

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

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

**Penalty No.22/2018**  
**in**  
**Appeal No. 200/SCIC/2017**

Iver Ferreira,  
House No.949, Manguairal,  
St. Estevam, Ilhas –Goa.  
Pin: 403106.

..... Appellant

V/s

The Public Information Officer,  
Office of the Mamlatdar,  
Tiswadi Taluka, Collectorate Building,  
Ground floor, Panaji –Goa.  
Pin: 403001.

..... Respondents

Decided on: 09/08/2018

**O R D E R**

1. While disposing the above appeal, this Commission by order, dated 18/05/2018 has directed the PIO, office of Mamlatdar Tiswadi to show cause as to why action as contemplated under section 20 (1) and/or 20(2) of the Right to Information Act 2005 should not be initiated against her.
2. The facts in Brief, which are relevant for the purpose of deciding this penalty proceeding are that by application dated 21/08/2017 filed under section 6(1) of the Right to Information Act 2005, the appellant has sought information from the respondent PIO in the form of copies of complaint filed at Police station regarding untraceable files, FIR logged at Police station and status of such complaint and action taken report. This

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information was sought in the background of the fact that to his earlier application filed for information, the PIO had replied that the document of tenancy declaration proceedings sought is not traceable in the records maintained.

3. The said application was responded by the PIO for the first time on 24/10/2017 after the order of the First Appellate Authority (FAA) wherein it was informed to appellant that there is no order of tenancy declaration proceeding in the above file. The appellant filed a second appeal before this Commission wherein the PIO did not file any say and hence the said order dated 18/05/2018 was passed.
4. On receipt of the show cause notice the PIO on 19/06/2018 furnished the information to the appellant, copy of which was filed before this Commission as an annexure to the reply. In the reply to said notice it was the contention of the PIO that the information sought was pertaining to a tenancy declaration to the proceeding related to case No.TNC/PUR/3/2003/JM/III. According to the PIO there was no FIR filed or any complaint filed as no declaration proceeding was at all filed and hence the question of loss or misplacement of any file does not arise. According to her as there was no complaint required to be filed in view of non existence of the file there was no information could be furnished. PIO therefore directed to file an affidavit in support of said contention and to clarify the facts.

5. Accordingly on 20/07/2018 PIO, Ms. Sapna Bandodkar filed an affidavit. According to the PIO as per said affidavit there was no FIR filed or any complaint filed by the office of the Mamlatdar and hence no records were generated. The PIO has further clarified that the tenant in case No.TNC/PUR/III/2003/JM-III has directly purchased the tenanted land under section 18(b) and 18(c) of the Goa Agricultural Tenancy Act and that there is no order of tenancy declaration. In other words there was no file pertaining to declaration, proceeding generated with the respondent Authority.

6. From the above affidavit it can be gathered that there was no tenancy declaration proceedings and consequently no file was generated. In the result there was no ground to file any complaint or FIR for loss of non existing file. In this situation commission does not find that the reply of the PIO by letter dated 24/07/2017 was at all malafide as the records pertaining to information sought was not yet all existing.

7. 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*

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*and existing. This 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."*

Thus by applying the said ratio and considering the non existence of the information with the authority the PIO cannot be held liable.

8. However this commission makes an observation that had this clarification been filed by the PIO in the second appeal itself before this Commission, a lot of time could have been saved. It is only because of the lethargy or negligence on the part of the PIO that the appellant is pulled to the Commission. This Commission expect that the PIO hence forth shall be diligent in respect of the proceeding under the RTI Act.

Considering the above situation and with the above observation, commission find no malafides to proceed with the above notice. Consequently notice dated 18/05/2018 stands withdrawn. Proceeding closed.

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