

**GOA STATE INFORMATION COMMISSION**

'Kamat Towers' Seventh Floor, Patto, Panaji – Goa

---

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

**Appeal No. 16/SCIC/2017**

Adv. Atish P. Mandrekar,  
C/o. Adv. D. Y. Sawant,  
Above Fair Deal Agency, 31<sup>st</sup> January Road,  
Panaji-Goa. .... Appellant

V/s

- 1) The Public Information Officer,  
Dr. Shilpa Waikar,  
Medical Superintendent IPHB,  
Bambolim-Goa.
- 2) The First Appellate Authority,  
Director/Dean IPHB,  
Bambolim-Goa. .... Respondents.

**Filed on:21/02/2017**

**Decided on: 27/06/2017**

**A) BRIEF FACTS:**

1. The facts in brief as are involved herein are that the appellant herein by his application, dated 14/12/2016, filed u/s 6(1) of The Right to Information Act 2005 (**RTI Act for short**) sought from the respondent no.1,Public Information officer(PIO), information concerning the illness of Mrs. Tanuja Ramchandra Malwankar @ Tanuja Narayan Kinlekar. The information was sought on five heads viz.

*(i)Entire medical report/record/treatment taken from 21/08/2008.*

*(ii) Nature/Description of illness/sickness caused.*

...2/-

*(iii) Nature of medical treatment taken by her.*

*iv) Names of doctors giving treatment.*

*v) Inspection of the documents/files register etc.*

2) Said application was responded by the PIO on 04/01/2017 in terms of section 7(1), interalia informing that she was examined by several doctors on different occasions and that providing of the information about illness/sickness or nature of treatment taken would require drawing inferences and hence not constituting information.

It was further replied that the medical records of patient are confidential and held by doctors in fiduciary relationship and that it has no larger public interest involved to warrant disclosure.

3) Being aggrieved by the said response, the appellant approached the First Appellate Authority (FAA) by way of first appeal u/s 19(1) of the RTI act. The FAA, by his order, dated 20/01/2017 directed the PIO to provide the information as per relevant clauses of the RTI act. While deciding the said appeal, the FAA has recorded that the appellant/counsel agreed to establish the relationship with the person, pertaining to whom information was sought as also to provide letter of Authority and the current address of the third party whose information was sought.

4) Pursuant to said order of FAA, the appellant submitted the document to establish the relationship, as also the authority and the address of the third party pertaining to whom information was sought. On receiving the said details, the PIO by reply, dated 16/02/2017, responded

the appellant's application u/s 6(1), once again. By said reply the PIO furnished the list of the names of doctors, who had treated the third party, which was in response to answer to point no.(4). However, the information regarding the other points Nos. 1, 2, 3 & 5 was refused on the same grounds as was raised earlier, being in the nature of drawing inferences, confidentiality and fiduciary relationship and that it lacks of public activity or interest and invasion on privacy of individual.

5) The appellant being aggrieved by said reply of PIO, pursuant to the order of FAA, has approached this Commission with this second appeal u/s 19(3) of The RTI act, on the ground that the reply, dated 16/02/2017 is unsatisfactory and deliberate refusal of information. It is also his contention that the PIO has not complied with the orders of the FAA and that PIO has breached the mandate of Act by denying information .

With the above grounds the appellant has prayed this Commission for a direction to furnish information as also for an action against PIO as also for penalty and disciplinary action and costs of the appeal.

On 16/03/2017 the appellant filed application for urgent notice on the ground that the concerned information is required to be produced before Civil Judge, Senior Division, Bicholim in matrimonial petition No.21/2014/A and that there is urgency. Said application was granted.

6) The PIO and the FAA were notified, pursuant to which they appeared. As the information sought pertains to one Smt Tanuja Malwankar @Kinlekar, hereinafter referred to as THIRD PARTY, as required u/s 19(4) of the RTI act, notice was issued to her to make her submissions. On receipt of said notice the third party filed her reply on 01/06/2017.

7) Vide her said reply, the third party viz Smt Tanuja Malwankar, objected the dispensation of her information to the appellant or any person. According to her the medical records are not within domain and scope of public information and has nothing to do with serving of public interest and that furnishing of information would cause grave damage and invasion on her privacy. It is according to her that the appellant has no relation of whatsoever nature with anything related or concerned with third party and hence is not entitled to have the information.

By referring to section 8(1)(j) of the RTI act, the third party has contended that unless the PIO is satisfied that a larger public interest justified the disclosure of information, the information as sought cannot be furnished.

