

CENTRAL INFORMATION COMMISSION
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Decision No. CIC/SM/C/2011/000117/SG/13230
Complaint No. CIC/SM/C/2011/000117/SG

Relevant facts emerging from the Complaint:

Complainant : Mr. Justice R N Mishra (Retired)
78A/38, Muir Road, Ashok Nagar,
Beside Nagar Nigam Ward Office,
Allahabad (Uttar Pradesh)

Respondent : Mr. Nirbhay Kumar,
PIO & Head of Branch,
CBI, Anti Corruption Branch,
C.G.O Complex- I, Kamla Nehru Nagar,
Hapur Road, Ghaziabad (Uttar Pradesh)

RTI application filed on : 12.07.2010
PIO replied to application on : 12.08.2010
Complaint filed on : 05.02.2011

Information Sought	Reply of the Public Information Officer (PIO)
Copy of following documents related with the investigation pertaining to Ghaziabad, Civil Court Provident Fund Scam:	The documents including GEQD Opinions and FIR have been submitted in the Court of Special Judge, CBI, U.P. (East) Anti Corruption, Ghaziabad along-with the Charge-sheet.
F.R. Part—I	The documents like F.Rs, SP Report would reveal identity of persons who have provided vital information in confidence during the course of investigation of this case.
F.R. Part —II	The case is under trial, disclosure of information as contained in these reports would impede the prosecution of offenders.
<ul style="list-style-type: none"> • Government Examiner of Question Document Expert Report • The First Information Report lodged by CBI 	In addition, the confidential CBI Reports have been sent to the Hon'ble Supreme Court in sealed cover and the matter is still <i>sub judice</i> . Hence, the details are withheld under Section 8(1) (g) and (h) of RTI Act, 2005.
Report of S.P., C.B.I.	

Grounds for Complaint:

“...3. Because the investigation regarding the matter is already over and the documents collected in pursuance of it are public documents and does not impede any process of investigation or prosecution but rather it is to assist the fair and impartial proceedings under the relevant procedure.

4. Because there were five documents required through the application dt. 12.07.2010 but the Public Information Officer has declined to submit information regarding the serial no. 1, 2 & 5 and has over looked the serial no. 3 & 4 on the ground that it is already submitted in the court of Special Judge, CBI, U.P. (East) Anti Corruption, Ghaziabad which he cannot do under the act.

5. Because no document can be classified arbitrarily as secret or confidential except as provided for in the act.

6. Because the information sought are absolutely beyond the purview of section -8 of the Act No. 22 of 2005 and Official Secret Act, to which the 1.0. is taking shelter.

7. Because as disclosed in the letter of CBI, the Charge Sheet has been submitted and the list of witnesses & documents are given along with the charge sheet. Hence nothing remains confidential. Charge Sheeted person has right to know that who has deposed what against him and what document is relied upon against him.

8. Because the question of security does not arise. Every information or evidence given by any person during the investigation has to be brought on record and has to be proved by prosecution, hence there is no justification for withholding the names of witnesses and details of documents.

9. Because on the basis of presumption of fear of security can not be made basis to refuse relevant information.

10 Because the desired information does not in any way in going to impede the process of justice because the investigation is over and Charge Sheet has been filed in court as disclosed in the letter of CBI.

11. Because all the informations & evidence collected by 1.0, has to be placed on record of the case and has to be proved against the accused, hence this is a part of record and cannot be concealed.

12. Because no court has passed any order that any information regarding this case be kept secret, hence the information relating to case can not with held under the garb of the pending of any transfer application in court.

13. Because even the press and news media are revealing the facts mechanically which means every information is being given to them by CBI but it refuses to give information to the person affected, thus double standard can not be applied.

14 Because the report of 1.0. on his basis of which the higher authorities have approved charge sheet, can not be held to be confidential .It is part of investigation and case diary.

