any reasons how it is exempted and on which ground.

Order of the First Appellate Authority (FAA):

FAA said that the use of the word ‘and’ appearing in Section 8(1)(i) between “after the decision has been taken’ and ‘the matter is complete or over’ implies that both the conditions, i.e. (i) the decision has been taken; and (ii) the matter is complete or over, must be satisfied for disclosure of full information. The Department-related Parliamentary Standing Committee on Science & Technology, Environment & Forests had put the contents of the Bill in the public domain and invited comments on it. As is public knowledge, the Committee has deliberated on the report and forwarded its observations to the Hon’ble Chairman, Rajya Sabha and Hon’ble Speaker, Lok Sabha. Thus, the matter stands and has to be taken forward, and the second condition i.e. ‘the matter is complete or over’ is not satisfied in this case. In view of the above, the information sought does not qualify for disclosure at this stage...

Grounds for the Second Appeal

“It is undisputed that the information relating to the Nuclear Safety Regulatory Authority Bill sought by me is in the nature of a Cabinet Note. However CPIO#1 has failed to appreciate the holistic position of the exemption provision that he has sought to invoke. While a Cabinet note may be exempted from disclosure initially, the proviso to Section 8(l) (i) clearly states that the decision of the Council of Ministers, the reasons thereof, and the material on the basis of which the decisions were taken shall be made public after the decision has been taken and the matter is complete, or over. The ostensible purpose of the Cabinet Note attached to the Nuclear Safety Regulatory Authority Bill was to seek the approval of the Union Cabinet for the draft provisions contained in the said bill and for its tabling in Parliament. Upon securing the approval of the Union Cabinet, the Minister of State for Public Grievances and Pensions tabled the said bill in the Lok Sabha in September 2011. So the purpose of the Cabinet note was completed upon securing Cabinet approval and the subsequent tabling of the said Bill in Parliament. The contents of the Cabinet note now qualify for disclosure under the proviso to Section 8(1)(i) as the matter is over. The passage of the Bill is dependent upon the will of both Houses of Parliament and the Union Cabinet cannot undertake to get the Bill passed. Therefore the limited purpose of the Cabinet Note attached to the said Bill may be treated as over. However CPIO #1 has not appreciated this fact. Instead he has mechanically invoked Section 8(1)(i) without paying any attention to the proviso underlying it which entitles me to receive the said information.”

“The Department of Atomic Energy is under an obligation as per Section 4(1)(c) of the RTI Act to make public the reasons for seeking amendments to the RTI Act. As they have not done so suo moto and as the matter relates to a Cabinet Note which is covered by Section 8(1) I was compelled to seek the information through a formal request. The Department of Atomic Energy is required to disclose the said Cabinet Note in order to facilitate informed debate on the amendment of the RTI Act. However it has not done so despite my formal request for information. Hence the filing of this second appeal before the Hon’ble Central Information Commission.” Information on query 1 should be provided.

Relevant Facts that emerged during the hearing on 18 May 2012:

The following were present

Appellant: Mr. Venkatesh Nayak

Respondent: Absent;

“The PIO was not present at the Mumbai NIC-Studio. The Commission called up the Joint Secretary on telephone no. 022-22027815 who stated that he has not received the notice of hearing in this matter and hence the matter is adjourned.. A fresh notice of hearing will be sent. Matter was adjourned.”

A notice was issued to both parties to be present for a hearing on 25 June 2012 at 11.00am impugned

Relevant Facts that emerged during the Hearing on 25 June 2012:

The following were present:

Appellant: Mr. Venkatesh Nayak;

Respondent: Mr. A. Anandraju, PIO & OSD(ER) on video conference from NIC-Mumbai Studio;

“The Appellant has stated that he would be satisfied if information sought in query-01 is disclosed.

Both the parties are agreed that the cabinet note has been put up to the Cabinet, and after due approval a bill has been presented to the Parliament. The matter has now been referred to the Standing Committee on Science and Technology which has submitted the recommendations to the Government with suggested changes. The PIO claims that the matter is not complete and over, until the bill is enacted, duly gazetted, and a notification is issued that the bill comes into force. The Appellant states that, “I contend that the matter regarding this NSRA Bill is complete or over on the date of the bill being tabled in Parliament.” He further stated, “Section 8(2) suggests that if public interest in disclosure outweighs the harm to the protected interest, then access may be allowed. So my contention is rather than nearly invoking 8(1)(i) mechanically the PIO has a duty and a burden to demonstrate what interests are sought to be protected by the secrecy of Cabinet papers at this stage of the bill, which will outweigh the disclosure in public interest. If the harm to any protected is not demonstrated by the PIO, I submit that the exemption should be overruled by Section 8 (2) of the Act.”

