

**CENTRAL INFORMATION COMMISSION**  
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**Decision No. CIC/SG/A/2011/002724/16593**  
**Appeal No. CIC/SG/A/2011/002724**

**Relevant Facts emerging from the Appeal:**

Appellant : Mr. Saurabh Yadav,  
S/o Dr. K.K. Yadav,  
House No. 1379, 1<sup>st</sup> Floor,  
Sector-46, Gurgaon,  
Haryana-122003

Respondent : Mr. Dinesh Chand,  
Public Information Officer &  
Deputy Director,  
National Board of Examinations,  
M/o Health and Family Welfare,  
Ansari Nagar, New Delhi-110029

RTI application filed on : 08/04/2011  
PIO replied on : 13/05/2011  
First Appeal filed on : 16/05/2011  
First Appellate Authority order of : 25/05/2011  
Second Appeal received on : 30/06/2011

S.No.	Information sought	Reply of Public Information Officer (PIO)
1.	(i) Attested photocopy of original question paper, Part I Series of FMG Exam held on 27/03/2011.	As per the policy of National Board of Examinations (the "NBE"), question paper/answer key of MCQ based exams cannot be provided.
	(ii) Attested photocopy of original question paper, Part II Series of FMG Exam held on 27/03/2011.	As per the policy of NBE, question paper/answer key of MCQ based exams cannot be provided.
2.	(i) Attested photocopy of answer key of question paper, Part I Series 'B' of FMG Exam held on 27/03/2011.	As per the policy of NBE, question paper/answer key of MCQ based exams can not be provided.
	(ii) Attested photocopy of answer key of question paper, Part II Series 'B' of FMG Exam held on 27/03/2011.	As per the policy of NBE, question paper/answer key of MCQ based exam can not be provided.
3.	(i) Attested photocopy of original answer sheet of question paper, Part I, Series 'B' attempted by Saurabh Yadav Roll No. 11143392 in FMG Exam held on 27/03/2011.	Scheme/format of application is available at NBE website- <a href="http://natboard.edu.in">natboard.edu.in</a> . Copy also enclosed.
	(ii) Attested photocopy of original answer sheet of question paper, Part II, Series 'B' attempted by Saurabh Yadav Roll No.	Scheme/format of application is available at NBE website- <a href="http://natboard.edu.in">natboard.edu.in</a> . Copy also enclosed.

**Grounds for First Appeal:**

Dissatisfied with the information provided by the PIO.

**Order of First Appellate Authority (FAA):**

As regards queries 1 and 2, the FAA observed- *“NBE has spent years to frame the questions that now form part of its question bank. The question bank is a very valuable resource for the NBE. NBE has got these questions prepared by making payments to the experts and NBE holds its intellectual property rights over these questions. The question bank is maintained to screen Indian nationals with foreign medical qualifications and assess the minimum standard of Medical education at the MBBS level in India, the same are scarce and in case these questions are shared with the third Party/Candidate/Institutions, the same will have a negative effect on the examination system. Therefore, questions of MCQ based examinations cannot be shown/divulged”*.

In relation to query 3, the FAA noted- *“Scheme/format of application is available at NBE web-site natboard.edu.in. Copy of the same is also enclosed”*.

**Grounds for Second Appeal:**

Dissatisfied with the FAA’s order.

**Relevant Facts emerging during Hearing held on 14 December 2011:**

The following were present:

**Appellant:** Mr. Saurabh Yadav;

**Respondent:** Mr. Dinesh Chand, PIO & Deputy Director and Dr. Rakesh Gosain, Standing Counsel.

The Respondent stated that he had objections in providing the question papers (as sought in query 1) as the question bank was limited and the design of the examination had been dictated by the Supreme Court of India in *Sanjiv Gupta v. Union of India (2005)1SCC45*. He submitted that if two or three question papers were revealed, the Respondent-public authority would not have any further questions which it could ask in the examination. The Respondent argued that a larger public interest would be served by not disclosing the question papers and answer keys. As regards query 3, the Respondent stated that he was willing to provide the answer sheets so long as the Appellant applied for them in accordance with the procedure set out by NBE. On the other hand, the Appellant argued that he required the question papers along with the answer keys to determine whether he was properly marked or not.

The order was reserved at the hearing held on 14/12/2011.

**Decision announced on 27 December 2011:**

The Respondent has submitted written submissions which have been perused by the Commission. At the outset, it is clarified that in the present matter the Appellant filed a First Appeal on 16/05/2011 in relation to which an order was passed by the FAA on 25/05/2011. Having said so, the instant matter is now considered on merits.

The right to information is a fundamental right of the citizens of India. This has been recognised by the Supreme Court of India in several decisions and subsequently, codified by the Parliament in 2005. The RTI Act lays down the substantive right to information of citizens and the practical mechanism to enforce the same. It is premised on disclosure being the norm, and refusal, the exception. Further, it is legally established that information requested for under the RTI Act may be exempt from disclosure in accordance with Sections 8 and 9 only, and no other exemptions can be claimed while rejecting a demand for disclosure. Moreover, under Section 6(2) of the RTI Act, an applicant is not required to give any reason for requesting the information.

