

**CENTRAL INFORMATION COMMISSION**  
**Room No.-415, 4<sup>th</sup> Floor, Block IV,**  
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**Decision No. CIC /OK/A/2008/00860/SG/0809**  
**Appeal No. CIC/OK/A/2008/00860/**

Appellant : Mr. Mangla Ram Jat,  
A- 7, Govt. Apartments,  
Bajaj Nagar, Jaipur,  
Rajasthan.

Respondent 1 : CPIO,  
Banaras Hindu University,  
Institute of Medical Sciences,  
Varanasi.

RTI filed on : 22/02/2008  
APIO replied : 26/03/2008  
First appeal filed on : 29/03/2008  
First Appellate Authority order : 22/04/2008  
Second Appeal filed on : 31/05/2008

**Brief Facts Leading to the Filing of Present Appeal:**

The Appellant had sought information under the Right to Information Act, 2005 (herein after referred to as the Act) on 22/02/2008 from the Central Public Information Officer (herein after referred to as CPIO), Banaras Hindu University (BHU), Institute of Medical Sciences regarding the Pre P.G Medical (MD/MS) examination 2008, held on 17/02/2008. In his application the Appellant sought the following information.

*“Kindly make available to me the complete text of the ‘question paper’, provided by the university to the examinees of the pre. P.G Medical (M.D/M.S) Examination 2008 held on 17/02/2008 by the institute of medical sciences, along with standard answer key adopted by the university.”*

The CPIO vide his reply dated 26/03/2008 informed the appellant as follows:

*“With reference to the information/document sought by you under the RTI Act, this is to inform you that the question paper along with the key answer to M.D/M.S Exam-*

2008, conducted by the institute of Medical Sciences, BHU cannot be given to you as the disclosure of the same is not favourable in larger public interest.”

Aggrieved by the said reply, the Appellant moved the First Appellate Authority on 29/03/2008. However, the First Appellate Authority denied the supply of information and stated :

*“this is to inform you again that the access of the same is not allowed. In a similar type of case, the decision of the Central Information Commission may be observed (Ref:- Appeal No. 844/ICPB/2007 & No. 845/ICPB/2007).”*

Aggrieved by the reply of the PIO and the First Appellate Authority, the Appellant is before this Commission in Second Appeal.

### **Relevant Facts emerging during Hearing on 15<sup>th</sup> December 2008.**

The case was taken up for hearing on 15/12/2008. The appellant was not present during the course of hearing. The respondent Mr. Ajay Kumar PIO was present and he relied on the decisions of the Central Information Commission dated 28/08/2007 in Appeal No. 844/ICPB/2007 titled as *Savi Sangwan v. AIIMS* & Appeal No. 845/ICPB/2007 titled as *B.L.Goel v. AIIMS*. The main issue before the Commission in the cited case was the non supply of question papers, along with the standard answer key adopted by the University. The respondent stated that these were the issues before the Commission in the decisions relied upon by them.

The Commission in Appeal No. 845/ICPB/2007 titled as *B.L.Goel v. AIIMS* had held as follows:

*“Regarding Answer Key and the Question Booklet after going through the Committee’s report and also the submissions made by the CPIO and AA during the hearing, I come to the conclusion that the AIIMS is taking all precautions in conducting examination in a most satisfactory manner and they have also evolved a foolproof system and it has got several in built checks and by disclosing this information we will not be able to protect any larger public interest. Keeping all these aspects in to account, I fully agree with the stand taken by the CPIO and AA in not providing this information to the appellant. ”*

No other exemption from the Act had been cited by the Commission. Based on the above reasoning, the information sought by the appellant was denied.

**Thereafter the decision was reserved.**

**Decision pronounced on 31 December, 2008:**

The Right to Information is one of the most fundamental Human Rights recognized by the world community and stands incorporated in the Universal Declaration of Human Rights and International Covenant on Civil and Political Rights (Art.19).This

has always been a Fundamental Right of the citizens under Article 19 (1) (a) of the Constitution of India, and stands codified as the Right to information Act, 2005.

Before going further, it is desirable to look into the Preamble of the Act and some of its provisions. The Preamble reads as

“AND WHEREAS democracy requires an informed citizen 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;

“AND WHEREAS revelation of information in actual practice is likely to conflict with other public interests including efficient operations of the Governments, optimum use of limited fiscal resources and the preservation of confidentiality of sensitive information;

“AND WHEREAS it is necessary to harmonize this conflicting interest while preserving the paramountcy of the democratic ideal;

*NOW, THEREFORE*, it is expedient to provide for furnishing certain information to citizens who desire to have it”

The preamble is the soul of the Act and gives an insight into the minds of the framers of the Act. It clearly spells out the aims and objectives of the Act. Accountability and transparency are the paramount objectives of the Act. Right to Information is not only a legal right, but also a Fundamental Right as enunciated by the Hon’ble Supreme Court in plethora of judgments.

Section 3 of the Act lays states,

*“subject to the provisions of this Act, all citizens shall have the right to information.”*

As per Section 3 of the Act, citizen’s right to access information under the Act is absolute, subject only to limitations prescribed under the Act. This Section forms the core of the Act and is a crisp, unambiguous declaration of the aims and objectives of the Act. To make this right meaningful and effective, citizens are not required to give any justification for seeking information.

Further, in Section 6 (2) of the Act in crystal clear words it is lays down as follows:

“6 (2) An applicant making request for information shall not be required to give any reason for requesting the information or any other personal details except those that may be necessary for contacting him.”

