

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

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**Appeal No.04/2019/SIC-I**

Shri Xaverito Geraldo De Costa,  
H.No. 8, Sukh Bhat Arossim,  
Cansaulim, Goa .

..... Appellant

V/s

1. The Public Information Officer,  
Assistant Director of Transport,(HQ)  
Government of Goa,  
1<sup>st</sup> floor , Junta House,  
Panajim Goa.
2. Deputy Director of Transport,  
First Appellate Authority,  
South Region,  
Margao Goa.

.....Respondents

**CORAM:**

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

**Filed on:08/1/2019**  
**Decided on: 29/1/2019**

**ORDER**

1. Brief facts leading to the present appeal are that the appellant Shri Xaverito Geraldo De Costa herein by his application dated 13/8/2018 sought for following information (i)Your reference letter No. D.Tpt/STA/Permits/2017/1476 dated 20/6/2017 and (ii) Form P.CO.P {A See Rule 71} (1)(ii) inward No. 14056 dated 3/8/2017. The said information was sought from Respondent No. 1, PIO of the office of Directorate of Transport at Panajim in exercise of appellants right under section 6(1) of RTI Act, 2005.
2. It is the contention of the appellant that he received a reply from Respondent no. 1 herein on 11/9/2018 seeking for extension of time to locate the documents /files on the ground that there is shortage of man power to search the said documents which are in a record room.
3. It is the contention of the appellant that on receipt of the above letter dated 11/9/2018 he vide his letter dated 10/10/2018 again

requested the PIO to provide him the said documents within three days. It is his further contention that he had also enclosed the Xerox copy of form P.CO.P. to his said letter for reference of Respondents.

4. It is the contention of the appellant that the Respondent No. 1 PIO failed to provide him information sought for and as such deeming the same as refusal, he filed first appeal on 5/11/2018 before the Director of Transport being first appellate authority who is the Respondent no. 2 herein interms of section 19(1) of RTI Act, 2005.
5. It is a contention of the appellant that the Respondent No. 2 first appellate authority vide order dated 5/12/2018 directed the Respondent no. 1 PIO to furnish the complete information and the details as per the provisions of RTI Act 2005 to the appellant within 30 days, free of cost.
6. It is the contention of the appellant that in pursuant to the order of first appellate authority, the Respondent no. 1 PIO had issued him a only one document as listed at serial no. 1 of his application and the information at point no. 2 was not provide to him despite of the order of the first appellate authority. As such he being aggrieved by the action of Respondent No.1 PIO, he is forced to prefer the present appeal.
7. In this background the appellant has preferred a present appeal on 8/1/2019 as contemplated u/s 19(3) of RTI Act, thereby seeking directions as against respondent PIO for furnishing him correct information and for invoking penal provisions.
8. In pursuant to the notice of this commission the appellant appeared in person Respondent no. 1 Shri R.B. Naik and Respondent No. 2 Shri Nandkishore Arolkar were present.

9. Replies filed by both the Respondent on 29/1/2019 along with the enclosures. The copy of the same were furnished to the appellant herein.
10. Arguments were advanced by both the parties.
11. It is the contention of the appellant that he is a owner of vehicle and he has submitted documents i.e form P.CO.P. ( Rule 72 (1) and (2) for completing necessary formalities for obtaining the permit (AGT) and the said was inwarded by their office vide, entry no. 14056 dated 3/8/2017. He further submitted that still no action had been taken on his said application/form and no permit had been granted to him till date . He further submitted that he is dependable on said vehicle to generate the daily income. He further submitted that he had sought the said information in order to approach the appropriate forum with his grievances. He further submitted that great prejudice will be caused to him if the said documents are not furnished to him. In support of his above contention he relied upon the Xerox copy of said form bearing the inward number of office of respondents.
12. It is the contention of the Respondent no. 1 PIO, that on receipt of the application from the appellant he issued memorandum dated 16/8/2018 to the head clerk , STA section seeking her assistance u/s 5 of sub section 4 and 5 of the RTI Act 2005 wherein she was directed to furnish the desired information to him within 5 days and the head clerk of STA section vide her letter dated 6/9/2018 informed him that the documents /filed are normally consigned to the record room and there is shortage of man power to search the documents. It is his further contention that accordingly he vide his reply dated 11/9/2018 given interms of section 7 (1) informed the appellant the said fact and sought for extension of 15 days time to locate the documents. In support of his above contention he relied upon memorandum dated 16/8/2018, the reply of Head Clerk dated 6/9/2018 and his reply dated 11/9/2018.

13. It is the further contention that the Head Clerk vide her letter dated 25/9/2018 furnished him the information at point no. 1 which he intern submitted to the appellant on 26/9/2018 .
14. It is the further contention of PIO even after the order of FAA he tried to locate the said information at point No. 2 by putting additional man power to search the same, however the said documents at point no. 2 was not traceable and therefore he brought said fact to the notice of his higher up and sought for permission to file FIR to local Police Station for loss of said documents and in support of his said contention he relied upon note sheet N/3 submitted to his higher ups .
15. It is the further contention of PIO that the missing complaint was lodged by him on 18/1/2019 with a Panajim Police Station with a request to investigate into the matter of missing documents and accordingly the police had issued him certificate dated 24/1/2019. In support of his said contention he relied upon his complaint dated 18/1/2019 and the certificate issued to him by the Police on 24/1/2019.
16. In the nutshell it is the case of the Respondent PIO that the all the efforts made by him to search and to locate the information at point NO. 2 and the said is not traceable and as such he is unable to provide the same to the appellant
17. I have scrutinize the records available in the file and also considered submission made by both the parties
18. It is seen that information sought at point No. 2 pertains to the Year 2017. The appellant has also placed on record Xerox copy of the said application/form submitted by him with the office of directorate of transport. The said Xerox copy also bears the inward stamp of the office of having received the same. The said application/form has gone missing within a span of one year. It is the contention of the present PIO that till date, that the said file /

Documents is not available and not traceable in their office records despite of through search . 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. The information at point no. 1 was also not provided within 30 days . The extension of time was also sought to furnish the said information and the said came to be furnished to the appellant only on 26/9/2018 after the first appeal was filed by the appellant .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. Besides, that the ground of "non availability of records "is not qualified to be exempted u/s 8 of the RTI act.

19. The Hon'ble 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 ”.

20. Considering the above position and the file/documents are not available now, I am unable to pass any direction to furnish information at point No. 2 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.
21. The facts of the present case does not warrant levy of penalty on PIO as the records reveals that PIO has acted and performed his duty diligently under the RTI Act and there was no denial of information from his side.
22. 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, Government of Goa, Junta House, Panajim-Goa or through his authorized officer shall conduct an inquiry regarding the said missing of file/documents i.e form No.P.CO.P {A See Rule 71) (1)(ii)} inward No. 14056 dated 3/8/2017 sought at point No. 2 vide application dated 13//8/2018 and to fix the responsibility for missing said file/documents. He shall complete such inquiry within 4 months from the date of receipt of this order by him. The Director of transport at Panajim shall also initiate appropriate proceedings against the person responsible as per his/ her service condition and the right of the appellant to seek the same information from the PIO free of cost is kept open, in case the said file is traced.

- b. The Public authority concerned herein also shall carry out the inventory of their records within 3 months and are hereby directed to maintain and preserve the records properly.
- c. The Public authority may also appoint Records officer for the purpose of maintaining and preserving the official records.
- d. The copy of the order shall be sent to The Director of Transport at Panajim for information and for appropriate action.

With the above directions, the appeal proceedings stands closed .

Notify the parties.

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.

Pronounced in the open court.

Sd/-

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