8) Oral submissions of appellant and the PIO were heard. The third party did not remain present at the time of oral hearing of the parties.

In his submissions the appellant submitted that he is the authorized representative of one Shri Ramchandra

Malwankar, husband of said Smt. Tanuja and has sought the information on his behalf pertaining to his wife, who is the third party herein. He submitted that the letter of authority alongwith the marriage certificate of said Ramchandra and third party Smt Tanuja, is filed on record.

Appellant further submitted that a proceedings for divorce between said Ramchandra and third party, Smt. Tanuja is pending in the Court on the ground of unsoundness of mind and ill-treatment and hence the information, which is sought, is required to be filed in court. According to appellant the information between husband and wife does not constitute third party and hence can be furnished to either of the spouses.

In support of his contentions appellant relied upon the judgment passed in ***Writ Petition No.1 of 2009 (Kashinath Shetye v/s Public Information Officer and others)*** of the Hon'ble High Court of Bombay at Goa. He has also relied upon the judgment of the Hon'ble Supreme court in the case of ***Mr "X"- Appellant V/s Hospital-Z Respondent [(2003(1) supreme 66 ]*** in support of his contention that the medical records can be disseminated as information in public interest.

Besides above citations the appellant has also relied upon the order passed by the *Central Information Commission (CIC) in the case of Mrs. Jyoti Jeena V/s PIO, Institute of Human Behaviour and Allied*

***Science (CIC/KY/A/2014/00/348-SA)*** and also of the Goa State Information Commission in the case of ***Mrs. Cynthia Azavedo V/s First Appellate Authority and others (Appeal No.35/SCIC/2011)***.

While concluding his submissions, appellant submitted that had there been no public interest or public activity involved, the PIO could have directed him to prove the same. With these submissions and relying on the above citations, the appellant has thus submitted that information as sought being not covered under any of the exemptions contained in section 8 of the RTI act, the same be ordered to be furnished.

9) While substantiating her stand in refusal of information, PIO submitted that the information as is sought is restricted under The Mental Healthcare Act 2017, (hereinafter referred to as **2017 ACT**). According to her section (23) of the said 2017 act requires confidentiality to be maintained in respect of the person with mental illness. Further u/s 82 (d) of the 2017 act, the issue regarding non disclosure of information can be dealt with only by the Board Constituted u/s 74 of said act. She further pointed out that section 120 of the 2017 act has a overriding effect over the RTI Act. Thus according to her the information cannot be furnished.

By referring to the application of the appellant in hand, PIO submitted that firstly the information as is sought is in the nature of summary of records and requires inferences to be drawn hence cannot be

furnished. Further according to her the information is held in confidentiality and fiduciary relationship and hence cannot be furnished. She further submitted that as no public interest is also involved in the information the same cannot be furnished. With reference to the order of the FAA, the PIO submitted that, in his said order the FAA has not considered the larger public interest nor has come to any finding in that respect.

In support of her contentions the PIO has relied upon the judgment of the Hon'ble High Court of Delhi in the case of ***the Registrar, Supreme Court of India V/s Subhashchandra Agarwal and others (WP(c ) 1842/2012 &CM No.4033/2012)***.

**B) FINDINGS :**

10) I have considered the pleadings of the parties vide the memo of appeal and reply filed by the third party as also the submissions made by the appellant and the PIO. Considering the rival contentions of the parties herein, the points which arise for my determination are:

**(i) Whether the information sought cannot be furnished in view of the bar created by section (23) R/w section 82(d) of the Mental Health care Act 2017.**

**(ii) Whether the information sought has any relationship to any public activity or involves any larger public interest.**

11) For the purpose of considering the point (i) above, which arises in view of the contention of the PIO, it would be necessary to consider the provisions of the 2017 Act.

Section 23 of the said act confers a right of confidentiality in favor of the person with mental illness. Section 82 (c) of said 2017 Act grants jurisdiction to the board constituted u/s 73 of the said act and thus takes away the jurisdiction granted to other authorities to consider the complaints of non disclosure of information. Section 120 of the said 2017 Act, in view of the overriding effect, also takes away the jurisdiction of this Commission to deal with the complaints of information seekers against refusal of information.

However while repealing the earlier act by way section 126 of the 2017 Act , the proceedings taken under the old act are saved. The proceedings in this case started in December 2016 when the 2017 act was not in force. Moreover there is nothing on record to hold that the new act of 2017 has at all come in operation.

