

CENTRAL INFORMATION COMMISSION
August Kranti Bhawan, Bhikaji Cama Place,
New Delhi-110066

F. No. **CIC/KY/A/2015/000029-YA**

Date of Hearing : **12.07.2016**
Date of Decision : **01.09.2016**
Appellant/Complainant : **Shri R K Jain, Delhi**
Respondent : **CPIO, HUDCO Limited**
Delhi

Through:
Shri Rajnish Kumar Jha, for L&DO
Shri Qamar Ali, for HUDCO
Shri T.T. Dines
Shri Yogesh Saxena, DGM HUDCO

Information Commissioner : Shri Yashovardhan Azad

Relevant facts emerging from appeal:

RTI application filed on : 27.09.2014
PIO replied on : 05.11.2014 & 25.11.2014
First Appeal filed on : 29.11.2014
First Appellate Order on : 23.12.2014
2nd Appeal/complaint received on : 02.12.2014

Information sought and background of the case:

Vide RTI application dated 27.09.2014, the appellant sought multifaceted information regarding the lease of office space at August Kranti Bhawan to Central Information Commission under 7 points. All points except B, C, & D were answered by the CPIO on 25.11.2014. The material queries whereupon the present appeal is premised are reproduced hereinafter:

	Information Sought	Reply of CPIO
B.	Please provide the copies of all note sheets of the files in which renting out of office premises to CIC	i) Sec.8(1)(a) of RTI Act provides that, there shall be no obligation to give information, disclosure of which would prejudicially affect the sovereignty and integrity of India, the security,

	<p>at August Kranti Bhawan, has been dealt with.</p>	<p>strategic, scientific or economic interest of the state, relation with foreign State or lead to incitement of an offence. HUDCO being a Govt. Company falls within the definition of "State" as defined in Art. 12 of the Constitution of India and hence providing such information is barred within Sec 8 (1)(a) of the RTI Act.</p> <p>ii) Sec.8(1)(d) of RTI Act provides that there shall be no obligation to provide 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. Information sought by RTI Applicant pertains to the commercial arrangements between HUDCO and Third Party i.e. M/s CIC thus attracts the provisions of Section 8(1)(d).</p> <p>iii) Information sought by RTI Applicant pertains to the commercial arrangements between HUDCO and Third Party i.e. M/s CIC thus attracts the provisions of Section 11 of the RTI act wherein a written notice is required to be given to Third Party and Third Party is to be invited to make a submission in writing or orally regarding whether the information is to be disclosed and such submission of the Third Party shall be kept in view while taking a decision about the disclosure.</p>
C	<p>Please provide a copy of the Lease Deed entered with CIC for leasing out August Kranti Bhawan, to them with copies of supplementary and subsequent modifications to said</p>	<p style="text-align: center;">-Do-</p>

	Lease Deed.	
D	Please provide the file Nos. in which the agreements with Habitat Service Centre has been entered by HUDCO Ltd. & CIC. Please also provide copies of all such agreements.	-Do-

The FAA upheld the decision of CPIO. Feeling aggrieved, the appellant approached the Commission.

Relevant facts emerging during hearing:

The Commission in receipt of a communication received from the appellant wherein he has expressed inability to attend the proceedings and requested to decide the matter on the basis of material on record. He however, has raised the following contentions through written submissions, which shall be discussed in the latter part of this order:

In the subject RTI application, I have sought information regarding the renting out of the office premises to the Central Information Commission at August Kranti Bhawan and also sought copy of the lease deed. Since these are financial matters, therefore, the information is not deniable, but the CPIO has claimed exemption under Section 8(1)(d) of the RTI Act. It is submitted that such information cannot be exempted under Section 8(1)(a), as it cannot pose any threat to the National Security or the economy of the country. Similarly, Section 8(1)(d) is also not applicable as such Lease Deeds are to be registered and all registered documents are treated public documents.

The CPIO is making contradictory claim, as on the one hand, he is claiming exemption under Section 8(1)(a) & (d) and on the other hand, he is claiming that the information is the third party information under Section 8(1)(j) of the RTI Act, but has not followed the procedure of Section 11 by issuing third party notice. Therefore, the information may be directed to be provided within the time bound frame and the appeal may kindly be allowed.

As regards to the explanation given for delay in providing the information, I am satisfied that there was no malafide in the matter, therefore, I am giving up my plea for penal action on the CPIO.

Sd/-

The respondent is present and heard at length. He states that information as available on record, as deemed disclosable was furnished to the appellant. He states that HUDCO is a socio-commercial profit making entity which competes with other private & state sponsored entities like any other commercially driven organization. In this light, the CPIO asserts that August Kranti Bhawan, a commercial space owned by HUDCO situated at Bhikaji Cama Place, New Delhi has been leased out to Central Information Commission in usual course of business. He contends that the terms of grant of lease as incorporated in the agreement, are the culmination of negotiations between HUDCO & CIC. He states that disclosure of the agreement *en bloc* containing all covenants & terms of agreement, gains & liabilities flowing from the document are commercially sensitive information and revelation thereof would be counterproductive for the commercial interests of HUDCO.

