

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

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**CORAM: Shri Juino De Souza : State Information Commissioner**

**Appeal No: 93/2018/SIC-II**

Julio Filipe de Heredia,  
Casa Heredia- 353,  
Piedade, Divar- 403 403.

**..... Appellant**

v/s

1. Public Information Officer,  
EDC House, 2<sup>nd</sup> Floor,  
Panaji, Goa- 403 001.

2. First Appellate Authority,  
Managing Director,  
EDC House,  
Panaji, Goa- 403 001

**..... Respondents**

**Relevant emerging dates:**

Date of Hearing : 26-11-2018

Date of Decision : 26-11-2018

**O R D E R**

1. **BRIEF FACTS** of the case are that the Appellant vide an RTI application dated 29/01/2018, sought certain information under Section 6 (1) of the RTI Act. 2005 from the Respondent PIO, O/o EDC, Panaji-Goa. The information pertains to 14 points and the Appellant is seeking information regarding one M/s Sea Scan Marine Services Pvt Ltd. which has procured a loan from the Public Authority which is Economic Development Corporation Ltd.(EDC).
  
2. The information *inter alia* is regarding details of names of Managing Directors/Director, Heads of the institution of Sea Scan Marine Services, Payment of term loan, copy of details of the Board of Directors-EDC approving the loan for the project of Sea Scan Marine, a copy from the Board of Director /M.D. of Sea Scan Marine Services, Bank transaction of the loan disbursed and for inspection of the Disbursement of the loan sanction file related to Sea Scan Marine Services and other such related information.

3. It is seen that the PIO as per section 7(1) vide reply No.EDC/RTI/2018/06/1838 dated 09/02/2018 informed the Appellant that the information sought is voluminous in nature and will disproportionately divert the resources of the Corporation as per Section 7(9) of the RTI Act. And to take inspection from the concerned files on any working day with prior appointment
4. Not satisfied with the reply, the Appellant filed a First Appeal as per 19(1) on 19/02/2018 and the First Appellate Authority (FAA) vide an Order dated 29/03/2018 partly allowed the First Appeal and directed the Respondent PIO to furnish information at point 4, 6 & 7 of the RTI application and as regards other information, the Appellant was given liberty to inspect the records and then apply for the relevant documents on payment of the necessary fees.
5. Being aggrieved that despite the Order of the FAA, certain information has not been furnished, the Appellant thereafter filed the Second Appeal u/s 19(3) of the RTI act 2005 before the Commission registered on 18/04/2018 and has prayed that the PIO be strictly ordered and directed to furnish the Appellant with proper and specific information as per the RTI application dated 29/01/2018 and for disciplinary action and other such reliefs.
6. **HEARING:** This matter has come up before this Commission on seven previous occasions and by consent is taken up for final disposal. During the hearing the Appellant, is present alongwith his wife Alette de Heredia. The Respondent PIO, B.S. Borkar is present alongwith APIO Shri Govind Narvekar. Adv. Sagar Sarmalker whose Vakalatnama is on record is also present on behalf of PIO and FAA.
7. **SUBMISSIONS/ARGUMENTS:** The Appellant submits that information at point No. 3(e) which is submitted by Sea Scan Marine Pvt Ltd to the Public Authority (EDC) has not been furnished and confirms that all other information has been furnished by the PIO.

8. The Appellant further submits that the information furnished on the Project Report by the PIO was incorrect, incomplete and misleading and after taking inspection of the files it was found that Project Report is in file No 1 no 8656, however the PIO did not allow inspection from C/311 to C/336. It is finally submitted that copy of the Project Report is not a confidential document as M/s Sea Scan Marine Pvt. Ltd is conducting training programmes for sea farers and therefore the PIO should furnish the same in public interest.
9. The Respondent APIO submits that while all other information as per the RTI application has been furnished to the Appellant, the information pertaining to copy of Project Report at point 3(e) could not be furnished as it is subject to provisions of section 8 & 11 of the RTI act,2005 and pertains to third party and the said third party M/s Sea Scan Marine Pvt. Ltd have objected to parting information to the Appellant on the ground that it is a confidential document depicting the company's intellectual and business trade secrets .
10. The APIO further submitted that an intimation vide letter No.EDC/RTI/2018/329 dated 10/08/2018 was sent to the third party and the third party SEA SCAN MARINE SERVICES Pvt LTD vide their letter dated 20/08/2018 have replied that since item No.3 is confidential document of the Company depicting the Company's intellectual and business trade secrets, the same should not be furnished to the Appellant.
11. **FINDINGS:** The Commission has heard the respective parties and perused the material on record including Reply of Respondent No 1 dated 22/06/2018, Rejoinder of the Appellant to the reply of the Respondent also dated 22/06/2018, Letter of Appellant dated 21/08/2018, additional Reply of Respondent No 1 dated 27/09/2018 enclosing copy of letter of third party dated 20/08/2018, RTI application dated 29/01/2018, reply of PIO dated 09/02/2018 and Order of the FAA dated 29/03/2018. ...4