15. Because Charge Sheet has been submitted in the case and the Supreme Court's order dt 23.09.2009 says that if Charge sheet is submitted by IO, the court concerned shall proceed with the case according to law As such only T.A. is pending before Supreme Court. IO cannot take the shelter of the pendency of Transfer Application before the said court.

Information not provided to applicant on incorrect grounds as the information sought does not come within the ambit of Section 8 (1) (g) and (h) RTI Act, 2005.”

Relevant Facts emerging during Hearing held on July 1, 2011:

The following were present:

Complainant: Absent;

Respondent: Mr. Nirbhay Kumar, CPIO & Head of Branch.

The Respondent stated that the Complainant was an accused charge sheeted in the PF Scam Case and the trial against him was pending. The Respondent gave written submissions to the Commission and took the plea that “As per notification dated 9.6.2011 of the Govt. of India, Ministry of Personnel, Public Grievances and Pensions (Annexure ‘C’) CBI has been included in the Second Schedule of the RTI Act, 2005 at Sl. No. 23”. Therefore, the RTI Act did not apply to CBI. The Respondent further stated that the Complainant had not filed a First Appeal but directly approached the Commission by way of a Second Appeal. The Respondent stated that if the information sought was furnished, it would reveal the identity of the persons/ resources who had provided vital information in confidence and impede the prosecution of the offender. He also claimed exemption under Section 8 (1) (g) and (h) of the RTI Act.

The order was reserved at the hearing held on 01/07/2011.

Discussion and Decision announced on 1 July 2011:

The Commission has perused the written submissions submitted by the Respondent. The Respondent has submitted that the Complainant, instead of preferring a First Appeal before the First Appellate Authority had directly filed a Second Appeal before the Commission. At the outset, the Commission clarifies that under Section 18 of the RTI Act, it is the duty of the Commission to receive and inquire into a complaint from any person who *inter alia* has been refused access to any information requested, believes that he or she has been given incomplete, misleading or false information under the RTI Act, etc. There does not appear to be a statutory requirement of filing a First Appeal and a Complaint may be made directly to the Commission in certain circumstances, as described above. In the instant case, access to the information sought has been denied to the applicant. Therefore, he filed a Complaint with the Commission under Section 18 of the RTI Act, hence the complaint is in order.

The Respondent has further submitted that as per the notification dated 09/06/2011 (the “**Notification**”) of the Department of Personnel and Training (“**DOPT**”), Ministry of Personnel, Public Grievances and Pensions, CBI was included in the Second Schedule of the RTI Act at Serial No. 23. As per Section 24 of the RTI Act, the provisions of the RTI Act would not apply to certain organisations and hence, as per the said notification, the provisions of the RTI Act would not apply to CBI, except when the information pertained allegations of corruption and human rights violations.

Section 24(1) of the RTI Act stipulates *inter alia* that nothing contained in the RTI Act shall apply to the intelligence and security organisations specified in the Second Schedule, being organisations established by the Central Government or any information furnished by such organisations to that Government. Further, Section 24(2) of the RTI Act provides *inter alia* that the Central Government may, by notification in the Official Gazette, amend the Second Schedule by including therein any other intelligence or security organisation established by that Government and on the publication of such notification, such organisation shall be deemed to be included in the Second Schedule.

Under Section 24(2) of the RTI Act, the DOPT, Ministry of Personnel, Public Grievances and Pensions has, vide the said notification stated as follows:

“G. S. R. 442 (E).- In exercise of the powers conferred by sub- section (2) of Section 24 of the Right to Information Act, 2005 (22 of 2005), the Central Government hereby makes the following further amendments in the Second Schedule to the said Act, namely:-

In the Second Schedule to the Right to Information Act, 2005, after serial number 22 and the entry relating thereto, the following serial numbers and entries shall be added, namely:-

- “23. Central Bureau of Investigation.*
- 24. National Investigation Agency.*
- 25. National Intelligence Grid.” ” (Emphasis added)*