In the present matter, the Respondent has described the background to the FMGE Screening Test. He has also referred to certain orders of the Supreme Court including in (2002)3SCC696 dated 08/03/2002 wherein directions were issued in respect of Foreign Medical Graduates who had applied for registration with the Medical Council of India (the “MCI”). Further, in Sanjeev Gupta v. Union of India (2005)1SCC45 it was observed that MCI was the best judge to decide whether a person was duly qualified to practice medicine in India. The Court noted that as regards the FMGE Screening Test, MCI had concluded that post-disintegration of USSR, due to serious aberrations in the recruitment system and admission of students in institutions located in Russia, there was a decline in the standard of medical education in these countries. Consequently, keeping in view the larger public interest and need to main a certain standard for students passing from these institutions, MCI decided that such students would be required to do an internship for a year as well as qualify for the said Screening Test before they were given permanent registration in India.

The above mentioned rulings lay down the importance of the Screening Test and the objectives behind it. This Bench however, is of the view that they deal with a different subject-matter and may not be relevant to determine whether the denial of information in the present matter was justified under the RTI Act and the specific exemptions contained therein.

The arguments raised by the Respondent have been summarized. The Respondent has argued that if the information sought is revealed, then it is liable to be grossly abused and comprise the confidentiality of the examination process. The syllabus of the Screening Test was judicially approved and fixed by the Supreme Court. Further, the Respondent was required to frame the questions for the Screening Test within the parameters fixed and only a limited number of permutations/combinations were possible limiting the number of questions. The Respondent has also submitted that the FMG Exam was conducted in public interest to screen the academic competence of professionals to whom the lives of prospective patients would be entrusted.

It is pertinent to mention that the Respondent has not cited any exemption in Sections 8 or 9 of the RTI Act to deny the information. This is clearly contrary to the legal position well-established in this regard. Moreover, the Commission is of the considered opinion that the arguments raised by the Respondent do not attract any of the exemptions under Section 8 of the RTI Act. In the functioning of the government and other like authorities including the Respondent-public authority, there may be various instances where certain documents, records, procedures, etc have been treated as confidential and at times, explicitly so provided. However, with the advent of the RTI Act, such information has to be provided subject only to the exemptions of the RTI Act viz. Sections 8 and 9. It may not be out of place to mention that where a test is conducted to screen the academic competence of professionals who are to be given permanent registration as medical practitioners, the questions set in such a test should necessarily be of a high standard testing the knowledge and competence of such persons, and not be mere repetitions from a limited question bank. The Commission is unable to agree with the Respondent’s arguments.

At this juncture, it must be noted that Section 9 of the RTI Act may be claimed as an exemption from disclosure of information where such disclosure would infringe a copyright subsisting in a person **other** than the State. Given that the FAA has already observed *inter alia* that the information sought is the intellectual property of NBE, Section 9 of the RTI Act is not applicable to the instant matter.

As regards query 3, the Respondent has specifically submitted that he was willing to provide the answer sheets so long as the Appellant applied for them in accordance with the procedure set out by NBE. 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. Given the above, two scenarios may be envisaged:

**1. An earlier law/ rule whose provisions pertain to furnishing of information and is consistent with the RTI Act:** Since there is no inconsistency between the law/ rule and the provisions of the RTI Act, the citizen is at liberty to choose whether she will seek information in accordance with the said law/ rule or under the RTI Act. If the PIO has received a request for information under the RTI Act, the information shall be provided to the citizen as per the provisions of the RTI Act and any denial of the same must be in accordance with Sections 8 and 9 of the RTI Act only; and

**2. An earlier law/ rule whose provisions pertain to furnishing of information but is inconsistent with the RTI Act:** Where there is inconsistency between the law/ rule and the RTI Act in terms of access to information, then Section 22 of the RTI Act shall override the said law/ rule and the PIO would be required to furnish the information as per the RTI Act only.

The procedure set out by NBE as well as the RTI Act coexist and therefore, it is for the citizen to determine which route she would prefer for obtaining the information. The right to information available to the citizens under the RTI Act cannot be denied where such citizen chooses to exercise such right, as has been done by the PIO in the instant case. The Commission would like to highlight that just as the procedure put in place by NBE is not abrogated, the RTI Act passed by the Parliament also cannot be suspended. If the PIO has received a request for information under the RTI Act, the information shall be provided to the applicant as per the provisions of the RTI Act and any denial of the same must be in accordance with Sections 8 and 9 of the RTI Act only. In view of the same, the Commission rejects the Respondent's contention.

### **The Appeal is allowed.**

The PIO is directed to provide the information on queries 1, 2 and 3 to the Appellant **before 20 January 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**  
**27 December 2011**

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