Thus the law makes it very clear that no justification is required from the applicant for obtaining the information.

The obligation on the public authority to give information to the sovereign citizens is absolute and is limited only by Sections 8 and 9.

Sections 8 and 9 state:

8. (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;

- (i) 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.

- (2) Notwithstanding anything in the Official Secrets Act, 1923 nor any of the exemptions permissible in accordance with sub-section (1), a public authority may allow access to information, if public interests in disclosure outweighs the harm to the protected interests.
- (3) Subject to the provisions of clauses (a), (c) and (i) of sub-section (1), any information relating to any occurrence, event or matter which has taken place, occurred or happened twenty years before the date on which any request is made under section 6 shall be provided to any person making a request under that section:

Provided that where any question arises as to the date from which the said period of twenty years has to be computed, the decision of the Central Government shall be final, subject to the usual appeals provided for in this Act.

9. Without prejudice to the provisions of section 8, a Central Public Information Officer or a State Public Information Officer, as the case may be, may reject a request for information where such a request for providing access would involve an infringement of copyright subsisting in a person other than the State. .

Any refusal of information has to be only on one or more grounds mentioned in section 8 (1) or Section 9. The Act gives no scope to the adjudicating authorities to import new exemptions other than those that have been provided under the Act and thereby deny the information. In a democracy the Government belongs to the people and therefore the rights of the owner to access this information has to be respected very carefully. Since in Section 3 it has been stated that 'subject to the provisions of this Act, all citizens shall have the right to information', it follows that denial of information can only be on the basis of the exemptions in the Act and no other grounds for denial are valid.

A similar question relating to revealing information regarding exam details came up for consideration under the Act before the Hon'ble High Court of Calcutta in the matter of *Pritam Rooj v. University of Calcutta and Ors.*(AIR2008Cal118). This

judgment which was pronounced on 28/3/2008, -after the orders of the Commission which have been relied upon by the respondent,- states:

*“The umbra of exemptions must be kept confined to the specific provisions in that regard and no penumbra of a further body of exceptions may be conjured up by any strained devise of construction”.*

Going through the decision in Appeal No. 845/ICPB/2007 titled as *B.L.Goel v. AIIMS* relied upon by the respondent, the Commission finds that none of the exemptions as required under the Act to deny information have been relied upon by the Hon’ble Commission while deciding the said appeal. The Commission is of the view that the aforesaid appeal was decided citing argument of ‘public interest’, which is not an exemption under the Act. While deciding the said appeal, the Hon’ble Commission came to the conclusion that ‘*by disclosing this information we will not be able to protect any larger public interest*’. However, this Commission, after going through the above quoted sections of the Act is of the view that nothing in the Act envisages denial of information on the ground that the information will not be able to protect any larger public interest.

The test of public interest is to be applied to give information, only if any of the exemptions of Section 8 apply. Even if the exemptions apply, the Act enjoins that if there is a larger Public interest, the information would still have to be given. There is no requirement in the Act of establishing any public interest for information to be obtained by the sovereign Citizen; nor is there any requirement to establish ‘protecting of any larger Public interest’. Therefore, in view of the above provisions of the Act, the denial of information in the Commission’s orders are ‘*per incuriam*’. I therefore, respectfully differ with the view taken by the Commission in *B.L.Goel v. AIIMS*.

This Commission is conscious of the fact that it has been established under the Act and being an adjudicating body under the Act, it cannot take upon itself the role of the legislature and import new exemptions hitherto not provided. The Commission cannot of its own impose exemptions and substitute their own views for those of Parliament. The Act leaves no such liberty with the adjudicating authorities to read law beyond what it is stated explicitly. There is absolutely no ambiguity in the Act and tinkering with it in the name of larger public interest is beyond the scope of the adjudicating authorities. Creating new exemptions by the adjudicating authorities will go against the spirit of the Act.

Under this Act, providing information is the rule and denial an exception. Any attempt to constrict or deny information to the Sovereign Citizen of India without the explicit sanction of the law will be going against rule of law.

Right to information as part of the fundamental right of freedom of speech and expression is well established in our constitutional jurisprudence. Any restriction on the Fundamental Rights of the Citizens in a democratic polity is always looked upon with suspicion and is invariably preceded by a great deal of thought and reasoning. Even the Parliament, while constricting any fundamental rights of the citizens, is very wary.

Therefore, the Commission is of the view that the Commission,- an adjudicating body which is a creation of the Act,- has no authority to import new exemptions and in the process curtail the Fundamental Right of information of citizens.

Even exemptions under section 8(1) are not absolute, and are subject to larger public interest as mentioned in section 8 (2) which reads,

*“Notwithstanding any of the exemptions permissible in accordance with sub section (1), a public authority may allow access to information if public interest in disclosure outweighs the harm to protected interest.”*

The concept of public interest cannot be invoked for denial of information. The Section empowers the Public Information Officer to provide the exempted information if it is in the larger public interest; meaning thereby that access to the exempted information can be allowed if public interest is served in providing the information.

Therefore, for the reasons stated above, the Commission comes to a conclusion that there can be no sanction of law for denying the information to the appellant.

**The appeal is allowed.**

The PIO will give the information sought by the appellant in his RTI application before 15 January, 2009.

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

**Shailesh Gandhi**  
**Information Commissioner**  
**31 December 2009**

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