Considering the above position, I find that the contention of PIO that the new act of 2017 is attracted in the present case or that it takes away the jurisdiction of the authorities constituted under the RTI Act is not attuned to 2017 Act. The 2017 act being not in operation till date and also in view of the fact that the present proceedings are saved under the ne act, there is no bar on the seeker to obtain information under RTI Act, unless bared by RTI Act. Consequently point no.(i) has to be answered in the negative.

12) Coming to point (ii) above, it would be expedient to analyze the nature of information vis a vis the person in respect of whom the same is sought.



The PIO vide her reply, dated 16/02/2017, being the response to the appellants application u/s 6(1) of the RTI act, has furnished part information which contains only the list of doctors who had treated the third party. However PIO has refused to furnish balance information on the ground that the same is exempted from disclosure under section 8(1)(e) and (j) of the act. Said provisions read:

**“ 8. Exemption from disclosure of information.**

\_\_\_\_\_ (1) Notwithstanding anything contained in this Act, there shall be no obligation to give any citizen,\_\_\_

a)-----

b)-----

c)-----

d)-----

(e) information available to a person in this fiduciary relationship, unless the competent authority is satisfied that the larger public interest warrants the disclosure of such information;

f)-----

g)-----

i)-----

j) 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.”

Thus for the purpose of considering exemption u/s 8(1)(e) and (j), it is necessary to consider whether the information held by the authority warrants disclosure in larger Public Interest or whether the disclosure has relation to any public activity or public interest.

13) Medical information of is a personal information, which is required to be maintained by the medical practitioner in confidence under his professional ethics. However the RTI act makes an exception to the maintenance of such secrecy in public interest. The term '**Public interest**' used in this provision requires that the disclosure of information for use and benefit of the people as on whole and concerning the affairs of community. In Wharton's Law Dictionary the term "**public Interest**" is defined as an "**action necessarily taken for public purpose**". In other words in case the interest of the public at large would be jeopardized by withholding the information in such event the same is required to be shared in the interest of community.

In the **Black's law dictionary** (6<sup>th</sup> edition) at page 1299 the term Public interest is defined as "***Something in which the public, the community at large, has some pecuniary interest by which their legal rights or liabilities are affected. It does not mean anything so narrow as mere curiosity, or as the interests of the particular localities, which may be affected by matters in question---***"

14) The appellant in support of his contentions has relied upon the judgment of the Apex Court in Mr. "X—Appellant v/s Hospital—Z- Respondent (W.P. 4641 of 1998. 2003(1) Supreme 66). In the said case the information which was sought was pertaining to HIV+ patient. In the said case before the Apex Court, an exception is carved out to the rule of confidentiality and disclosure of medical information is permitted apprehending immediate or future health risk to others. These observations of the apex Court are contained in the following words:

***"16. The General Medical Council of Great Britain in its guidance on HIV infection and AIDS has provided as under:***

***"When diagnosis has been made by a specialist and the patient after appropriate counseling, still refuses permission for the General Practitioner to be informed of the result, that request for privacy should be respected. The only exception would be when failure to disclose would put the health of the health-care team at serious risk. All people receiving such information must consider themselves to be under the same obligations of confidentiality as the doctor principally responsible for the patient's care. Occasionally the doctor may wish to disclose a diagnosis to a third party other than a health-care professional. The Council think that the***

***only grounds for this are when there is a serious and identifiable risk to a specific person, who, if not so informed would be exposed to infection.....A doctor may consider it a duty to ensure that any sexual partner is informed regardless of the patient's own wishes."***

***(Emphasis supplied)***

***17. Thus, the Code of Medical Ethics also carves out an exception to the rule of confidentiality and permits the disclosure in the circum-stances enumerated above under which public interest would override the duty of confidentiality, particularly where there is an immediate or future health risk to others. "***

15) The illness involved in the case before the Hon'ble Supreme Court was of an HIV+ patient. In the said case the Medical Council as also Apex court has considered the special circumstances warranting such relaxation specifically on HIV infection and AIDS. It is a matter of public knowledge that the said illness is contagious and may affect the community if not made aware. It is with this intent of social awareness that the secrecy is relaxed. But neither the General Medical Council nor the Hon'ble Apex Court has generalized the said rule of disclosure for all illnesses/ailments.

