

CENTRAL INFORMATION COMMISSION
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Decision No. CIC/SG/A/2011/002664/17150
Appeal No. CIC/SG/A/2011/002664

Relevant Facts emerging from the Appeal:

Appellant : Mr. Vinod K. Jose,
E-3, Jhandewalan Estate,
Rani Jhansi Road,
New Delhi-110055

Respondent : Mr. K. S. Rejimon,
PIO & Deputy Secretary,
M/o Information and Broadcasting,
BPL Section,
'A' Wing, Shastri Bhawan,
New Delhi-110001

Third Party : **Sun Direct TV (P) Ltd.,**
4/1017, 3rd Cross Street,
9th Link, Nehru Nagar,
Kottivakkam, Chennai-600041

RTI application filed on : 11/02/2011
PIO replied : 17/03/2011
First appeal filed on : 14/04/2011
First Appellate Authority order : 19/05/2011
Second Appeal received on : 27/06/2011

S. No.	Information Sought	Reply of the Public Information Officer (PIO)
1.	According to the government regulations, what is the percentage of stake that a broadcaster can own in a DTH Venture?	The eligibility criteria laid down in the DTH guidelines was provided by the PIO giving the details of the company, total foreign equity, FDI component, quantum represented by the paid up equity shares, etc.
2.	In Sun Direct, what is the percentage of stake that Kalanidhi Maran owns?	Information sought is commercial in nature, thus information requested cannot be provided. However information can be obtained from M/s Sun Direct.
3.	Who are the other stake holders and what is their share of stake in Sun Direct?	Information sought is commercial in nature, thus information requested cannot be provided. However information can be obtained from M/s Sun Direct.

Grounds for the First Appeal:

Incomplete and unsatisfactory information provided by the PIO.

Order of the First Appellate Authority (FAA):

The FAA was satisfied with the information provided by the PIO.

Grounds for the Second Appeal:

Incomplete and unsatisfactory information provided by the PIO and unfair disposal of the appeal by the FAA.

Relevant Facts emerging during Hearing on 14 December 2011:

The following were present

Appellant: Ms. Leena Reghunath representing Mr. Vinod K. Jose;

Respondent: Mr. K. S. Rejimon, Public Information Officer & Deputy Secretary.

“The PIO has refused to give the information without mentioning any exemption under Section 8(1) of the RTI Act. The FAA has also not quoted any exemption. The PIO has produced a letter from the Third Party “Sun Direct TV (P) Ltd.” objecting to release of information and claiming exemption under Section 8(1)(d) of the RTI Act. It appears that the PIO or FAA were unaware of the exemption when they refused to give the information. The Commission warns them not to deny information unless they can justify the exemption under Section 8(1) of the RTI Act. The Commission adjourns the hearing to 23 January 2012 at 10.00AM to give an opportunity to the Third Party “Sun Direct TV (P) Ltd.” to give its arguments how the information sought by the Appellant is exempt as per the provisions of Section 8(1) of the RTI Act. The Commission directs the PIO to serve a notice of hearing to the Third Party.

If the third party does not appear for the hearing no adjournments will given and the matter will be decided based on the material before the Commission. The Third Party may also give its written submission if they want.

The matter is adjourned to 23 January 2012 at 10.00AM.”

Relevant Facts emerging during Hearing on 23 January 2012:

The following were present:

Appellant: Mr. Krishn representing Mr. Vinod K. Jose;

Respondent: Absent;

Third Party: Mr. Angad Singh Dugal, Advocate for Sun Direct TV (P) Ltd.

“Both parties were heard. The Third Party claimed that the information sought was exempted from disclosure under Sections 8(1)(d) and (j) of the RTI Act. It was claimed that information regarding shareholding pattern is in the nature of commercial confidence-protected under Section 8(1)(d) of the RTI Act and disclosure of the same would harm the commercial interest of the Third Party. When the Commission asked the third party whether such information can be accessed from the Registrar of Companies (ROC), he stated that it could not be accessed. The Third Party gave written submissions to the Commission. The Appellant submitted that he required the information from an authentic source for the purposes of publication and that in itself qualified as being in public interest-under Section 8(2) of the RTI Act.