It follows from the above that CBI has been brought within the Second Schedule of the RTI Act thereby exempting it from the application of the RTI Act in accordance with Section 24 of the RTI Act. However, on a plain reading of the Notification, it does not appear to have a retrospective effect. Reliance may be placed upon the decision of the Supreme Court of India in P. Mahendran v. State of Karnataka AIR 1990 SC 405 wherein it observed as follows:

“It is well- settled rule of construction that every statute or statutory Rule is prospective unless it is expressly or by necessary implication made to have retrospective effect. Unless there are words in the statute or in the Rules showing the intention to affect existing rights the Rule must be held to be prospective. If a Rule is expressed in language which is fairly capable of either interpretation it ought to be construed as prospective only. In the absence of any express provision or necessary intendment the rule cannot be given retrospective effect except in matter of procedure.”

The Notification was issued on 09/06/2011 and there is no express stipulation whatsoever that the Notification shall come into force with effect from any date prior to 09/06/2011. Moreover, the Notification does not appear to indicate any intention of affecting existing rights and therefore, must be construed as prospective in nature. Hence, information sought in any RTI application filed prior to 09/06/2011 with CBI must be provided in accordance with the provisions of the RTI Act.

Having established the above, the Commission shall now examine whether the Notification itself is within the letter and spirit of the RTI Act. As mentioned above, under Section 24(2) of the RTI Act, the Central Government has been given the power to include any other intelligence or security

organizations,-apart from the eighteen in the original list,- within the Second Schedule by way of a notification. This power does not appear to have been extended to any other body, and is restricted to only intelligence or security organisations. In view of the same, it becomes pertinent to understand whether CBI qualifies as “intelligence or security organisation” as per Section 24(2) of the RTI Act.

The Commission has perused the CBI website and the relevant extracts thereof have been reproduced below:

*“The Central Bureau of Investigation traces its origin to the Special Police Establishment (SPE) which was set up in 1941 by the Government of India. The functions of the SPE then were to investigate cases of bribery and corruption in transactions with the War & Supply Deptt. Of India during World War II. Even after the end of the War, the need for a Central Government agency to investigate cases of bribery and corruption by Central Government employees was felt. The **Delhi Special Police Establishment Act** was therefore brought into force in 1946. The CBI's power to investigate cases is derived from this Act.” (Emphasis added)*

The Delhi Special Police Establishment acquired its popular current name, CBI through a Home Ministry resolution dated 01/04/1963. The relevant provisions of the Delhi Special Police Establishment Act, 1946, which describe the powers of CBI are provided as follows:

*“2. Constitution and powers of police establishment- (1) Notwithstanding anything in the Police Act, 1861 (5 of 1861), the Central Government may constitute a special police force to be called the Delhi Special Police Establishment 2[****] for the investigation 3 [in any 4. [Union territory]] of offences notified under section 3.*

(2) Subject to any order which the Central Government may make in this behalf, Members of the said police establishment shall have throughout 5 [any 4 [Union territory]] in relation to the investigation of such offences and arrest of persons concerned in such offences, all the powers, duties, privileges and liabilities which police officers of 6 [that Union territory]. have in connection with the investigation of offences committed therein.

...

2. The words "for the State of Delhi" omitted by Act 26 of 1952, sec. 3, (w.e.f. 6-3-1952).

3. Subs. by Act 26 of 1952, sec. 3 for "in that state" (w.e.f. 6-3-1952).

4. Subs. by A.L.O. 1956, for "Part C State".

5. Subs. by A.L.O. 1956, for "the State of Delhi".

6. Subs. by A.L.O. 1956, for "that State". (Emphasis added)

The Mission and Vision of CBI in its Annual report of 2010 have been provided as follows:

“Mission

To uphold the Constitution of India and law of the land through in-depth investigation and successful prosecution of offences; to provide leadership and direction to police forces and to act as the nodal agency for enhancing inter-state and international cooperation in law enforcement.

