

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

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Complaint No. 01/2020/SIC-I

Shri Roy C. D'Souza  
H. No. 525,  
Mesta Bhat,  
Merces-Ilhas, Goa

.....Complainant .

V/s.

1. Nathin Araujo,  
Public Information Officer/Dy. Director(Vigilance),  
Directorate of Vigilance,  
Serra Building, Near All India Radio,  
Altinho, Panaji-Goa.

.....Respondent/Opponent

**CORAM:** Ms. Pratima K. Vernekar, State Information Commissioner.

Filed on: 08/01/2020  
Decided on: 06/08/2020

**ORDER**

1. The facts leading to present complaint as put forth by the complainant Shri Roy C.D'Souza are as under;
  - a. The Complainant vide his application dated 31/7/2019 had sought for certain information on 3 points as stated therein including the inspection of the documents/files from the PIO of Anti Corruption Branch at Altinho panajim-Goa pertaining to inquiry conducted by Anti Corruption Branch regarding the complaint filed by him dated 12/2/2014 against Shri Ashish K. Rego .
  - b. It is the contention of the complainant that the PIO of Anti Corruption Branch transferred his application u/s 6(3) to the Opponent PIO of General Vigilance section with the request to provide the reply directly to the complainant since the file No. ACB/VIG/COM 23/2014 dated 12/2/2014 pertaining to the inquiry into the complaint dated 12/2/2014

filed by the Complainant was forwarded to Director Vigilance vide Movement No. 198/2014 dated 20/10/2014.

- c. It is the contention of complainant that he received a letter dated 27/8/2019 from the Opponent PIO given interms of section 7(1) of RTI Act wherein the information was rejected interms of section 8(1) (h) of the Right to Information Act on the ground that the matter is under examination/inquiry and it would impede the process of investigation .
- d. It is contention of the Complainant that he being aggrieved by such a response of Opponent PIO , he preferred First Appeal on 23/09/2019 before the Directorate of Vigilance being First Appellate Authority and his first appeal was registered as appeal No. RTI /APPEAL/03/ 2019-VIG/2632.
- e. It is in contention of the complainant that Opponent filed reply to the First appeal before the First Appellate Authority dated 16/10/2019 and the First Appellate Authority after hearing both the parties, the First Appellate Authority was pleased to allow his appeal and passed order dated 25/10/2019 directing the opponent to provide the information to the complainant within 15 days from the date of the order.
- f. It is in contention of the complainant that the opponent issued him letter dated 1/11/2019 intimating him to remain present in the office on 6/11/2019 to inspect the file and in pursuant to the said letter he visited the office of opponent and inspected the file furnished by the opponent bearing No. 15/09/2015-VIG(PART)on 6/11/2019 and also sought for the documents.
- g. It is in contention of the complainant that the inspection offered by the opponent is not a file No. ACB/VIG/Com 23/2014 as sought by the complainant in his application

dated 31/7/2019 but the file bearing No. 15/09/2015/VIG (PART) which was different file as such he vide his letter dated 6/11/2019 brought to the notice of opponent that the file No. bearing NO. ACB/VIG/Com 23/2014 is not produced for inspection.

h. It is in contention of the complainant that the opponent vide letter dated 11/11/2019 informed him that the file No. ACB/VIG/Com 23/2014 is presently not traceable in general vigilance section in the Directorate and efforts are being made to trace the said file and no sooner it is found, he will be intimated accordingly.

2. In this background the present complaint came to be filled by the Complainant on the grounds raised in the memo of Complaint, thereby seeking various relief and direction to PIO such as (i) for providing him the inspection and the information as sought by him in his application dated 31/7/2019 of file No. ACB/VIG/Com 23/2014 which was transferred by the Anti-corruption Branch to the opponent vide movement No. 198/2014 dated 20/10/2014 and for invoking penal provisions.
3. The matter was taken up on board was listed for hearing. In pursuant to the notice of this commission complainant was present in person. Opponent PIO Mrs Nathin Araujo appeared and filed her reply on 13/2/2020 along with enclosures.
4. Affidavit was also filed by complainant on 11/3/2020 and by opponent on 27/7/2020.
5. Arguments were advanced by complainant. PIO submitted to consider her reply and her affidavit in rejoinder as her argument.
6. It is the contention of the Appellant that he had filed complaint in the office of Anti-corruption branch on 12/2/2014 for registering FIR against Shri Ashish K. Rege, officiating Principal and vide his RTI application dated 31/7/2018 had sought

information and inspection in regards to said complaint. It was further contended that by letter bearing No. ACB/VIG/Cont/125/2014 dated 19/3/2014 he was requested to remain in the office of Anti corruption along with all relevant documents on 20/3/2014 and his statement was recorded and in support of his said contention he relied upon the complaint lodged by him dated 12/2/2014 and the letter dated 19/3/2014 issued by Dy. Superintendent Of Police, ACB/Vigilance .

