

**GOA STATE INFORMATION COMMISSION**  
'Kamat Towers' Seventh Floor, Patto, Panaji – Goa

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**Shri Prashant S.P. Tendolkar,**  
**State Chief Information Commissioner**

**Appeal No.116/SCIC/2017**

Mr. Shrikant Vishnu Gaonker,  
FA 501/505 Sinari Apartments,  
Near Datta Mandir, Ribandar Patto,  
Ribandar Goa 403006.

Appellant

V/s

- 1) The Dy. Commissioner,  
Public Information Officer,  
Office of the Commissioner,  
Corporation of the City of Panaji,  
Municipal Building,  
Panaji –Goa.
- 2) The First Appellate Authority,  
The Commissioner,  
Corporation of the City of Panaji,  
Municipal Building, Panaji –Goa.

Respondents

Filed on : 02/08/2017

Disposed on: 28/11/2017

**1) FACTS IN BRIEF:**

a) The appellant herein by his application, dated 17/1/2017, filed u/s 6(1) of The Right to Information Act 2005 (Act for short) sought certain information from the Respondent No.1, Public Information Officer (PIO) under eleven points therein.

b) The said application was replied on 16/2/2017. However according to appellant the information as sought was not fully furnished vide said reply dated 16/2/2017 and hence the appellant filed first appeal to the respondent No.2 being the First Appellate Authority(FAA).

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c) The FAA by order, dated 28/4/2017, allowed the said appeal and directed dealing hand to inspect the records and to furnish the information.

d) The appellant contends that the said order of the FAA is suffering from bias/malice, non application of judicial mind as PIO who is responsible under RTI Act is not reprimanded and has been let off, without even a word of caution. According to him the dealing hand has not been named nor any one is directed to refund excess monies. It is also the contention of appellant that the FAA has not made any comments against the erring officials nor any one held responsible for lapses for giving wrong information. With these contentions and others the appellant has landed before this commission in this second appeal u/s 19(3) of the act.

e) Notices were issued to the parties, pursuant to which they appeared. The PIO on 11/10/2017 appeared and offered to give inspection of files containing the information so that the required information can be located and the same can be furnished. Accordingly after inspection of the files the PIO, Shri Sudhir Kerkar furnished the purported information to the appellant. On going through the same the appellants on the subsequent date of hearing submitted that he has received the entire information as sought by him. However he insisted that his appeal with respect to his relief of penalty sought against the PIO and other officials, be considered.

f) Considering the fact that the information is received by the appellant, controversy involved herein now is restricted only to the issue of penalty as prayed.

**2.FINDINGS:**

a) I have perused the records and considered the contention of the appellant. The entire exercise in this proceedings starts by the application dated 17/01/2017. By said application at points 1 and 2 the appellant has sought the information pertaining to occupancy certificate including its copy. Vide reply, dated 16/02/2017, the same was offered to the appellant. At point 3, 4, 5 and 7, the appellants has sought the details of the residential and commercial units existing in the building its area and the area as approved by the CCP. To this points the PIO has offered the approved plan and the details of the area and the house tax payable. Thus the said information was not denied.

At point 6 the appellant required the details of the house tax paid by the owners. The list of such owners is furnished at column 6 of the reply, dated 16/02/2017. Similarly the information at point 8 was also not denied as the photo copy of the plan of the lower ground floor for commercial units was offered. On further consideration of the reply 16/02/2017 it is seen that the PIO has appropriately offered the information sought on payment of fees.

b) While considering the extent and scope of information that could be dispensed under the act, the Hon'ble Supreme court in the case of: ***Central Board of Secondary Education & another V/s Aditya Bandopadhyay*** (Civil Appeal no.6454 of 2011) at para 35 has observed :

*"35. At this juncture, it is necessary to clear some misconceptions about the RTI Act. The RTI Act provides access to all information that is available and existing. This*