Vision

Based on its motto, mission and the need to develop professionalism, transparency, adaptability to change and use of science and technology in its working, the CBI will focus on

1. Combating corruption in public life, curb economic and violent crimes through meticulous investigation and prosecution.
2. Evolve effective systems and procedures for successful investigation and prosecution of cases in various law courts.
3. Help fight cyber and high technology crime.
4. Create a healthy work environment that encourages team-building, free communication and mutual trust.
5. Support state police organizations and law enforcement agencies in national and international cooperation particularly relating to enquiries and investigation of cases.
6. Play a lead role in the war against national and transnational organized crime.
7. Uphold Human Rights, protect the environment, arts, antiques and heritage of our civilization.
8. Develop a scientific temper, humanism and the spirit of inquiry and reform.
9. Strive for excellence and professionalism in all spheres of functioning so that the organization rises to high levels of endeavor and achievement.” (Emphasis added)

Further, the FAQs on the CBI website provide an insight on the functioning and mandate of the CBI. The relevant portions have been reproduced below:

“1. Please give brief background of CBI.

*During the period of World War II, a Special Police Establishment (SPE) was constituted in 1941 in the Department of War of the British India to enquire into allegations of bribery and corruption in the war related procurements. Later on it was formalized as an agency of the Government of India to investigate into allegations of corruption in various wings of the Government of India by enacting the **Delhi Special Police Establishment (DSPE) Act, 1946**. In 1963, the Central Bureau of Investigation (CBI) was established by the Government of India with a view to investigate serious crimes related to Defence of India, corruption in high places, serious fraud, cheating and embezzlement and social crime, particularly of hoarding, black-marketing and profiteering in essential commodities, having all-India and inter-state ramifications. CBI derives its legal powers to investigate crime from the DSPE Act, 1946.*

...

5. What types of Crimes CBI investigate today?

CBI has grown into a multidisciplinary investigation agency over a period of time. Today it has the following three divisions for investigation of crime:-

*(i) **Anti-Corruption Division** - for investigation of cases under the Prevention of Corruption Act, 1988 against Public officials and the employees of Central Government, Public Sector Undertakings, Corporations or Bodies owned or controlled by the Government of India - it is the largest division having presence almost in all the States of India.*

*(ii) **Economic Offences Division** - for investigation of major financial scams and serious economic frauds, including crimes relating to Fake Indian Currency Notes, Bank Frauds and Cyber Crime.*

*(iii) **Special Crimes Division** - for investigation of serious, sensational and organized crime under the Indian Penal Code and other laws on the requests of State Governments or on the orders of the Supreme Court and High Courts.*

The laws under which CBI can investigate Crime are notified by the Central Government under section 3 of the DSPE Act.

6. What is the difference between the nature of the cases investigated by the National Investigation Agency (NIA) and the CBI?

The NIA has been constituted after the Mumbai terror attack in November 2008 mainly for investigation of incidents of terrorist attacks, funding of terrorism and other terror related crime, whereas CBI investigates crime of corruption, economic offences and serious and organized crime other than terrorism.

29. Does CBI perform any other important function other than investigation of crime?

Yes. CBI has been notified as the Interpol of India. CBI has a training academy in Ghaziabad, where it organizes training courses in various subjects not only for its own officers but for officers from other countries as well as from State & UT police organizations, vigilance officers of Public Sector Undertakings, Banks etc.” (Emphasis added)

On a careful perusal of the material, it can be ascertained that CBI was established for the purposes of investigation of specific crimes including corruption, economic offences and special crimes. It continues to discharge its functions as a multi-disciplinary investigating agency and evolve more effective systems for investigation of specific crimes. Members of CBI have all the powers, duties, privileges and liabilities which police officers have in connection with the investigation of offences. There is no claim in its mandate and functions, as described above, that CBI is involved in intelligence gathering or is a security organisation. Even the additional functions performed by CBI other than investigation of crimes do not include any function which would lend it the character of an intelligence or security organisation. In view of the same, CBI does not appear to fit the description of an “intelligence or security organisation” under Section 24(2) of the RTI Act.