7. It was further contended that his application was transferred by the PIO of ACP/vigilance to the opponent herein interms of section 6(3)of RTI Act by mentioning the file number ACP/VIG/CON/23/2014 dated 12/2/2014 pertaining to the inquiry into the complaint dated 12/2/2014 filed by the complainant herein and also mentioning the moment No. 198/2014 dated 20/10/2014 .
8. It is a contention of the complainant that the opponent refused to furnish the certified copies of documents and inspection of the files vide initial reply dated 27/8/2019 on the ground that it is exempted u/s 8(1)(h) of the Right to Information Act and the same stand was also taken even in the reply dated 16/10/2019 by the PIO before the First appellate Authority . The complainant further submitted that the opponent in her reply before the First Appellate Authority at para 2 have stated that *after verification of the relevant file she informed Complainant that matter is under examination /inquiry* and hence Information sought could not be sought at that stage as it would impede the process of investigation. Hence it could be gathered that at the relevant time the file is in the possession and in the custody of the opponent . It was further contended that opponent deliberately with the malafide intention even after the order passed by the First Appellate Authority tried to show as if complying with the order by offering inspection to the complainant of different file other then the file sought by the complainant. It was further

submitted that for the first time when the complainant sought the file No. ACB/VIG/Com 23/2014 at the time of inspection it was brought to his notice by the opponent that the file No. ACB/VIG/Com 23/2014 is not traceable so also vide letter dated 11/11/2019 submitted for the first time the said is not traceable in the general vigilance section of the office of the opponent .It was further contended that sudden disappearance of the file No. ACB/VIG/con/23/2014 creates the serious doubt as it appears the file has been destroyed. He further contended that there is serious lapse on the part of opponent by deliberately concealing the true fact that the file is missing /not traceable as the opponent knew right from the beginning that the file No. ACB/VIG/Com/23/2014 was missing/not traceable but acted in breach of official duty by appearing before the First Appellate Authority and filing first reply to the extent that the matter is under investigation. It was further submitted that the file which was showed to him was pertaining to the application made by him to Chief Secretary on 31/12/2015 seeking sanction to prosecute to Shri Ashish Rege and the information which was sought by him was with regards to the complaints filed by him with Anti Corruption to registered FIR against Shri Ashish Rege and this files pertains to different issues. It was further submitted that at para 8 of the reply dated 13/2/2020 filed by the opponent shows that the file was inwards in the vigilance section on 21/10/2014 which have now been reported as missing and not traceable. It was further submitted by the complainant that the file is malafidely destroyed by the office of the opponent and hence the inquiry has been ordered. It was further submitted that the opponent should be penalised for misleading him that it is under investigation when infact his file is not traceable. He further submitted that opponent had statutory obligation under to Right to Information Act 2005 to disclose the information and to submit the exact cause of certain

disappearance of file when the complaint was called for inspection of the file bearing No. ACB/VIG/COM-23/2014 .

9. On the other hand, it is the contention of the Opponent PIO that she has furnished the correct reply within a prescribed period to the complainant with respect to his RTI Application date 31/7/2019 which was transferred to her by the PIO of ACP/Vigilance vide letter dated 2/8/2019 since the matter was pending in the disciplinary proceeding section of the General Vigilance Wing in the Directorate of Vigilance and she after verifying the relevant file i.e file bearing no. 15/9/2015-VIG(part) found that the matter was till under inquiry in the said section and hence she bonafidely presumed that the RTI application was transferred to with respect to the said matter, accordingly vide a letter dated 27/8/2019 informed complainant that information sought could not be spread 8(1)(h) of RTI Act as it would impede in the process of investigation.
10. She further contended that the Complainant being aggrieved vide reply dated 27/8/2019 preferred first appeal and the First Appellate Authority was pleased to allow the said appeal vide order dated 25/10/2019 wherein the observation made by the First Appellate Authority that the Appellant himself being the complainant in the complaint dated 12/2/2014 has a right, to know the progress of the complaint as such disclosure of the information to him is not in any way impede the process of investigation and as such directed the opponent to provide the information to the complainant within 15 days from the date of the said order.
9. It is the contention that she tried to comply the order of First Appellate Authority by issuing a letter dated 1/11/2019 to complainant to attend the office for inspection of the files pending in the disciplinary section in the general vigilance wing (vigilance officer-I)and at the time of inspection complainant brought to her