Decision:

The preliminary onus to justify non disclosure of information rests on the respondent. The Commission finds that Section 8(1)(a) of the RTI Act does not come to aid respondent. The facts of present appeal do not contain essential ingredients required to attract exemption under Section 8(1)(a).

However, the Commission finds merit in the argument that the terms of agreement entered between the respondent and CIC do constitute information of commercial confidence. HUDCO, a profit making PSU, must not be placed in a disadvantageous position vis-à-vis its competitor private organizations. The Commission shall now advert to address the contentions raised by the appellant. The appellant asserts that the Section 8(1)(d) is not applicable since 'Lease Deeds' are required to be registered under law and all registered documents are *per se* public documents. The crux of appellant's submission is that no exemption can be invoked to withhold disclosure of a 'public document'.

The RTI Act, 2005 makes no distinction between 'public documents' & 'private documents'. Section 8 of the RTI Act, 2005 is the sole touchstone to determine whether any information can be disclosed or not. Any information which can withstand the rigour of Section 8 qualifies for exemption from disclosure. Even otherwise the contention of the appellant is misplaced. In **Smt. Rekha Rana and Ors. vs. Smt. Ratnashree Jain: MANU/MP/0544/2005**, a division bench of Hon'ble M.P. High Court opined as follows:

A deed of conveyance or other document executed by any person is not an act nor record of an act of any sovereign authority or of any official body or tribunal, or of any public officer, legislative, judicial and executive. Nor is it a public record kept in a State of any private documents. A sale deed (or any other deed of conveyance) when presented for registration under the Registration Act, is not retained or kept in any public office of a State after registration, but is returned to the person who presented such document for registration, on completion of the process of registration, An original registered document Is not therefore a public record kept in a state of a private document, Consequently, a deed of sale or other registered document will not fall under either of the two classes of documents described in Section 74, as 'public documents'. Any document which is not a public document is a private document. We therefore have no hesitation in holding that a registered sale deed (or any other registered document) is not a public document but a private document.

*This position is made abundantly clear in **Gopal Das v. Shri Thakurji AIR 1943 Privy Council 83**, wherein the Privy Council considering the question whether a registered receipt is a public document observed thus:*

It was contended by Sir Thomas Strongman for the respondents that the receipt comes within para 2 of Section 74, Evidence Act, and was a "public document"; hence under Section 65(e) no such foundation is required as In cases coming within Clauses (a), (b) and (c) of that section. Their Lordships cannot accept this argument since the original receipt, of 1881 is not "a public record of a private document". The original has to be returned to the party. A similar argument would appear at one time to have had some acceptance in India but it Involves a misconstruction of the Evidence Act and Registration Act and later decisions have abandoned it.

(Emphasis supplied)

We may also refer to the following passage from Ratanlal's Law of Evidence' (19th Edition page 237):

Public document, (clause (e)) - This clause is intended to protect the originals of public records from the danger to which they would be exposed by constant production in evidence. Secondary evidence is admissible in the case of public documents mentioned in Section 74. What Section 74 provides is that public records

*kept in any state of private documents are public documents, **but private documents of which public records are kept are not in themselves public documents. A registered document, therefore, does not fall under either Clause (e) or (f). The entry in the register book is a public document, but the original is a private document.***

The Commission observes that often the parties before us, seek copies of private registered documents under the mistaken belief that the same qualifies to be disclosed notwithstanding the provision of the RTI Act, 2005.

Another limb of contention advanced by the appellant is that the CPIO had taken the plea that no disclosure can be made without inviting comments from the third party ie. Central Information Commission. The appellant is discontent over failure of CPIO in following procedure u/ 11 of the RTI Act, 2005. It is worthwhile to mention that CPIO had taken 3 distinct grounds for denying the information on material points. Even before the Commission, the CPIO reiterated all of them. It is not uncommon in Common Law system to adopt alternative submissions & prayers. A piece of information may be exempt under more than one provision of RTI law, hence, the Commission does not find force in the contention of appellant since the CPIO did not deem fit to resort to Section 11 proceedings in view of specific plea/exemption sought under Section 8(1)(a) & (d). Further, no wider public interest is demonstrated by the appellant warranting disclosure of the information sought.

As a sequel to the aforesaid discussion, the Commission finds the reply of CPIO in order. The appeal is dismissed.

(Yashovardhan Azad)
Information Commissioner

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.

(R.P.Grover)
Designated Officer