Even by virtue of the fact that certain organisations such as CBI, during the course of investigation, may touch upon terrorist-related crimes or matters that may have an impact on the security of the nation, the same cannot be a reason for classifying such an organisation as intelligence or security organisation. If such a claim was to be accepted, it would mean that every organisation which is involved in some investigation or the other, including the police, would come within the realm of Section 24(2) of the RTI Act. The absurdity of this proposition may be seen from an instance where terrorists launch bomb attacks in trains, the Ministry of Railways and other local authorities may obtain certain information which can be classified as ‘intelligence’ or such information may have an impact on the security of the nation. However, that cannot be a reason for bringing the Ministry of Railways or such other local authorities within the Second Schedule of the RTI Act. It is pertinent to note that on the CBI website, in response to FAQ 6, it has been clearly stated that the CBI investigates crimes of corruption, economic offences, and serious and organized crimes *other than terrorism*.

Even where organisations such as CBI may obtain certain information that can be classified as ‘intelligence’ or may have an impact on the security of the nation, the same may be sought to be exempted from disclosure under Section 8(1) of the RTI Act. The Right to Information is a fundamental right of the citizens embedded in Article 19(1) of the Constitution of India. When Parliament codified the said right in the form of the RTI Act, it took care to lay down 10 exemption clauses in Section 8(1) on the basis of which information may be denied to citizens, unless there was a larger public interest. The exemptions contained in Section 8(1) of the RTI Act are adequate and comprehensive to ensure that disclosure of information does not *inter alia* compromise national security or impede the process of investigation or apprehension or prosecution or endanger the life or physical safety of any individual. It may be worthwhile to list the exemptions under Section 8(1) of the RTI Act, which are as follows:

“8. Exemption from disclosure of information.- (1) Notwithstanding anything contained in this Act, there shall be no obligation to give any citizen,-

(a) information, disclosure of which would prejudicially affect the sovereignty and integrity of India, the security, strategic, scientific or economic interests of the State,

- relation with foreign State or lead to incitement of an offence;*
- (b) information which has been expressly forbidden to be published by any court of law or tribunal or the disclosure of which may constitute contempt of court;*
 - (c) information, the disclosure of which would cause a breach of privilege of Parliament or the State Legislature;*
 - (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;*
 - (e) 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;*
 - (f) information received in confidence from foreign government;*
 - (g) information, the disclosure of which would endanger the life or physical safety of any person or identify the source of information or assistance given in confidence for law enforcement or security purposes;*
 - (h) information which would impede the process of investigation or apprehension or prosecution of offenders;*
 - (i) 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;

- (j) 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.”

Further, as mentioned above, it is established that the right to information is a fundamental right of the citizens. However, when the fundamental right to information was being codified by way of the RTI Act, the Parliament felt that certain “intelligence and security organisations” may require greater protection from disclosure of information and therefore stipulated Section 24(1) of the RTI Act. Therefore, even at the cost of abridging the fundamental right to information of citizens, the Parliament identified certain bodies as “intelligence and security organisations” that required to be protected from disclosure of information to serve a greater purpose. These organisations were consequently included in the Second Schedule.

Parliament envisaged that during the course of time, there may be certain additions as well as omissions to the Second Schedule. Therefore, under Section 24(2) of the RTI Act, the Central Government was given the power to *inter alia* amend the Second Schedule by notification in the Official Gazette by including therein any other intelligence or security organisation established by that Government, or by omitting therefrom such organisation which is already specified. Given the stature and mandate of CBI, it does not seem plausible that the Parliament could have inadvertently omitted to include CBI in the Second Schedule when the RTI Act was being enacted. In fact, it may be inferred that it was certainly not the intent of the Parliament to include investigating agencies within the purview of Section 24(1) of the RTI Act. If it was intended that Parliament be given the power to include even investigating agencies in the Second Schedule subsequently, then Section 24(2) of the RTI Act would have expressly provided for the same.