notice that the file bearing no. ACB/VIG/Com-23/2014 was not provided to him for inspection and that it was informed to him by the disciplinary proceeding section that the file bearing No. ACB/VIG/Com-23/2014 (vigilance officer-I) informed him that the said file is not available in the section.

10. She further contended that it was only on the day of the inspection i.e on 6/11/2019 she came to know that the Complainant has also sought information about file no. ACB/VIG/COM-23/2014, which file was not available in the disciplinary proceedings section.
11. It was further contended that on thoroughly checking the RTI application and the transfer applications of PIO ,ACB, she noticed that there was a mentioned of above files which she had failed to notice initially by inadvertence.
12. It is her further a contention that on verification of inward registered she found that the file bearing No. ACB/VIG/ Com23 /2014 was inwarded in the Directorate of Vigilance on 21/10/2014 as informed by the PIO ACB in a transfer application, and the said file was not shown to be marked to any section of the Directorate of Vigilance. In the absence such endorsement, it was difficult to ascertained as to which section the file is marked to .
13. She further contended that the memorandum dated 7/11/2019 was issued by the Additional Directorate (Vigilance) to all section of their Department to carry out a thorough search of file bearing No. ACB/VIG/Com23/2014, however all the sections of the Directorate informed by their respective replies that the said file was not traceable in their section. Accordingly vide reply dated 11/11/2019 she requested the complainant to collect the information sought by him vide his application dated 6/11/2019 as available in the disciplinary proceedings section. It was further contended that the said file bearing No. ACB/VIG/Com-23/2014 is not available in the General Vigilance Section of the Directorate

and the efforts have been to trace the said file and no sooner it is found, he would be intimidated.

14. In support of her above contention she relied upon inward outward register annexure-V, memorandum, dated 7/11/2019 by Additional Director (Vigilance) and the respective replies dated 8/11/2019 given by Head constable, UDC, by technical section, by Administrative section, by inward and outward clerk and by Account section vide letter dated 11/11/2019 etc.
15. It was further submitted that the superintendent of police (ACP) vide letter dated 23/1/2020 was also requested to direct the officials under his control to carry out the search the file no. ACB/VIG/Com-23/2014 by the Director of Vigilance and the Anti Corruption Branch vide reply dated 27/1/2020 informed that the thorough search was carried out in ACP section, so as to reconfirmed if any such files was mistakenly transferred to their office, however all efforts will futile. The ACB also informed that as per the file movement records the file no. ACB/VIG/Com-23/2014 pertaining to the enquiry into Complaint dated 12/2/2014 filed by the Complainant against Shri Ashish Rege was submitted to Director, Directorate of Vigilance vide moment No. 198/2014 dated 20/10/2014 which was duly acknowledged. In support of the above convention she relied upon letter dated 23/1/2020 issued to Superintendent of Police , ANC (Vigilance) by the Director(Vigilance) and the reply dated 27/1/2020 of Deputy Superintendent of Police, ACB, Vigilance . Movement register bearing entry No. 198/2014 dated 20/10/2014 was also relied upon by the Respondent PIO.
16. The Opponent denied the contents of para 18, 19, 21, 23 & 26 of the Affidavit filed by the complainant on 11/3/2020 being false and reiterated that the reply dated 27/8/2019 and the reply dated 16/10/2019 filed by her in first appeal was in respect to file

no.15/9/2015/VIG(part)and not with respect to file no. ACP/VIG/COM-23/2014 as alleged by complainant.

