

**Shri Ram Kumar R. vs Central Bureau Of Investigation on 11 September, 2009**

CENTRAL INFORMATION COMMISSION

Appeal No.CIC/WB/A/2008/00572 dated 11.3.2008

Right to [Information Act](#) 2005 - Section 19

Appellant - Shri Ram Kumar R.

Respondent - Central Bureau of Investigation

Decision announced: 11.9.2009

**Facts:**

By an application of 29.9.07 Shri Ramkumar R. of Yashasvi Nagar, Thane (W), Mumbai applied to CPIO Shri Ashwani Kumar, SP HQs. Seeking the following information :

"1. Copy of Regular Cases closed by different branches of CBI in the last 12 years may kindly be furnished. The list should contain the name of the branch and the total number of regular cases closed by the branch during that year. The list should also contain the Regular Case numbers, The name with the designation of the highest authority which approved the closure and Whether the closure was accepted by the concerned.

2. Copy of report submitted by Shri Manoj Parigarkar, Dy. SP (A)/ CBI/SCR-I/ New Delhi to SP\_/ CBI SCR-I/ New Delhi or to DIG/ SC-I regarding theft of data from hard disk of computer on 11.6.2007 maintained in the O/o SP/CBI/SCR-I/ New Delhi.

3. List of IPS offices who have come on deputation to CBI in the past 20 years on the recommendation of Director's of CBI and the designations held by each of them in CBI may kindly be provided.

4. List of IPS officers have come on the recommendation of Ministry of Home Affairs in the past 20 years and the designations held by each of them in CBI may kindly be furnished.

5. List of officials/ officers (excluding IPS officers) who have come on deputation to CBI (including Special Unit) from various other organizations for the last 20 years may kindly be furnished. The list should contain the Name of the organization from where these officials/ officers have come on deputation, its address and their grade scale in their parent department and in CBI at the present moment.

'6. List of officials/ officers (Excluding IPS officers) who have extended their deputation period in CBI (including Special Unit) for the last 20 years alongwith the reasons for their extension of deputation may kindly be furnished.

7. List of officials/ officers who have been transferred to places like North Last branches/ Port Blair branch/ Jammu branch alongwith office order numbers and date of issue of order from CBI/HO/ New Delhi for the last 30 years may kindly be furnished.

8. List of officials/ officers whose orders of transfer to places viz. North East branches/ Port Blair branch/ Jammu branch along with office order numbers and date of issue of order which have been cancelled by CBI, head Office, New Delhi in the last 20 years may kindly be furnished. This list should also contain the designation of the officer issuing this office order.

9. List of officials/ officers whose transfers have been withdrawn/ cancelled by CBI, Head office, New Delhi in the last 20 years (Apart from list asked at Sl. No. 8 above) may kindly be furnished.

10. Copies of noting portion of the relevant file wherein my representations dated 31.7.2007 (5 in number) and 1.8.2007 ( 2 in number) sent to SP/CBI/SCR-I/ new Delhi regarding joining of duties in office of SP/CBI/SCR-I/ new Delhi have been dealt with may kindly be furnished.

11. Copies of noting portion of my personal file maintained with SP/CBI/SCR-I/ New Delhi from the date 31.7.2007 may kindly be provided to me.

12. Copy of transfer truck claim/ TA bill submitted by Shri Surinder Paul Klair, SP in the O/o SP, CBI, SCB, Navi Mumbai.

13. Amount paid to Shri Surinder Paul Klair, SP after processing of his Transfer Truck Claim/ Ta bill so submitted by him in the O/o SP, CBI, SCB, Navi Mumbai.

14. Copies of noting portion and correspondences of all my files maintained in CBI/ HQ, New Delhi excluding my personal file which has already been provided to me."

To this Shri Ramkumar R received a response dated 3.10.07 transferring the application in three sets, as follows:

"Points No. 1 (concerning AIG (P)-I/ CBI/ New Delhi), Point Nos. 2, 10 and 11 (concerning SP/ CBI/SCR-I/ New Delhi) and Point Nos. 12 and 13 (concerning SP /CBI/SCB/ Navi Mumbai)."

These three sets are discussed below:

Point no. 1 In regard to this point Shri Ram Kumar received a response dated 25.10.07 from Asstt. Inspector General of Police (P), as follows:

'2. A list of Regular Cases closed w.e.f. 1.4.1997 to 31.3.2007 by different branches of CBI as available in Policy Division is enclosed. Compilation of information for the remaining period of two years would disproportionately affect the routine work of the office. Hence information is exempted under [Section 7](#) (9) of the Act.