16) Coming to the case in hand, the illness alleged is not the one which can affect the community at large. The same at the most can effect another individual with reference to the behavior. There is no contagiousness involved to alert the community. In the circumstances, the liberty of revealing the information in the cases of contagious disease like AIDS, as is granted by the said guidance in public interest, cannot be applied to the ailment of the third party herein. Thus ratio laid by the Apex court and the one involved herein are distinguishable.

17) Regarding the case of *Ms. Jyoti Jeena CIC/Ky/A/2014/001348-A(Supra)* as relied upon by the appellant, firstly I have to observe that the said order does not have a binding effect over this Commission, being passed by another commission with concurrent jurisdiction.

However even for the purpose of reference, I have to say that the same is based on the same judgment of the apex Court in the case of *Mr.-X Appellant v/s Hospital -Y Respondent (Supra)*. In the said order of CIC, a reference is made to the observation of the apex court of para (27) of the judgment . On the bases of the words "Others" as used by the Apex Court the CIC has concluded that the private information could be passed on to others. Infact in the said judgment of apex court which is referred to by CIC, the term "*others*" used by the apex court suggests that the same pertains to public at large.

18) The Hon'ble Supreme Court observation in the said case was for the interpreting the scope and extent of relaxation of confidentiality to be maintained by doctors under Indian Medical Council Act. In the said case in view of the nature of disease The Apex Court had had held involvement of "public interest".

As per the preamble of RTI Act, the right to information to citizen is to secure access to information under the control of public authorities, in order to promote transparency and accountability in the working of every public authority. Thus the rights conferred to citizens under this act are distinct and separate from the ones granted under the constitution and other laws.

19) I have considered the case of *Mrs Cynthia Azavedo (Supra)*, as relied upon by the appellant .Though the said Judgment is not a precedent for this Commission, I subscribe to the view of the then State Chief Information Commissioner. In the said case the information was sought from the public Authority pertaining to a public officer receiving his salary from public exchequer. Notwithstanding the relation of the seeker as wife of the officer, the seeker therein as a citizen, was held to be entitled to know the exact amount received by him from public exchequer. Certainly a public interest was involved therein.

20) In the present case the appellant has also claimed to be the authorized person of the husband of the third

party. According to him the said information is required for the purpose of a matrimonial proceedings pending in the court at Bicholim. It is according to him the information can be shared to him being the representative of the spouse.

If one peruses the provisions of the RTI act, neither section 6(1) of the act nor exemptions contained in section 8 grant any privileges to the relative of the third party, to have a special access to the information of his/her counter part. Such privileges, may be available under any other law but under RTI act the issue to be considered by this forum is whether as a citizen of India a seeker can have access to the information of another, unless it is justified that it has a relationship to public activity or that a larger public interest is involved. The relation of the seeker and the third party is immaterial.

21) In the present case the third party, viz Smt Tanuja Malwankar has been examined by the Institute being her individual requirement. She is neither accountable to public authority nor has relation with the functioning of public authority. As held above the illness has no implication on the society as a whole.

22) In a similar matter regarding the disclosure of the wife's personal details for the purpose of using as evidence in civil action initiated by the husband, the Hon'ble High Court of Delhi in the case of ***Vijay Prakash V/S Union of India and others (Writ petition ( C ) 803/2009***, by upholding the findings of the Central Information Commissioner has observed

*"23. As discussed earlier, the "public interest" argument of the Petitioner is premised on the plea that his wife is a public servant; he is in litigation with her, and requires information, - in the course of a private dispute – to establish the truth of his allegations. The CIC has held that there is no public interest element in the disclosure of such personal information, in the possession of the information provider, i.e. the Indian Air Force. This court concurs with the view, on an application of the principles discussed. The petitioner has, not been able to justify how such disclosure would be in "public interest" : the litigation is, pure and simple, a private one. The basic protection afforded by virtue of the exemption (from disclosure) enacted under Section 8(1)(j) cannot be lifted or disturbed. "*

In the said writ petition the Hon'ble High Court has upheld the findings of the CIC which were in the following words:

*"During the hearing, the Appellant submitted that the information sought was required for producing before the Competent Court where a dispute was pending between him and Dr. Sandhya Verma and the information was necessary for fair trial. The Respondents submitted that the information was necessary pertained to personal information concerning Dr. Sandhya Verma, a Third Party and had no relationship to any public interest or activity and, therefore, exempt from disclosure under*



