

**GOA STATE INFORMATION COMMISSION**

Kamat Tower, Seventh Floor, Patto Panaji-Goa

---

Appeal No. 190/2017

Mr. Datta G. D'Souza,  
Through his Power of Attorney,  
Mr. Nilesh V. Parvatkar,  
H.No. M-270, Mollar,  
Corlim Tiswadi Goa.

.....Appellant.

**V/s.**

1. Public Information Officer  
Asst. Director of Transport (North),  
Panaji Goa.

2. Dy. Director of Transport,  
North, Goa,  
Panaji Goa.

....Respondents

**CORAM:**

**Smt. Pratima K. Vernekar**, State Information Commissioner

**Filed on: 13/11/2017**

**Decided on: 31/1/2018**

**ORDER**

1. The brief facts leading to present appeal are that the appellant Shri Datta D'Souza by his application, dated 13/4/2017, filed u/s 6(1) of The Right to Information Act , 2005 sought certain information from the PIO of office of Assistant Director of Transport, North Goa, Panaji ,under two points as stated therein in the said application .
2. The said application was responded by Respondent No.1 herein on 12/5/2017 interalia informing appellant that information at serial No. 1 & 2 are not traceable since the office was shifted and renovated.
3. As the information as sought was not furnished , the appellant filed first appeal to the respondent No.2 Dy. Director of Transport, North Goa at Panajim, being the first appellate

authority on 11/9/2017 which was registered under Appeal no.09/17.

4. Respondent no. 2 First appellate authority by an order dated 14/7/2017 disposed the said appeal with the direction to PIO to locate the said information as had been sought by the appellant and to furnish the same free of cost within 30 days from the receipt of the order.
5. Since the Respondent PIO Despite of aforesaid order did not furnished him information, as such the appellant vide application dated 11/9/2017 brought the said fact to the notice of Respondent no.2. The Respondent no. 2 again vide letter dated 14/9/2017 directed PIO to comply with the contents of the order and if the information is not available then the applicant may be informed accordingly.
6. In compliance to the order of the First appellate authority and the subsequent directions , the Respondent PIO vide letter dated 18/9/2017 informed the appellant that all the possible efforts are being made to trace the requested information . and the requested information at serial No. 1 & 2 is not traceable.
7. The appellant being aggrieved by the said response of PIO , has approached this commission in this second appeal u/s 19(3) of the act with the contention that the information is still not provided thereby seeking order from this commission to direct the PIO to furnish the information as also for other reliefs.
8. In pursuant to notices of this Commission, Appellant represented by Advocate Sandeep Naik. The then PIO Shri Sandeep Dessai was present alongwith present PIO Shri Nandkishore Arolkar and filed his reply in affidavit on 31/1/2018 alongwith Annexures. Respondent no. 2 Shri Prakash Azavedo appeared. The copy of the reply was furnished to the Advocate for the Appellant.

9. Arguments advanced by both the parties.
10. It is the contention of the appellant that he had sought the said information in order to approach the competent authority as according to the appellant the transfer of permit in respect of vehicle No. GA-01-T-7248 was not submitted by him and the said transfer of said permit is done illegally by the officials of the public authority concerned herein. He further contended that the said information was sought by him in larger public interest in order to expose the irregularities done by the officials of the public authority.
11. It is contention of the present PIO also that said documents are still not traceable and the efforts have been made to trace the same.
12. It was also contended that then PIO through his dealing hand had filed police complaint with Panaji police station and Panaji Police Station has issued certificate on 28/7/2017. It is further contended that the said facts have been brought to the notice of his higher-ups by then PIO Shri Sandeep Desai vide letter dated 8/5/2017.
13. I have perused the records and also considered the submissions of the parties.
14. It is the contention of present and then PIO that the records are missing, misplaced and not traceable . It is not the contention of the PIO that the said information is destroyed based on any order or as per the law or that records are weeded out as per the procedure . Besides that mere claim of " non availability of records " has no legality as it is not recognized as exception under the RTI Act. If the file/documents are really not traceable, it reflects the inefficient and pathetic management of the public authority .

15. In this case it is only the lapse and failure of the authority to preserve the records which has lead to non traceability of the file. From the above it appears that the authority itself was not serious of preservation of records. Such an attitude would frustrate the objective of the act itself .
16. It is quite obvious that appellant has suffered lots of harassment and mental agony in seeking the information and pursuing the matter before different authorities
17. The Honble High court of Delhi in writ petition © 36609/12 and CM 7664/2012 (stay) in case of Union of India V/s Vishwas Bhamburkar has held

“ It is not uncommon in the Government departments to evade the disclosure of the information taking the standard plea that the information sought by the applicant is not available . Ordinarily, the information which at some point of time or otherwise was available in the records of the government should continue to be available to the concerned department unless it has been destroyed in accordance with the rules framed by the department for destruction of old records. Even in the case where it is found that desired information though available at one point of time is now not traceable despite of best efforts made in the regards , the department concerned must fix responsibility for the loss of records and take action against the officers /official responsible for the loss of records. unless such a course of action is adopted, it would not be possible for any department /office, to deny the information which otherwise is not exempted from the disclosure “.

18. Considering the above position and the file/documents is not traced till date, I am unable to pass any direction to furnish information as it would be redundant now. However that itself does not absolve the PIO or the public authority concerned

herein to furnish the information to the appellant. An appropriate order therefore is required to be passed so that the liability is fixed and records are traced.

In the above circumstances and in the light of the discussions above I dispose off the above appeal with the following:

### **ORDER**

- a) The Director of Transport or through his representative shall conduct an inquiry within four months regarding the said missing file/documents and fix the responsibility for missing said file. The director of Transport shall also initiate appropriate proceedings against the person responsible as per his/ her service condition. A copy of the report of such inquiry shall be sent to the appellant and the right of the appellant to seek the same information from the PIO free of cost is kept open, after the said file is traced.
- b) The Public authority concerned herein also shall carry out the inventory of their records within 3 months and duly catalog and index and paginate the documents. The public authority are hereby directed to preserve the records properly.
- c) The Public authority may also appoint Records officer for the purpose of maintaining and preserving the official records.
- d) Issue notice to the Public Authority concerned herein i.e Department of Directorate of Transport(Enforcement), North Goa Panajim through its Director, to show cause as to why it should not be ordered to compensate the appellant as contemplated u/s 19(8)(b) of the RTI Act, 2005, returnable on 16/2/2018 at 10.30.am.

With the above directions , the appeal proceedings stands closed.

Notify the parties.

Pronounced in the open court.

Authenticated copies of the Order should be given to the parties free of cost.

Aggrieved party if any may move against this order by way of a Writ Petition as no further Appeal is provided against this order under the Right to Information Act 2005.

Sd/-

**(Ms.Pratima K. Vernekar)**  
State Information Commissioner  
Goa State Information Commission,  
Panaji-Goa

Ak/-