

Written Submission for the Hearing on June 5, 2012

Name of Applicant		Ms. Anumeha Jha, C/o Common Cause
Date of Application	-	May 9, 2011
Date of First Appeal		May 30, 2011
Date of Order of First Appellate Authority-		June 29, 2011

1. 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.

That in response to the above queries, the applicant was informed by the concerned CPIO vide order 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”*.

2. Ground for denial of information by the Appellate Authority-

- 2.1 The Appellate Authority too concurred with the CPIO and in his rejoinder as stated in point 3. of his order, the Appellate Authority has stated that the files sought to be inspected is not available with the Ministry of Home Affairs as it has been referred to Ministry of Law & Justice and inspection of relevant files currently held by the latter , would halt the process as it would delay the completion of the action.

Rejoinder:

- 2.2 No reason had 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. In case the file itself or any part has been sent to the Ministry of Law & Justice, 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).
- 2.3 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.
- 2.4 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.
- 2.5 I would request that Hon'ble CIC lay down guidelines, because in such peculiar situations when the files containing information sought has been transferred to some other Ministry, then what should a common man do? We as NGOs can afford time and effort to take the case to its logical conclusion, but what about others who cannot, and whose applications are dismissed on such flimsy grounds?

3. Ground for denial of information by the Appellate Authority

- 3.1 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.”**

Rejoinder:

- 3.2 The Appellant fails to comprehend the logic of this contention as 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
- 3.3 Further, the Public 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.

4. Ground for denial of information by the Appellate Authority

4.1. 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.”**

Rejoinder:

4.2 The Appellant would like to point out that 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.

4.3 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 ”**

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.

4.4 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.

4.5 Therefore, it is obvious from the order of the Appellate Authority, 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.

5. 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.

5.1 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”.

5.2 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”.

5.3 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”.

5.4 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 5.1 .

5.5 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.

5.6 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

6. Prayer for Relief

In light of the above arguments, it is prayed that

6.1 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.

6.2 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.

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