

**Chief Information Commissioner
Central Information Commission
August Kranti Bhawan
Bhikaji Cama Place
New Delhi- 110 066**

Second Appeal under Section 19(3) of the Right to Information Act, 2005.

Names and Address of the Appellant –	Ms. Anumeha C/o Common Cause 5, Institutional Area, Nelson Mandela Road, Vasant Kunj, New Delhi-110070
Name & Address of the Central Public Information Officer	Shri M.L.Varma CPIO & Deputy Secretary (ANL) Ministry of Home Affairs, North Block, New Delhi-110001
Date of Application -	May 9, 2011
Date of Reply from PIO/CPIO	May 25, 2011
Name & Address of First Appellate Authority against the decision of whom the appeal is preferred	Shri. M.Gopal Reddy Joint Secretary (UT) & 1 st Appellate Authority Department of Personnel & Training North Block, New Delhi-110001
Date of First Appeal	May 30, 2011
Date of Order of First Appellate	

Authority-

June 29, 2011

Particulars of the order including number, if any, against which the appeal is preferred:

F. No. 14011/70/2011-UTP
dated June 29, 2011

Brief facts leading to the appeal -

1. The Applicant had filed an RTI Application seeking a suitable time and date for inspection of all files related to the points given as below:
 - (i) Comments received by the Ministry of Home Affairs, on the Draft Delhi Police Bill, 2010, posted on the MHA website.
 - (ii) Final version of the Draft Delhi Police Bill, 2010 taking into account the comments received by the MHA.

A copy of the RTI Application is placed at **Annexure A**.

1.2. That in response to the above queries, the applicant was informed vide order No. 14011/70/2011-UTP dated May 25, 2011 "*that the matter has been referred to Ministry of Law & Justice. Therefore, the request made in the aforementioned application cannot be acceded to at this stage*".

A copy of this order by CPIO is placed at **Annexure B**.

1.3. That an Appeal dated May 30th, 2011, under Section 19(1) of Right to Information Act, 2005 was preferred before the concerned Appellate Authority against the aforementioned order of the CPIO. It was argued by the appellant that no reason has been attributed for denial of applicant's request except that the matter has been referred to Ministry of Law & Justice which by itself cannot be a reasonable ground for denial of the request made in the application. The appellant further stated that in case the file itself or any part has been sent to the Ministry of Law & Justice as has been contended by the CPIO, he should have dealt with the matter under section 6(3) of the RTI Act under intimation to the applicant. In not doing so, the CPIO has clearly acted in violation of the provision prescribed under sec 6(3).

A copy of this Appeal is placed at **Annexure C**.

1.4. That in response to the aforesaid appeal, the Appellate Authority in his order No. 14011/70/2011-UTP dated June 29, 2011 has concurred with the decision of the CPIO in rejecting the applicant's request.

1.5 That the Appellate Authority in denying the request has stated that the file sought to be inspected by the appellant " is not available with the Ministry of Home Affairs as it has been referred to Ministry of Law & Justice and the draft Delhi Police Bill is being examined. It may not be appropriate to halt the process, as it would delay the completion of the action."

1.6 The Appellate Authority further averred that "transfer of application to Ministry of Law & Justice may not serve any purpose as CPIO in that Ministry is not the custodian of the record."

1.7 The Appellate Authority also affirmed that "the entire matter is proposed to be placed before the Union Cabinet for its consideration, and as such it is exempted from disclosure at this stage under section 8(1)(i) of the RTI Act, 2005."

A copy of this order by Appellate Authority is placed at **Annexure D**.

2. Prayers or Relief Sought-

2.1 In his rejoinder as stated in point 3. of his order, the Appellate Authority has stated that inspection of relevant files currently held by the Ministry of Law & Justice, would halt the process as it would delay the completion of the action. This reply of the Appellate Authority undermines the very principle of the RTI Act, which necessitates transparency and accountability in public functioning through disclosure of information.

Section 2 (j) of the RTI Act clearly states that "right to information" means the right to information accessible under this Act which is **held** by or **under the control** of any public authority..." Since, in this case the matter is with the Ministry of Law & Justice, the relevant CPIO/ Public Authority in that Ministry would be the holder of this information or having control over the matter.

Either the CPIO could have been resourceful enough to get photocopies of the relevant matter for the inspection of the appellant or transfer a copy of the application to the appropriate department in the Ministry of Law & Justice which is currently the **holder or controller** of that information. It is not for the appellant to tell the ways and means how the relevant information should be made available, but the duty of the CPIO/Appellate Authority to provide information under RTI Act.