The Commission asked the PIO if he can explain the harm which can accrue to the protected interest if the information sought by the Appellant in query-01 is disclosed. The PIO states that since the bill has not been enacted so far revealing the cabinet note may be inappropriate and hence it should not be revealed. He did not give any explanation on the harm which could accrue if the information was disclosed.

The appellant states that the NSRA bill has proposed amendments to the RTI Act and the DOPT has stated to the Parliament that no amendments are proposed to the RTI Act. The Appellant therefore states that he needs to know the contents of the Cabinet note so that he may make representations to the elected representatives to ensure that no amendments are made to the RTI Act without widespread consultation.

The PIO states that the bill is already in the Public domain and therefore he is not able to appreciate the Appellant’s contention. The Commission reserved the order during the hearing.

The order is reserved.”

Decision announced on 26 June 2012:

The PIO has claimed exemption under Section 8 (1) (i) of the RTI Act whereas the appellant has stated that the Cabinet note sought by him is not covered by the said exemption. The appellant has further argued that in terms of Section 8 (2) of the RTI Act, even if the Commission rules that the information is exempt under Section 8 (1) (i), there is a larger public interest in disclosure, and hence the information must be disclosed as per the provision of Section 8 (2).

The RTI Act has codified the fundamental Right to Information of Citizens guaranteed under Article 19 of the Constitution. As per Section 3 of the Act, 'Subject to the provisions of this Act, all citizens shall have the right to information. 'The provisions of the Act by which any information may be denied to a Citizen is defined in ten exemptions of Section 8 (1) of the Act. Section 8 (2) of the Act, which states, 'Notwithstanding anything in the Official Secrets Act, 1923 nor any of the exemptions permissible in accordance with sub-section (1), a public authority may allow access to information, if public interests in disclosure outweighs the harm to the protected interests' would override the exemptions of Section 8 (1) if a larger public interest in disclosure is shown. The appellant has claimed that disclosure of the Cabinet note should be made as per the provision of Section 8 (2), even if the exemption claimed under Section 8 (1) (i) by the PIO is upheld.

Section 8 (1) (i) under which the PIO has claimed exemption, which has been upheld by the First appellate authority exempts, "cabinet papers including records of deliberations of the Council of Ministers, Secretaries and other officers:

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

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

The Commission therefore agrees with the First appellate authority's contention that the use of the word 'and' appearing in Section 8(1)(i) between "after the decision has been taken' and 'the matter is complete or over' implies that both the conditions, i.e. (i) the decision has been taken; and (ii) the matter is complete or over, must be satisfied for disclosure of full information.

From the arguments put across by the Appellant and the PIO the issue to be decided by the Commission is whether the "decision has been taken, and matter is complete or over". If the decision has been taken **and** the matter is complete or over, the exemption under Section 8(1)(i) would not be available. If the decision has not been taken or the matter is not complete or over the information would be exempt. The PIO has argued that this means that the purpose for which the cabinet note was made,-passing of the proposed Act,- should be over. If such an interpretation were to be given it would mean that if an Act for which the Cabinet note was made is either not passed by Parliament, or not Gazetted, or not Notified, such a Cabinet note would never be disclosed under the RTI Act. The Commission had also asked the PIO to explain what harm could come to any protected interest if the information was divulged. The PIO's statement that disclosing the Cabinet note may be inappropriate does not give any reasons to show what harm could come by disclosure of the cabinet note.

The Appellant has argued that once the cabinet decision is taken the condition in the proviso that "the decision has been taken" is fulfilled. He has also argued that once the bill is presented in the Parliament "the matter is complete, or over" since the cabinet decision has been complied with.

Subsequently the Bill is a property of the Parliament and hence the objective of the cabinet note is over with the presentation of the bill in Parliament.

It may be worthwhile to glimpse the mind of the Parliament when passing the RTI Act to understand the frame of mind of the elected representatives.