By enacting the Notification and bringing CBI within the Second Schedule, the Government appears to have increased the scope of Section 24(2) of the RTI Act, which was not envisaged by the Parliament. Given the fact that the Right to Information is a fundamental right, any provision by which the said right is sought to be curtailed must be strictly construed. The Government, however, appears to have stretched the interpretation of Section 24(2) of the RTI Act far beyond what Parliament had intended, by including an investigating agency such as CBI within the Second Schedule, which was envisaged exclusively for intelligence or security organisations. The Government has read additional qualifications into Section 24(2) of the RTI Act which were hitherto not contemplated. By this method the Government could keep adding organisations to the Second Schedule, which do not meet the express criteria laid down in Section 24(2) of the RTI Act and ultimately render the RTI Act ineffective. The Government cannot frustrate a law made by the Parliament by resorting to such colourable administrative fiat.

In this context, it is relevant to mention the observations of Mathew, J. in *State of Uttar Pradesh v. Raj Narain* (1975) 4 SCC 428 that, “*In a government of responsibility like ours, where all the agents of the public must be responsible for their conduct, there can be but few secrets. The people of this country have a right to know every public act, everything that is done in a public way by their public functionaries. They are entitled to know the particulars of every public transaction in all its bearing. Their right to know, which is derived from the concept of freedom of speech, though not absolute, is a factor which should make one wary when secrecy is claimed for transactions which can at any rate have no repercussion on public security*”. This notion has also been reflected in the Preamble of the RTI Act, which stipulates as follows:

“An Act to provide for 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, the constitution of a Central Information Commission and State Information Commissions and for matters connected therewith or incidental thereto.

Whereas the Constitution of India has established democratic Republic;

And whereas democracy requires an informed citizenry and transparency of information which are vital to its functioning and also to contain corruption and to hold Governments and their instrumentalities accountable to the governed; ...” (Emphasis added)

Therefore, by enacting the Notification and placing CBI in the Second Schedule, the Government appears to be claiming absolute secrecy for CBI without the sanction of law. The RTI Act was a promise to Citizens by Parliament of transparency and accountability. Given that the previous year has been characterized by unearthing of various scams in the Government which are being investigated by CBI, inclusion of CBI in the Second Schedule by the Government would be considered to be a step to avoid the gaze and monitoring of Citizens in matters of corruption.

Furthermore, under Section 4(1)(d) of the RTI Act, it is mandated that every public authority shall provide reasons for its administrative or quasi judicial decisions to affected persons. Even in the absence of the said provision, it is a basic tenet of democracy that where the Government takes any major decision which would affect the citizens, it must inform the citizens of the reasons for its actions. It is incumbent on the Government to provide the reasons for constricting the citizen’s fundamental right to information. In the instant case, the Commission has noted that neither in the Notification nor on its website or otherwise, the DOPT or the Ministry of Personnel, Public Grievances and Pensions has provided any reasons for including CBI in the Second Schedule. Such an administrative decision has a profound impact on the citizens of India inasmuch as it restricts their fundamental right to information. Therefore, the DOPT/ Ministry of Personnel, Public Grievances and

Pensions ought to have communicated the reasons for this sudden decision to include CBI within the Second Schedule.

Springing such a Notification to shroud CBI with an armour of opacity without giving any reasons, is violative of the promise made by the Parliament in Section 4(1)(d) of the RTI Act. No urgency or emergency appears to have been claimed to justify the inclusion of CBI into the Second Schedule. Since no reasons have been advanced, citizens are likely to deduce that the purpose of including CBI in the Second Schedule was to curb transparency and accountability from the investigations of several corruption cases against high- ranking Government officers. In the absence of any reasons, the Government's move appears to be arbitrary in nature. It appears an attempt is being made to slip in the CBI with National Investigation Agency and the National Intelligence Grid into Schedule two.