2.2 The Appellant fails to comprehend the logic in the second contention as stated by the Appellate Authority in point 4. of his order. The Appellate Authority is under a statutory obligation to transfer the application under sec 6 (3) of the RTI Act and

intimate the applicant about the same. In any case the CPIO is not required to be the “custodian of the record” as claimed by the Appellate Authority, but either the holder or controller of information as prescribed under sec 2(j) of the RTI Act. Therefore if the relevant file is not with the CPIO/Appellate Authority in the Ministry of Home Affairs the application has to be simply transferred to the appropriate department in the Ministry of Law & Justice.

2.3 The third argument given by the Appellate Authority as articulated in point 5. of his order, yet again emasculates the spirit of the RTI Act, 2005 and is also opposed to the value of transparency in governance, an essential element in the fight against corruption and misuse of public office. The Appellate Authority has not appreciated the well established principle that only Cabinet papers are exempted under Section 8(1) (i). The records of deliberations of Ministers, Secretaries and other officers can be exempted under this Section if they explicitly form part of the papers **actually put up to the Cabinet** for their consideration. Therefore, since the information sought by the Appellant has not been put up to the Cabinet, it is not exempted and open for disclosure.

2.4 It is further asserted that **only the papers actually put up before the Cabinet are exempted under Section 8(1)(i) of the RTI Act, 2005 and all concomitant preceding or subsequent information is excluded from the ambit of sec 8(1)(i) , thereby qualifying it for disclosure under sec 4 (1)(c) of RTI Act.** Therefore, the entire process of formulation of a draft bill (entailing drafting, consultations, redrafting, interim approvals) before placing of the final draft before the Cabinet is open for disclosure.

Hence, as required under Sec 19(3) of the RTI Act, this appeal has been filed requesting you to kindly look into the matter and direct the concerned authority to provide a suitable time and date for inspection of relevant information requested by the undersigned at the earliest.

3. Grounds for Prayer or Relief-

3.1 The Appellant in her application, had requested to inspect the files related to Draft Delhi Police Bill, 2010 and has been informed by the CPIO that since the matter has been referred to Ministry of Law & Justice the request cannot be acceded to at this stage. The Appellate Authority has concurred with the decision of the CPIO and has added that, getting the files back to their department for inspection would halt the process and delay the completion of the action.

The Appellate Authority has also informed the appellant that transfer of application to Ministry of Law & Justice may not serve any purpose as CPIO in that Ministry is not the custodian of the record.

3.2 In response to the above contention it is argued that a citizen of this country has a right to access information and it is the statutory obligation of the appropriate public authority to provide the information asked for.

It is not for the citizen who seeks access to information under the RTI Act to inform the CPIO how to provide her with that information. If one agrees with the argument put forth by the Appellate Authority that allowing the request of the applicant for inspection of relevant files would “halt the process as it would delay the completion of the action”, it would mean that wherever requests for inspection of files have been made by applicants and if such files have been referred/transferred to another Ministry, the relevant CPIOs would be well within their right to reject such applications. It is only fair to claim that when in all such cases the applicant’s requests are denied, the very rationale of RTI Act would be defeated; as since many of these applications are sent to other ministries for comments, there would be denial of requests for information in all such cases.

More importantly, transfer of files has not been listed under any of the exemption clauses as stipulated under sec 8 (1) of the RTI Act.

3.3 It is again reaffirmed that sec 2(j) of the RTI Act stipulates that the CPIO provide the information which is either held by him or under his control. He may also transfer the same to the appropriate public authority and inform the applicant immediately about such transfer as prescribed under sec 6(3) of the RTI Act.

Therefore, in the present matter, in case the file itself or any part of it has been sent to the Ministry of Law & Justice, the concerned CPIO at MHA should have dealt with this under Section 6(3) of the RTI Act under intimation to the appellant. In this case, the appropriate CPIO in the Ministry of Law & Justice would be holding or controlling the information transferred by the Ministry of Home Affairs as the matter has been referred to the former.

3.4 The Appellate Authority has also cited the exemption provision prescribed under Section 8 (1) (i) of the Right to Information Act, 2005 to deny information to the appellant. His order in point 5. states that “Moreover, the entire matter is proposed to be placed before the Union Cabinet for its consideration, and as such it is exempted from disclosure at this stage.....”

3.5 In this context, it is pertinent to cite the order of the Central Information Commission dated August 30, 2010, in the matter of Shri Venkatesh Nayak vs. DOP & T. The order reads that “exemption u/s 8 (1) (i) will apply only when a Note is submitted by the Ministry that has formulated it to the Cabinet Secretariat for placing this before the Cabinet. All concomitant information preceding that, which does not constitute a part of that Cabinet Note will then be open to disclosure u/s 4 (1) (c).....**It is only when proposals formulated are actually taken up for consideration by the Cabinet that they become so exempt. In other words, when a Cabinet Note is finally approved for submission to the Cabinet through the Cabinet Secretariat Sec 8(1) (i) will apply...**”