3. Since case records relating to these cases are maintained in the branches concerned, other information in these cases may be obtained from the CPIOs of the branches concerned.' Not satisfied, however, Shri Ramkumar moved an appeal before J.D.(P) on 20.11.07, on the following grounds:

"A list of Regular Cases closed w.e.f. 1.4.1997 to 31.3.2007 by different branches of CBI as available in Policy Division is enclosed. Compilation of information for the remaining period of two years would disproportionately affect the routine work of the office. Hence information is exempted under [Section 7](#) (9) of the Act.

Since case records relating to these cases are maintained in the branches concerned other information in these cases may be obtained from the CPIOs of the branches concerned."

The Appellate Authority Shri Vineet Rajan Wason JD(P) in his order of 28.11.07 upheld the order of CPIO, as follows:

"I find that the CPIO has complied with the provisions of [RTI Act](#) by providing all the available information and collating the other information such as details of the cases etc which would be

available with the branches, would certainly divert the organisational sources and serve no public purpose.

As such, I do not find any merit in the appeal and reject the same.' Point nos. 2, 10 & 11 In this case appellant Shri Ramkumar received a response from CPIO/ SP, CBI, SCR-I who had received the application on 4.10.07, as follows:

"The information cannot be furnished to the applicant since the same is exempted u/s 8 (1) (e) (g) (j) & Sec 11 of [RTI Act](#), 2005."

Shri Ram Kumar then moved an appeal on 20.11.07 before Shri Satish Golchha, DIG CBI, Special Crime Region-I, with the following plea:

"The head office has furnished attested copy of my personal file and documents relating to joining which is maintained in CBI/ IIO/ New Delhi vide letter No. DPPELS II 2007/ 2445/ A-60011/33/2005 of AO(P) dated 23.8.2009 while the CPIO, SP/ CBI/SCR-1/ New Delhi has claimed exemption for furnishing attested copy of my personal file and related documents u/s 8 (1) (e) (g) (j) & Sec 11 of [RTI Act](#), 2005."

Upon this, Shri Ram Kumar initially received a response of 17.12.07 asking him to specify the documents required by him, but upon his attempting to do so in his letter of 20.12.07, no further orders have been passed.

In this case response was received on 30.11.07 from Shri S. N. Saxena who had received the application on 12.10.07, as follows:

"In respect to points nos. 12 and 13 of your application, enclosed please find copies of requested records.' In the meantime, Shri Ramkumar had moved an appeal before the DIG Special Crime Branch, Navi Mumbai on 20.11.07 pleading that "I have not received attested copies of documents as asked for from CPIO/ SP/CBI/SCB/Navi Mumbai in this regard."

Upon this, no order appears to have been passed separately in response to his initial application of 30.11.07. Shri Ramkumar has then moved his appeal before us on all points with the following prayer :

"11.1 That the respondents/ public authorities be directed to furnish the information/ document documents as asked for vide application dated 29.9.2007 (Annexure 1). 11.2 That the CPIO's i.e. S/Shri Anurag Garg, Surinder Paul Klair may kindly be directed to pay the penal amount/ fine from the date when the information/ documents have not been furnished.

11.3 That Shri Ashwani Kumar SP (Hqrs)/ CPIO may kindly be proceeded against for failing to transfer the said application dated 29.9.2007 to All Supdt's Police/ CPIO's of CBI."

This he has grounded on the following:

"no order has been passed by the first appellate authority and the SP/ CPIO has failed to observe the law laid down under [RTI Act](#), 2005 to provide information within a month and a penalty should be imposed on him and for failure on his part to adhere to rules/ regulations laid down in [RTI Act](#)."

The appeal was scheduled for hearing on 26.8.09, but on the request of SP, CBI, SC-1 Shri Surinder Paul, and appellant having no objection, it was adjourned to 11.9.09 when it was heard by videoconference with the following persons present:

Appellant at NIC Studio, Thane, Mumbai Shri Ramkumar R.

Respondents at CIC Studio, New Delhi.