In view of the foregoing reasons, the Commission is of the view that the Notification is not in consonance with, either the letter or spirit of the RTI Act,- in particular Section 24,- for the following reasons:

1. As observed above, CBI is not an "intelligence or security organisation", which requirement needs to be satisfied in order for it to be covered under Section 24 of the RTI Act and therefore, it cannot be included in the Second Schedule.
2. No reasons have been provided by the DOPT or the Ministry of Personnel, Public Grievances and Pensions, as required under Section 4(1)(d) of the RTI Act, to justify the inclusion of CBI in the Second Schedule. In the absence of reasons, inclusion of CBI in the Second Schedule along with National Intelligence Agency and National Intelligence Grid appears to be an arbitrary act. The promise made to Citizens under Section 4 (1) (d) of the RTI Act must be fulfilled.

This Commission rules that the said notification of 9/6/2011 is not in consonance with the letter or spirit of Section 24 of the RTI Act, since it constricts the Citizen's fundamental right in a manner not sanctioned by the law.

The PIO has also claimed exemption under Section 8 (1) (g) and (h) of the RTI Act. The Respondent has claimed support from the Commission's decisions in Vinod Kumar v. CBI CIC/WB/A/2009/000503 dated 27/07/2010 and C. Seetharamaiah v. Commissioner of Customs & Central Excise CIC/AT/A/2008/01238 dated 07/06/2010 in support of his contention. The Respondent contended that if the information sought was furnished, it would reveal the identity of the persons/resources that had provided vital information in confidence and impede the prosecution of the offender. In the *Vinod Kumar Case*, the Commission held that the Cr. P. C. specifically debars the disclosure of case diaries and any deviation would necessarily impede the process of prosecution. On this basis, copies of FR- I and FR- II could not be provided to the appellant under the RTI Act and may be sought access to under the specific circumstances of the Indian Evidence Act, 1872 before the Trial Court.

Section 22 of the RTI Act expressly provides that the provisions of the RTI Act shall have effect notwithstanding anything inconsistent therewith contained in the Official Secrets Act, 1923, and any other law for the time being in force or in any instrument having effect by virtue of any law other than the RTI Act. Section 22 of the RTI Act, in no uncertain terms, lays down that the RTI Act shall override anything inconsistent contained in any other law. From a plain reading of Section 172(3) of the Cr. P. C., it appears that except specific circumstances, neither the accused nor his agents shall be entitled to call for case diaries or be allowed to see them merely because they are referred to by the Court. In other words, Section 173(2) of the Cr. P. C appears to impose a restriction on access to information held by or under the control of a public authority, which is *prima facie* inconsistent with the RTI Act. Therefore, in accordance with Section 22 of the RTI Act, the provisions of the RTI Act shall override the provisions of Cr. P. C. only to the extent the latter prescribes anything inconsistent

regarding furnishing of information to citizens. In view of the same, this Commission does not see the relevance of the *Vinod Kumar Case* as well as the *Seetharamaiah Case* in the instant matter.