It further says that “... exemption u/s 8 (1) (i) will not apply to deliberations leading to formulation of a policy framework till such time as the draft is submitted to the

Cabinet Secretariat, with all its necessary attachments for submission to the Cabinet, which would then be a final form given to the draft ”

3.6 In view of the above cited order of the CIC, it is further submitted that the phase wherein inter-ministerial deliberations are being held, upto the point when the draft is put up before the Cabinet Secretariat for placing it before the Cabinet, the matter cannot qualify for exemption from disclosure u/s 8 (1) (i) since they do not necessarily form part of the papers presented to the Cabinet. Hence, this exemption only applies to the **Note actually submitted in final form to the Cabinet Secretariat for submission to the Cabinet.**

Therefore, it is obvious from the order of the Appellate Authority quoted in para 3.4 that the papers requested for inspection by the appellant, **have not been actually drawn up for submission to the Cabinet but are in the preparatory stage involving consultation within or between ministries and departments and for that reason are not automatically entitled to the exemption given to Cabinet papers under Section 8(1)(i).** Hence, the Appellate Authority has clearly erred in denying the request for inspection of files citing exemption under this clause.

3.7 It is further argued that the appellant had requested the inspection of files related to comments received by the Ministry of Home Affairs, on the Draft Delhi Police Bill, 2010, posted on the MHA website.

The landmark order of the CIC dated July 7, 2010 CIC/SG/C/2010/000345000400/8440 averred that “Section 4 of the RTI Act mandates *suo motu* disclosure of information in public domain by public authorities.....Section 4(1)(c) of the RTI Act requires proactive disclosure of proposed laws/ policies and amendments thereto or to existing laws/ policies to enable citizens to debate in an informed manner and provide useful feedback to the government, which may be taken into account before finalizing such laws/ policies”.

This order directs the Chief Secretary, GNCTD to develop a credible mechanism in all departments for proactive and timely disclosure of “draft legislations/ policies and amendments thereto or to existing laws/ policies , as required under Section 4(1)(c) of the RTI Act, during the process of their formulation and before finalization”.

The order further reads that “The citizens individually are the sovereigns of the democracy and they delegate their powers in the legislature. The RTI Act has recognized this and Section 4(1) (c) is meant to ensure that the citizens would be kept informed about proposals for significant legislative and policy changes”.

This order of the CIC has established the principle that while formulating draft legislation, government departments must place such Bills in the public domain to encourage public consultation. As such, the Draft Delhi Police Bill, 2010 posted on the MHA website had attracted comments from various civil society groups. These comments along with a revised

version of the Draft Delhi Police Bill, 2010 ought to be placed in public domain as stipulated by sec 4(1)(c) of the RTI Act and as mandated by the order of the CIC quoted in para 3.7 .

3.8 Also, from a plain reading of the above quoted judgments it is clear that CIC has been providing instructions/guidelines regarding information disclosure to the public authorities, which are not being complied with, as is evident from the denial of request for file perusal in this particular case pertaining to a subject which suo moto should have been placed in the public domain by the concerned authorities as prescribed under section 4(1) (c) of RTI Act.

3.9 Hence, by dismissing the appellant's request for inspection of files related to (i) *comments received by the Ministry of Home Affairs, on the Draft Delhi Police Bill, 2010, posted on the MHA website and (ii) Final version of the Draft Delhi Police Bill, 2010 taking into accounts the comments received by the MHA*; the Appellate Authority has not only acted in contravention of the spirit of the RTI Act but also disregarded the order of the CIC pertaining to GNCTD in particular and all public authorities in general

4. Prayer for Relief

In light of the above arguments, it is prayed that

(a)The CPIO be directed to grant the request of the appellant, at the earliest and fix the date and time for the appellant to peruse all the files and documents related to (i) Comments received by the Ministry of Home Affairs, on the Draft Delhi Police Bill, 2010, posted on the MHA website & (ii) Final version of the Draft Delhi Police Bill, 2010 taking into account the comments received by the MHA.

(b)In order to save the precious time of the CIC, consolidated instructions be issued to the public authorities for disclosure of information to the RTI applicants in accordance with the landmark decisions of the CIC.

(c) Issue such other order or orders as may be deemed appropriate in the interest of justice.

I hereby declare that the aforementioned facts are true to the best of my knowledge.

Appellant's signature

Name of the Appellant

Date: July 13, 2011

Enclosures:

1. Copy of the original RTI Application dated May 9, 2011
2. Copy of the order of CPIO dated May 25, 2011
3. Copy of Appeal dated May 30, 2011
4. Copy of order of Appellate Authority dated June 29, 2011

Copy of this complaint sent to :

Shri. M.Gopal Reddy
Joint Secretary (UT) & 1st Appellate Authority
Department of Personnel & Training
North Block,
New Delhi-110001