The order was reserved at the hearing held on 23 January 2012.”

Decision announced on 30 January 2012:

The Commission has perused the written submissions of the Third Party. At the outset, it must be mentioned that the RTI Act sets 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 such authority. The Supreme Court of India has recognised the Right to Information as a fundamental right of the citizens of India under Article 19 of the Constitution of India. The RTI Act codifies this fundamental right. Section 3 of the RTI Act clearly confers such right on a citizen inasmuch as it stipulates that-“*Subject to the provisions of this Act, all citizens shall have the right to information*”.

Section 6(2) of the RTI Act lays down that an applicant making a request for information shall not be required to give any reason for requesting the information. Therefore, considerations such as whether the information sought relates to any public/national activity or interest, or if it has any relevance to the public at large, are immaterial when a request for information is received by the PIO under the RTI Act. So long as the information sought is available on the records of the public authority and is not exempted from disclosure under Sections 8(1) and 9 of the RTI Act, the information shall be provided to the applicant. Further, Section 8(2) of the RTI Act mandates that even where disclosure of information is protected by the exemptions under Section 8(1) of the RTI Act, if public interest in disclosure outweighs the harm to such protected interests, the information must be disclosed under the RTI Act. In CPIO, Supreme Court of India v. S.C. Agarwal W. P. (C) No. 188/2009, the High Court of Delhi observed that the RTI Act is premised on disclosure being the norm, and refusal, the exception. According to the RTI Act, information may be exempted from disclosure in accordance with Sections 8 and 9 only, and no other exemptions can be claimed while rejecting a demand for disclosure.

Having laid down the above, the Commission will now examine whether the information sought in queries 2 and 3 was exempt from disclosure under Sections 8(1)(d) and (j) of the RTI Act-as contended by the Third Party. The Commission noted that the information on query 1 has already been furnished to the Appellant.

The Third Party has contended that the information sought is exempt under Section 8(1)(d) of the RTI Act, which provides as follows:

“8. (1) Notwithstanding anything contained in this Act, there shall be no obligation to give any citizen,—

...

(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;”

Section 8(1)(d) of the RTI Act exempts information including commercial confidence, the disclosure of which would harm the competitive position of a third party. To claim this exemption, it must be established that the information sought relates to commercial or trade secrets, intellectual property or similar information. If the information sought satisfies this condition, then it must be established that disclosure of this information would result in harming the competitive position of a third party. In the instant case, in queries 2 and 3, the Appellant has sought the percentage of stake held by one Mr. Kalanidhi Maran in Sun Direct TV (P) Ltd. and the names of other stakeholders along with the percentage of stake held by them in Sun Direct TV (P) Ltd. Put simplistically, the Appellant has sought details of the shareholding of Mr. Kalanidhi Maran and other shareholders in Sun Direct TV (P) Ltd. i.e. the Third Party.

The Third Party has argued that the information sought by the Appellant is of a sensitive, commercial nature, the disclosure of which will cause grave prejudice to it. In Tata Motors Limited & Anr. v. State of West Bengal & Ors. W.P.(C) No. 1773/2008 decided on 12/01/2010, the Calcutta High Court, while discussing Section 8(1)(d) of the RTI Act observed-*“The term commercial confidence has not been defined as such. But the word commercial is defined in the Shorter Oxford English Dictionary as something “pertaining to, or engaged in commerce. Interested in financial rather than artistry; likely to make a profit; regarded as a mere matter of business”.* In the opinion of this Bench, the term ‘commercial confidence’ comprises of commercial, business or financial information, which entities keep as confidential, or do not display or bring to the knowledge of the public, mostly with an intention to maintain an advantage over its competitors.

Given the above, this Bench cannot agree with the Third Party's contention that details of shareholding pattern are in the nature of 'commercial confidence'. List of members of a company, shares issued, etc are required to be furnished (usually by way of annual returns) to the ROC in compliance with the provisions of the Companies Act, 1956. This information is available on the ROC website on payment of the prescribed fees. Therefore, such information cannot be treated as confidential, more so, because it is accessible to the public. The Third Party has not given any explanation to the Bench how disclosure of its shareholding details would harm its competitive position. This Bench is of the view that disclosure of merely the shareholding pattern of Sun Direct TV (P) Ltd cannot put it at a disadvantage from its competitors. Therefore, the contention that the information sought was exempt under Section 8(1)(d) of the RTI Act is rejected.