12. It is seen that the PIO has furnished all information except the information at point 3(e) which is the Project Report and which the appellant insists that it should be furnished. The Commission will therefore focus only on information at point 3(e) of the application.
13. Section 8(1)(d) which is relevant in the instant case, *inter alia*, provides that the Public Authority may refuse to give information relating to commercial confidence, trade secret or intellectual property, disclosure of which would harm the competitive position of a third party, unless the competent authority is satisfied that larger public interest warrants the disclosure of such information.
14. The question, therefore, that falls for consideration is as to whether the disclosure of the Project Report submitted by the Company M/s SEA SCAN SERVICES Pvt. Ltd to the Public Authority for procuring a term loan is a trade secret or commercial confidence or intellectual property? And whether the said information on Project report can be denied u/s section 8(1)(d) and also since it pertains to third party whether section 11 of the RTI act has been applied by the PIO?
15. In this connection, the Commission at the outset finds that pursuant to receiving the RTI application dated 29/01/2018, the PIO in his reply dated 09/02/2018 has merely informed the Appellant to take inspection of concerned files for obtaining information as the information sought is voluminous. Nowhere in the said reply has the PIO stated that information at point 3(e) cannot be furnished as it is hit by provisions u/s 8(1)(d). Further it is seen that the PIO has also not invoked section 11, which is to be followed in case of third party information within five days of receipt of RTI application.
16. The FAA in his order dated 29/03/2018 after hearing both parties had partly allowed the First Appeal while granting liberty to the appellant to inspect the records and apply for relevant documents on payment of fees. It is observed that nowhere in this order also there is any mention of the PIO raising the issue of 'Third Party Information' or of denying information u/s 8(1)(d). ...5

17. The PIO raised the issue of section 8 and 11 for the first time in his reply dated 22/06/2018 and sent a letter to the third party M/s Sea Scan Marine Services Pvt. Ltd on 10/08/2018, belatedly after seven months delay from the date of the RTI application dated 29/01/2018 which is totally unjustifiable, unwarranted and uncalled for.
18. The Appellant has submitted that on taking inspection of the said file, he came across a Project Report in file No.1 numbered 8656 which is from C/311 to C/336 and which information was denied by the PIO. The Appellant has stated that the company is imparting training programme to sea farers. Therefore it can be construed that M/s Sea Scan Services Pvt LTD is not manufacturing any research product or having any unique strategy that may infringe intellectual and business trade secrets or intellectual property rights.
19. It is also observed that Sea Scan Marine Services Pvt. Ltd. in their letter dated 20/08/2018 sent to the PIO, has mentioned about a Special Civil Suit No.07/2012A on the file of Civil Judge, Senior Divisional, Margao filed by the Plaintiffs Mrs. Marcilia Lizette Felicidade Vaz. The Commission is of the opinion that perhaps this is prime reason why the Company does not want to divulge the information, as the disclosure may affect the outcome of the said Civil suit and which has nothing to do with business trade secrets or intellectual property rights.
20. Purportedly the Company has submitted the Project Report to the Public authority (EDC) for the purpose of securing a term loan and which has since been sanctioned. Usually such Project Report gives the background of company and promoters Background, Area of expertise, aims of the project, Future Plans, Profiles of key personnel in the organization, area of specialization, Financial arrangements, balance Sheet, Annual Report, Space Requirement / Built up Land and other such related information which cannot be termed as business and trade secret or intellectual property rights.

21. Therefore, prima facie, the Commission is of the view that once a decision of sanctioning the loan is taken, there is no justification to keep the Project Report a secret. People have a right to know the basis on which the decision has been taken to sanction the term loan by the Public authority. If the authorities of a Government owned company refuses to disclose the document, the very purpose of the Act will be frustrated.
22. Moreover, disclosure of information on the Project Report sought by the Appellant, cannot not be treated as a trade secret or commercial confidence; rather disclosure of such information shall be in public interest, inasmuch as it will show the transparency in the activities of the Company. A contract entered into by the public authority with a private company for purpose of sanctioning a loan cannot be treated as confidential after completion of disbursement of loan.
23. The Right to Information Act, 2005 has been enacted to provide for a legal right to information for citizens to secure access to information under the control of public authorities, in order to promote transparency and accountability in every public authority.
24. The Supreme Court in the case of *The State of Uttar Pradesh v/s. Raj Narain and Ors.* AIR 1975 observed: 74. In a Government of responsibility like ours, where all the agents of the public must be responsible for their conduct, there can be but few secrets. The people of this country have a right to know every public act, everything that is done in a public way, by their public functionaries. They are entitled to know the particulars of every public transaction in all its bearing. The right to know, which is derived from the concept of freedom of speech, though not absolute, is a factor, which should make one wary, when secrecy is claimed for transactions which can, at any rate, have no repercussion on public security. To cover with veil of secrecy, the common routine business is not in the interest of the public. Such secrecy can seldom be legitimately desired.

**CONCLUSION: This Commission accordingly holds that information sought for with regard to document at point 3(e) (Project Report) of the RTI application dated 29/01/2018 does not come under the purview of Section 8(1)(d) of the RTI Act 2005 and no prejudice will be caused to the Company if the information on the Project Report is furnished to the Appellant.**

Consequently the Second Appeal succeeds. The Respondent PIO in terms of prayer at point 1 is hereby directed to furnish all information pertaining to point No. 3 (e) which is copy of the Project Report of M/s Sea Scan Marine Services Pvt Ltd. within 15 days of the date of the receipt of the Order by Speed post with acknowledgement. The Respondent PIO shall also file a compliance report thereafter alongwith proof of dispatch before the Commission. The prayer of the appellant in terms of point 2 and 3 for disciplinary action and penalty stand rejected.

**With these directions the appeal case stands disposed.**

All proceedings in Appeal case stands closed. Pronounced before the parties who are present at the conclusion of the hearing. Notify the parties concerned. Authenticated copies of the order be given free of cost.

Sd/-  
**(Juino De Souza)**  
**State Information Commissioner**