*Section 8(1)(j) of the Right to Information Act. The information which has been sought includes, attested copies of all the leave application forms submitted by Dr. S. Verma since she was posted to 4 AFSB, copies of nomination of DSOP/other official documents with financial implications and record of investment made and reflected thereon in service documents along with the nominations thereof, if explicitly made. The information sought is obviously personal information concerning Dr. Sandhya Verma, a Third Party. It is immaterial if Dr. Sandhya Verma happens to be the wife of the Appellant. The information sought does not seem to have any relationship to any public interest or public activity and has been expressly sought to be used as evidence in a dispute in a Court pending between the Appellant and Dr. Sandhya Verma. The decision of the CPIO, upheld by the Appellate Authority, in denying the information by invoking the exemption provision of Section 8(1)(j) of the Right to Information Act seem to be absolutely right and just. We find no reason to interfere with the decision of the Appellate Authority and, thus, reject the appeal.”*

23) Another contention of the appellant is that he was never given any notice to establish larger public interest nor any explanation was sought from him. Such argument is also dealt with by the Hon'ble High Court of Delhi in the said case of **Vijay Prakash (supra)** by holding :

“22.-----The nature of restriction on the right to privacy is therefore of a different order; in the case of private individuals, the degree of protection afforded is greater; in the case of public servants, the degree of protection can be lower, depending on what is at stake. Therefore, if an important value in public disclosure of personal information is demonstrated, in the particular facts of a case, the protection afforded by Section 8(1)(j) may not be available; in such case, the information officer can proceed to the next step of issuing notice to the concerned public official, as a “third party” and consider his views on why there should be no disclosure. The onus of showing that disclosure should be made, is upon the individual asserting it; he cannot merely say that as the information relates to a public official, there is a public interest element. Adopting such a simplistic argument would defeat the object of Section 8(1)(j); the legislative intention in carving out an exception from the normal rule requiring no “locus” by virtue of Section 6, in the case of exemptions, is explicit through the non-obstante clause.-----”

24) The appellant has relied on the judgment in the case of ***Kashinath Shetye V/s Public Information officer Writ Petition No.1 of 2009(Supra)***. In the said case

the commission has directed the disclosure of information pertaining to leave records of the petitioner who is a public servant. The said order was challenged in the said Writ Petition, which was dismissed. However while clarifying the limitation contained under the RTI act in such disclosure in the interest of privacy, the Hon'ble High Court at para (8) has observed:

*"8. The next question is whether the applicant should be supplied the copies of the application at all. It was contended that the copies of the application should not be supplied for, they may contain the nature of the ailment and the applicant has no right to know about the ailment of the petitioner or his family. To my mind, what cannot be supplied, is a medical record maintained by the family physician or a private hospital. To that extent, it is his right of privacy, it certainly, cannot be invaded. The application for leave is not a medical record at all. It, at the most, may contain ground on which leave was sought.-----  
-----"*

25) I have perused the order, dated 20/01/2017, passed by the FAA. In the said order, though the PIO has contended before it that no public interest or activity is involved, no findings of FAA are contained therein. Before directing the disclosure, it was incumbent upon the FAA to conclude and hold that the information has a relation to public activity or that it involves public interest. Be that as

...20/-

it may, the FAA while deciding the appeal has considered the offer of the appellant to furnish the documents pertaining to the relationship with the third party and on bases of such offer has passed the order to provide the information as per relevant clauses of the RTI Act.

Firstly the authorities constituted under the RTI Act have no jurisdiction or competence to decide the relationship of any of

the parties. Only relation ship recognized under RTI act is that the seeker is a citizen of India. Relation of the parties interse is redundant under the RTI act. Thus the FAA has exceeded his jurisdiction on such issue. I therefore find that the order of the FAA is not based on the judicial principal consequently same cannot survive.

26) In the backdrop of the above facts, I find that Medical records of the third party herein are not maintained in the course of any public activity. The said records are created under the personal requirements of the patient. Moreover the disclosure of the said information has no relation to any public activity or public interest. Thus, notwithstanding the fact that the seeker is the husband of third party herein, in case the same are disclosed the same would amount to invasion on privacy of the third party. The third party also has objection to dispense the same to the appellant. In the circumstances I find no merits in the appeal. Consequently the same is disposed with the following :

...21/-

**O R D E R**

The appeal is dismissed. The order dated 16/2/2017 passed by the PIO is upheld. The order dated 20/01/2017 passed by FAA is set aside.

This order shall not effect the right of appellant to seek the information/records under any other law in force from the competent forum.

Proceedings closed.

Notify the parties.

Pronounced in the open proceedings.

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