The Third Party has also contended that the information sought was exempt under Section 8(1)(j) of the RTI Act, which provides as follows:

“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: ...”

In the present matter, the Third Party has argued that since the information sought has no relationship with any public activity or interest, disclosure of such information would cause unwarranted invasion of the privacy of the Third Party. This Bench, in a number of decisions has held that to qualify for the exemption under Section 8(1)(j) of the RTI Act, the information must satisfy the following criteria:

1. It must be personal information: Words in a law should normally be given the meaning given in common language. In common language, we would ascribe the adjective 'personal' to an attribute which applies to an individual and not to an institution or a Corporate. Therefore, it flows that 'personal' cannot be related to institutions, organisations or corporates. Hence Section 8(1)(j) of the RTI Act cannot be applied when the information concerns institutions, organisations or corporates.
2. The phrase 'disclosure of which has no relationship to any public activity or interest' means that the information must have been given in the course of a public activity. Various public authorities in performing their functions routinely ask for 'personal' information from citizens, and this is clearly a public activity. Public activities would typically include situations wherein a person applies for a job, or gives information about himself to a public authority as an employee, or asks for a permission, licence or authorisation, or provides information in discharge of a statutory obligation.
3. The disclosure of the information would lead to unwarranted invasion of the privacy of the individual. The State has no right to invade the privacy of an individual. There are some extraordinary situations where the State may be allowed to invade the privacy of a citizen. In those circumstances special provisions of the law apply usually with certain safeguards. Therefore where the State routinely obtains information from citizens, this information is in relationship to a public activity and will not be an intrusion on privacy.

Certain human rights such as liberty, freedom of expression or right to life are universal and therefore would apply uniformly to all human beings worldwide. However, the concept of 'privacy' is a cultural notion, related to social norms, and different societies would look at these

differently. Therefore referring to the Data Protection Act, 1988 of U. K. or the laws of other countries to define 'privacy' cannot be considered a valid exercise to constrain the citizen's fundamental right to information in India. Parliament has not codified the right to privacy so far, hence, in balancing the right to information of citizens and the individual's right to privacy, the citizen's right to information would be given greater weightage.

In the instant case, details regarding shareholders of the Third Party may be 'personal' information to the extent it relates to an individual shareholder only. It is also likely that such information may have been given to the Respondent- public authority during the course of a public activity. However, disclosure of shareholding details of the Third Party cannot be considered as an unwarranted invasion on the privacy of individual shareholders or of the Third Party itself. As mentioned above, this Bench is aware that shareholding details as well as other information about an entity can be accessed on the ROC website. Given that such information is already in public domain, disclosure of the same by the Respondent- public authority cannot be considered as an unwarranted invasion on the privacy of individual shareholders or the Third Party itself. In view of the foregoing, the contentions of the PIO that the information sought was exempt from disclosure under Section 8(1)(j) of the RTI Act is also rejected.

The Third Party has also submitted four decisions of the Commission, which have been perused by this Bench. The four decisions cited are: Manish Dnyaneshwar v. Hindustan Petroleum Corporation Limited. CIC/MA/A/2006/00050 dated 20/04/2006, Manoj K. Kamra v. Punjab National Bank Appeal No. 17/IC(A)/2006 dated 28/03/2006, Jasvinder Singh Rana v. Bank of Baroda Appeal No. 19/IC(A)/2006 dated 29/03/2006 and Farida Hoosenally v. Chief Commissioner of Income Tax Appeal No. 22/IC(A)/2006 dated 30/03/2006. It appears that the factual matrix and the information sought in the above cited decisions are different from that in the present matter. Therefore, the precedents cited are not relevant to the present matter.

The Appeal is allowed. The PIO is directed to provide the information as per record on queries 2 and 3 to the Appellant **before 25 February 2012.**

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
30 January 2012

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