Shri Surinder Paul, SP, CBI/SC-1 Shri S. K. Palsania, AIGP CBI at NIC Studio, Mumbai Shri P. Kannadaswamy, Zonal Head / A.A. Mumbai Shri Pramod, P.P., Mumbai In the meantime, we have received a response to the appeal notice from CPIO Shri S. K. Palsania, AIGP(P) in which he has submitted as follows:

"The RTI Application dated 29.9.2007 of the appellant was received on transfer from SP (HQ), CBI, HQ, New Delhi on 5.10.2007 for providing information in respect of point 1 of the application. A list of 752 closed cases for last 10 years w.e.f. 1.4.1997 to 31.3.1997 was provided vide letter dated 25.10.2007 (copy enclosed) to the appellant. The appellant was also informed that since the case records relating to these cases are maintained in all CBI branches concerned; other information in these cases may be obtained from the CPIOs of the branch concerned.

In view of the above stated position, it submitted that there has been no delay or inaction on the part of CPIO/ Policy Division.' With regard to this point, respondents Shri Palsania confirmed that the information on cases that had been closed by all Branches of CBI is maintained centrally in the Policy Division of CBI, a copy of which has been provided to appellant. Appellant, however, invited our attention specifically to Point 2 of this request which asked for the names and designation of the highest authority which approved the closure. Shri Palsania submitted that no separate record of this is maintained. To obtain the information for appellant would require scrutinizing all the files which are maintained in the different Branches of the CBI and club the information with that being sought, an exercise which would attract the provision of sub sec. (9) of Sec. 7.

Appellant Shri Ramkumar R. submitted that he cannot afford to travel to different parts of the country and, therefore, the CPIO HQs Shri Ashwani Kumar should have transferred this application to all Branches holding the information sought.

POINTS 2, 10 & 11 In this case Shri Surender Paul submitted that on the basis of a complaint received from Shri Ramkumar R on 4.6.07 regarding robbing sensitive data on a computer, an enquiry has been initiated. This is an ongoing investigation, hence the manner of reply provided. We brought to Shri Surender Paul's attention that in this case refusal has not been made on grounds of Sec. 8(1)(h) but only of sub sec. (e), (g) & (j) of Sec. 8(1). He, however, stated that the real reason for refusing the information was what he has stated. Appellant Shri Ramkumar R submitted that he had indeed been given certain documents from his personal files but these were only part of the files. What he required was the remaining part, which he was unable to specify, to which Shri Surender Paul submitted that unless he specifies the documents sought, CPIO was not in a position to supply the same. Appellant Shri Ramkumar was asked by us as to why he did not seek inspection of the file to which he responded that he could not bear the expenses to travel to Delhi, since he was located in Thane.

Point nos. 12 & 13 In this case respondent Shri Kannadaswamy DIG submitted that all the documents asked for had in fact been provided to appellant Shri Ramkumar R, although he admitted there was a delay because of the exigencies of work.

However, the concerned CPIO was now deceased. Appellant Shri Ramkumar stated that he had no plea in this matter.

DECISION NOTICE Point no.1 In this regard it is clear that the Policy Division of CBI has provided to appellant Shri Ramkumar the documents held by it. Appellant's plea that to obtain one part of the information which he asked for under this point, the application should have been circulated to all the CBI Branches in the country, would be a plea only for disproportionately diverting the resources of the CBI, besides requiring maximum expenses for appellant Shri Ram Kumar himself, which he says he can ill afford. Appellant is, therefore, advised to modify this part of his question No. 1 so as to render it more easily accessible under the [RTI Act](#). This issue is disposed of accordingly.

Point nos. 2, 10 & 11 In this case we find that the appeal before Shri Satish Golchha, DIGP, st CBI, SCR-1 has not been responded to. Because the 1 appellate authority has not addressed the questions of appellant, which are of direct concern to his public authority and because appellant has pleaded no ground for making a direct complaint to us u/s 18, the Commission has decided to remand this appeal st to Shri Satish Golchha, DIGP, CBI, SCR-1, 1 appellate authority who is directed to dispose of the appeal within 15 working days from the date of receipt of this decision notice, under intimation to Shri PK Shreyaskar, Jt Registrar, Central Information Commission. However, in doing so he will take into account the ruling of Ravindra Bhat J with regard to application of [sections 8\(1\) \(e\) and\(j\) of the RTI Act](#), as contained in the Delhi High Court's order in Writ Petition (Civil) 288/2009 Supreme Court of [India vs. Subhash Chandra Agrawal](#) of 2.9.'09..

"It is necessary to first discern what a fiduciary relationship is, since the term has not been defined in the Act. In [Bristol & West Building Society v. Mothew](#) [1998] Ch 1, the term "fiduciary", was described as under:

"A fiduciary is someone who has undertaken to act for and on behalf of another in a particular matter in circumstances which give rise to a relationship of trust and confidence."