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*is clear from a combined reading of section 3 and the definitions of 'information' and 'right to information' under clauses (f) and (j) of section 2 of the Act. If a public authority has any information in the form of data or analysed data, or abstracts, or statistics, an applicant may access such information, subject to the exemptions in section 8 of the Act. But where the information sought is not a part of the record of a public authority, and where such information is not required to be maintained under any law or the rules or regulations of the public authority, the Act does not cast an obligation upon the public authority, to collect or collate such non available information and then furnish it to an applicant. A public authority is also not required to furnish information which require drawing of inferences and/or making assumptions. It is also not required to provide 'advice' or 'opinion' to an applicant, nor required to obtain and furnish any 'opinion' or 'advice' to an applicant. The reference to 'opinion' or 'advice' in the definition of 'information' in section 2(f) of the Act, only refers to such material available in the records of the public authority. Many public authorities have, as a public relation exercise, provide advice, guidance and opinion to the citizens. But that is purely voluntary and should not be confused with any obligation under the RTI Act."*

- c) It is the contention of the appellant in this appeal as also in the first appeal that the information sought was incomplete, incorrect or misleading. I am unable to accept this contention as the PIO under the act is only a custodian of the records

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which is the information. He is expected to furnish the same in the form and the manner in which it exist. The PIO is not expected nor can be called upon to collect or collate the information nor can be called upon to summarize the Information as is sought by the seeker.

In the present case the technical details of the premises like the location, area etc. were sought. It is the common knowledge that such details are contained in the plan approved by the authority. In the present case the PIO has offered to the appellant the plans itself as it exist. The plans contain certain technical information, which may be beyond the competence and knowledge of the PIO, more particularly if he is a non technical person. In this situation the PIO is expected to furnish the information as it exist. In the present case the PIO has offered the same in the same pattern i.e. the plan itself which contains the details as sought..

d) I have also perused the order of the FAA. While considering the first appeal the FAA apparently has found that there was some error in calculation of the area as recorded in the Municipal records. In the first appeal the FAA has issued certain instructions to its Junior Engineer and on complying of the same has held the assessment was worked out wrongly.

Such an exercise was permissible to the FAA under the municipal laws but direction for correction of records though found erroneous is beyond the scope and powers conferred to the FAA under the act. After seeking correction of records the FAA has passed the impugned order. Such corrections were

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made subsequent to the date of appellants application dated 17/1/17. In other words, the records offered by PIO existed in the same form, though erroneous. It appears that the FAA has mixed his identity under the municipal law while dealing with the appeal under the Right to Information act. It is also seen that FAA has to be furnished after rectification or correction. The facts remains is that the PIO has offered the information to the appellant as was existing on the date of appellants application under section 6 (1). The PIO has rightly and appropriately dealt with the said application under section 6(1) and has offered the information as was existing then as laid down by Hon'ble Supreme Court in the case of Aditya Bandopadhyaya (Supra). I am therefore unable to subscribe the order of the FAA.

e) The Hon'ble High Court of Bombay, Goa bench at Panaji, while dealing with a case of penalty, (Writ petition No. 205/2007, Shri A. A. Parulekar, V/s Goa State Information Commission and others ) has observed:

*"11. The order of penalty for failure is akin to action under criminal Law. It is necessary to ensure that the failure to supply the information is either intentional or deliberate."*

In the backdrop of above facts, I find no denial of information by the PIO nor there any intentional delay. The subsequent information furnished, though pertain to the same subject matter, cannot be held as an obligation under section 7 of the act. The same at the most can be considered as purely voluntary and out of 'gratis'. I therefore find no grounds to

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consider the request of the appellant for invoking my powers under the act for imposing penalty and hence I dispose the present appeal with the following:

**ORDER**

The appeal stands dismissed.

Order to be notified to the parties.

Proceeding closed.

Pronounced in the open proceedings.

**Sd/-**

**(Mr. Prashant S. P. Tendolkar)**  
State Chief Information Commissioner  
Goa State Information Commission  
Panaji-Goa