Moreover, it is legally established that information sought can be denied to citizens only on the basis of Sections 8 and 9 of the RTI Act. Section 8(1)(h) of the RTI Act exempts disclosure of information which would impede the process of investigation or apprehension or prosecution of offenders. Merely because the process of investigation or prosecution of offenders is continuing, the bar stipulated under Section 8(1)(h) of the RTI Act is not attracted; it must be clearly established by the PIO that disclosure of the information would impede the process of investigation or apprehension or prosecution of offenders. Ravindra Bhat, J. of the High Court of Delhi in *Bhagat Singh v. CIC* W.P. (C) No. 3114/2007 has observed as follows:

“13. Access to information, under Section 3 of the Act, is the rule and exemptions under Section 8, the exception. Section 8 being a restriction on this fundamental right, must therefore be strictly construed. It should not be interpreted in manner as to shadow the very right itself. Under Section 8, exemption from releasing information is granted if it would impede the process of investigation or the prosecution of the offenders. It is apparent that the mere existence of an investigation process cannot be a ground for refusal of the information; the authority withholding information must show satisfactory reasons as to why the release of such information would hamper the investigation process. Such reasons should be germane, and the opinion of the process being hampered should be reasonable and based on some material. Sans this consideration, Section 8(1)(h) and other such provisions would become the haven for dodging demands for information.” (Emphasis added)

It is clear from the ruling of Ravindra Bhat, J. that the PIO, who is denying information under Section 8(1)(h) of the RTI Act, must show satisfactory reasons as to why disclosure of such information would impede the process of investigation or apprehension or prosecution of offenders. These reasons must be relevant and the opinion of the PIO that by disclosing the information prosecution of offenders shall be impeded should be reasonable. The opinion of the PIO must be based on some material and cannot be a mere apprehension not supported by any evidence.

In the instant case, the PIO has denied the information simply on the basis that such disclosure would impede the process of prosecution. However, he has failed to explain how such disclosure would actually be an impediment to the process of prosecution, as laid down above by the High Court of Delhi. The denial of information by the PIO appears to be a mere blanket statement not supported by any cogent evidence or material on the basis of which it can be clearly demonstrated that such disclosure would in fact attract the exemption contained in Section 8(1)(h) of the RTI Act. In other words, the PIO has failed to discharge the burden placed upon him under Section 19(5) of the RTI Act to prove that the denial of information under Section 8(1)(h) of the RTI Act was justified. On this basis, the Commission rejects the contention of the PIO that the information sought was exempted under Section 8(1)(h) of the RTI Act.

Furthermore, the Respondent has claimed Section 8(1)(g) of the RTI Act for non-disclosure of information and argued that the identity of the persons/ resources that had provided vital information in confidence would be revealed. The Commission is of the opinion that there is some merit in the contention raised by the Respondent. Section 10(1) of the RTI Act provides as follows:

“10. Severability.- (1) Where a request for access to information is rejected on the ground that it is in relation to information which is exempt from disclosure, then, notwithstanding anything contained in this Act, access may be provided to that part of the record which does not contain any information which is exempt from disclosure under the RTI Act and which can reasonably be severed from any part that contains exempt information.”

Under Section 10 of the RTI Act, it is possible to sever certain portions of the information before disclosing it to an applicant to ensure that information that is exempt from disclosure under the RTI Act

is not disclosed. Therefore, this Commission has decided to apply Section 10 of the RTI Act to the information sought by the Complainant.

The CPIO is directed to provide to the Complainant copy of the FIR lodged by CBI. The CPIO is further directed to send copies of FR- I, FR- II and GEQD Expert report after severing the names and other particulars of persons, the disclosure of which would endanger their life or physical safety or identify the source of information or assistance given in confidence for law enforcement or security purposes. Since the PIO has claimed that the report of S. P., CBI has been given in a sealed cover to the Supreme Court, it appears to be exempted from disclosure under Section 8(1)(b) of the RTI Act and therefore need not be provided to the Complainant.

The Complaint is allowed.

The CPIO is directed to provide to the Complainant copy of the FIR lodged by CBI. The CPIO is further directed to send copies of FR- I, FR- II and GEQD Expert report to the Complainant. The information should be sent to the complainant after severing the names and other particulars of persons, the disclosure of which would endanger their life or physical safety or identify the source of information or assistance given in confidence for law enforcement or security purposes. The information as directed here should be sent to the complainant before 25 July 2011.

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
01 July 2011

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