As per this ruling of the High Court of Delhi a fiduciary relationship can cover the following:

- Trustee/beneficiary ([Section 88, Indian Trusts Act](#), 1882) • Legal guardians / wards ([Section 20, Guardians and Wards Act](#), 1890) • Lawyer/client;
- Executors and administrators / legatees and heirs • Board of directors / company • Liquidator/company • Receivers, trustees in bankruptcy and assignees in insolvency/ creditors • Doctor/patient • Parent/child:

On the application of Sec (8) (1) (j) on the other hand, Hon'ble Ravindra Bhat J has ruled as follows:

"66. It could arguably be said that that privacy rights, by virtue of [Section 8\(1\)\(j\)](#) whenever asserted, would prevail. However, that is not always the case, since the public interest element, seeps through that provision. Thus when a member of the public requests personal information about a public servant, - such as asset declarations made by him- a distinction must be made between the personal data inherent to the position and those that are not, and therefore affect only his/her private life. This balancing task appears to be easy; but is in practice, not so, having regard to the dynamics inherent in the conflict. If public access to the personal data containing details, like photographs of public servants, personal particulars such as their dates of birth, personal

identification numbers, or other personal information furnished to public agencies, is requested, the balancing exercise, necessarily dependant and evolving on a case by case basis, would take into account of many factors which would require examination, having regard to circumstances of each case. These may include:

- i) whether the disclosure of the personal information is with the aim of providing knowledge of the proper performance of the duties and tasks assigned to the public servant in any specific case;
- ii) whether the information is deemed to comprise the individual's private details, unrelated to his position in the organization, and,
- iii) whether the disclosure will furnish any information required to establish accountability or transparency in the use of public resources.

Section 8(1)(j)'s explicit mention of privacy, therefore, has to be viewed in the context. Lord Denning in his "What next in Law", presciently emphasized the need to suitably balance the competing values, as follows: "English law should recognise a right to privacy. Any infringement of it should give a cause of action for damages or an injunction as the case may require. It should also recognise a right of confidence for all correspondence and communications which expressly or impliedly are given in confidence. None of these rights is absolute. Each is subject to exceptions. These exceptions are to be allowed whenever the public interest in openness outweighs the public interest in privacy or confidentiality. In every instance it is a balancing exercise for the Courts. As each case is decided, it will form a precedent for others. So a body of case-law will be established."

67. A private citizen's privacy right is undoubtedly of the same nature and character as that of a public servant. Therefore, it would be wrong to assume that the substantive rights of the two differ. Yet, inherent in the situation of the latter is the premise that he acts for the public good, in the discharge of his duties, and is accountable for them. The character of protection, therefore, afforded to the two classes - public servants and private individuals, is to be viewed from this perspective. The nature of restriction on the right to privacy is therefore of a different order; in the case of private individuals, the degree of protection afforded is greater; in the case of public servants, the degree of protection can be lower, depending on what is at stake. Therefore, if an important value in public disclosure of personal information is demonstrated, in the particular facts of a case, by way of objective material or evidence, furnished by the information seeker, the protection afforded by [Section 8\(1\)\(j\)](#) may not be available; in such case, the information officer can proceed to the next step of issuing notice to the concerned public official, as a "third party" and consider his views on why there should be no disclosure. The onus of showing that disclosure should be made, is upon the individual asserting it; he cannot merely say that as the information relates to a public official, there is a public interest element. Adopting such a simplistic argument would defeat the objective of [Section 8\(1\)\(j\)](#); Parliamentary intention in carving out an exception from the normal rule requiring no "locus" by virtue of [Section 6](#), in the case of exemptions, is explicit through the non-obstante clause."

Shri Satish Golchha, DIG CBI is, therefore, directed to give his decision taking into account the above observations. This issue is disposed of accordingly. If not satisfied with the information so provided, appellant Shri nd Ramkumar R. will be free to move a fresh 2 appeal before us as per Sec 19 (3).

Point nos. 12 & 13.

In this case, there is no contest and the appeal in this regard is disposed of accordingly.

Announced in the hearing. Notice of this decision be given free of cost to the parties.

(Wajahat Habibullah) Chief Information Commissioner 11.9.2009 Authenticated true copy.  
Additional copies of orders shall be supplied against application and payment of the charges, prescribed under the Act, to the CPIO of this Commission.

(Pankaj Shreyaskar) Joint Registrar 11.9.2009