In Parliament when the RTI Bill was debated, Shri Varkala Radhakrishnan, MP said, “There must be transparency in public life. There must be transparency in administration and people must have a right to know what has actually transpired in the secretariat of the State as well as the Union Ministry. A citizen will have a right because it will be safe to prevent corruption. Many things are done behind the curtain. Many shoddy deals take place in the secretariats of the Central and State Governments and the information will always be kept hidden. Such practice should not be allowed in a democratic country like ours. Ours is a republic. The citizenry should have a right to know what transpired in the secretariat. Even Cabinet papers, after a decision has been taken, must be divulged as per the provisions of this amendment. It cannot be hidden from the knowledge of others. It must be divulged. But before taking a final decision, the Cabinet papers can be kept secret.”(Emphasis supplied). Thus it is clear that the intention to prevent disclosure was only until the time that the decision was taken by Cabinet on the Cabinet Papers/Notes. Once the Cabinet decision has been taken, the first part of the proviso that the decision had been taken would be fulfilled. With the tabling of the bill in Parliament the second part of the Proviso that the matter is complete or over would also have been met. The Commission would like to remember the further contentions of Shri Varkala Radhakrishnan, “After Independence, the Constitution came into being on 26th January 1950; till date, we have not given the fundamental right to information to the citizenry. Many things are done without their knowledge. They have a right to know. We are accountable to the people. The Government as well as the Parliament, as also everybody is accountable to people. It includes Judiciary also; and everybody is accountable to the people. They must know and they are entitled to know what actually is taking place in the governance of the country.”

At this stage since there are doubts which have been voiced by some functionaries that Right to Information is draining the financial resources it is worthwhile to remember what Shri Milind Deora, MP said, “Once the use of this Bill matures, it will actually bring down the cost of Government. This is not a cost increase for the Government. This is going to reduce the cost of the Government, this is going to reduce implementation cost and this is going to ensure that quality service is given to the people of India.”

Suresh Pachauri, Minister DOPT assured the nation that, “The UPA Government wants to hand over the key of democracy to the people of this country. The Government does not want to hide any information, which is in the national interest, from the people. “

The heart and essence of democracy is the concept that each individual citizen is a sovereign in her own right, and she gives up part of the sovereignty to the State, in return for which she gets rule of law. The Citizen has a right to know the basis on which decisions were taken by the Cabinet, before the law is finally made, which was the clear intent of Parliament. This would facilitate a reasoned discussion and debate in the country amongst citizens and their public servants. This appears to have been the intent of Parliament, as mentioned by the MPs whose speeches have been quoted above. The key of democracy must be with the Citizens of our Nation.

In view of preceding discussion the Commission rules that the Cabinet note is material on the basis of which a Cabinet decision is taken to table a bill in Parliament. Once the decision is taken by the Cabinet to table the bill in Parliament the ‘decision has been taken’; when the bill is tabled in Parliament ‘the matter is complete or over’ as far as the Cabinet is concerned. In the instant case, since the ‘the decision has been taken, and the matter is complete, or over:’ the exemption claimed under Section 8 (1) (i) of the RTI Act by the PIO is not upheld.

The PIO has not given any valid reasons showing that any harm could come to any protected interest, whereas it is obvious that if Citizens knew the contents of the Cabinet note based on which Parliament proposed to enact a law, it would lead to a better and meaningful democracy and enactments of laws which would indeed serve people's needs. It appears to the Commission that there is a larger public interest in disclosing Cabinet notes regarding introducing any new bill in Parliament, after the Cabinet has taken a decision to table such a bill and the bill is tabled. This meets the criterion for suo moto disclosure mandated by the RTI Act in Section 4 (1) (d) of the Act which mandates that all public authorities must 'provide reasons for its administrative or quasi judicial decisions to affected persons;'. Citizens are certainly deeply affected by every law made by Parliament, and hence have a right to know the basis on which these laws are being made. The citizen who gives legitimacy to the Members of Parliament and thereby to the institution of Parliament itself must be provided reasons which are behind the laws being made by Parliament. The Commission therefore directs the Secretary, Department of Atomic Energy to display this Cabinet note and all Cabinet notes in future on the department's website where such Cabinet notes relate to proposing a new bill to be tabled in Parliament, within 07 days of the bill being tabled in Parliament. This order is being given by the Commission in exercise of its powers under Section 19 (8) (a) (iii) of the RTI Act.

The Appeal is allowed.

The PIO is directed to provide an attested photocopy of the Cabinet Note sought by the Appellant alongwith all the annexures in query-01 to him before 20 July 2012.

The Secretary, Department of Atomic Energy is directed to ensure that the Cabinet Note mentioned above is displayed on the website of the Department before 20 July 2012 and all Cabinet Notes relating to proposals for new bills to be tabled in the Parliament should also be displayed on the website of the Department within 07 days of tabling the bill in the Parliament.

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
26 June 2012

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

Copy to:

Secretary
Department of Atomic Energy
Officer on special duty (ER) & CPIO
Anushakti Bhawan
Chtrapati Shivaji maharaj Marg
Mumbai- 400001