17. It was further contended that there was no question of furnishing information with respect to file which is not available in the disciplinary section and she has furnished the information as available in a General Vigilance Wing for which she is the PIO .
18. It was further contended that the complaint may be dismissed as she has given correct reply/information within prescribed period and she cannot be held responsible for not furnishing the information, not at all available with her.
19. I have scrutinized the records and also considered the rival submission made by both the parties.
20. In the present proceedings the point for my determination are:
  1. Whether the information as sought at relief (a) can be provided in the complaint proceedings ?
  2. Whether the penalty as sought at relief (b) and (c) can be granted ?

Point No. 1

21. While dealing with issue, whether information can be provided in complaint, the Hon'ble Apex Court in the case of ***Chief Information Commissioner and another v/s State of Manipur and another (civil Appeal No. 10787-10788 of 2011)*** has observed at para (35) thereof as under:

*"Therefore, the procedure contemplated under Section 18 and Section 19 of the said Act is substantially different. The nature of the power under Section 18 is supervisory in character whereas the procedure under Section 19 is an appellate procedure and a person who is aggrieved by refusal in receiving the information which he has sought for can only*

***seek redress in the manner provided in the statute, namely, by following the procedure under Section 19. This Court is, therefore, of the opinion that Section 7 read with Section 19 provides a complete statutory mechanism to a person who is aggrieved by refusal to receive information. Such person has to get the information by following the aforesaid statutory provisions. The contention of the appellant that information can be accessed through Section 18 is contrary to the express provision of Section 19 of the Act. It is well known when a procedure is laid down statutorily and there is no challenge to the said statutory procedure the Court should not, in the name of interpretation, lay down a procedure which is contrary to the express statutory provision. It is a time honoured principle as early as from the decision in Taylor v. Taylor [(1876)1 Ch. D. 426] that where statute provides for something to be done in a particular manner it can be done in that manner alone and all other modes of performance are necessarily forbidden.***

The rationale behind these observation of Hon'ble Apex court is contained in para (37) of the said Judgment in following words.

*" 37. We are of the view that section 18 and 19 of the Act serve two different purposes and lay down two different procedures and they provide two different remedies, one cannot be substitute for the other."*

Again at para (42) of the said judgment their Lordship have observed.

*"42. Apart from that the procedure under Section 19 of the Act, when compared to Section 18, has several safeguards for protecting the interest of the person who has been refused the information he has sought.*

*Section 19(5), in this connection, may be referred to. Section 19(5) puts the onus to justify the denial of request on the information officer. Therefore, it is for the officer to justify the denial. There is no such safeguard in Section 18. Apart from that the procedure under Section 19 is a time bound one but no limit is prescribed under Section 18. So out of the two procedures, between Section 18 and Section 19, the one under Section 19 is more beneficial to a person who has been denied access to information."*

22. The Hon'ble High Court of Karnataka At Bangalore in writ Petition No. 19441/2012 and Writ Petition Numbers 22981 to 22982/2012 C/W Writ Petition No. 24210/2012 and Writ Petition Numbers 40995 to 40998/2012 (GM-RES) Between M/s Bangalore Electricity Supply Company Limited. V/s. State Information Commissioner, Karnataka information Commission has held that

*"information Commissioner has got no powers under section 18 to provide access to the information which has been requested for by any person and which has been denied and that the remedy available would be to file an Appeal as provided under section 19 of the RTI Act"*

23. By applying the same ratio, this Commission has no powers to provide access to information which have been requested for any person or which have been denied to him. The only order which can be passed by the commission, as the case may be, u/s 18 is an order of penalty provided u/s 20 of RTI Act. However before such order is passed the commission must be satisfied that the intention of the Respondent PIO was not bonafide.

Point No. 2

24. With regards to other prayers which are nature of penalty and compensation, for the purpose of considering such liability

interms of section 20 of RTI Act, The Hon'ble High Court of Bombay, Goa bench at Panaji in writ petition 205/2007 ; Shri A.A. Parulekar v/s Goa State information commission has observed;

“The order of penalty for failure is akin to action under the criminal law. It is necessary to ensure that the failure to supply information is either intentional or deliberate”.

25. Hence according to the ratio laid down by above Hon'ble High Court, failure to supply the information should be either intentional or deliberate .
26. On perusing the transfer application u/s 6(3) of RTI Act, dated 2/8/2019 addressed to the present opponent PIO of General Vigilance section of Directorate of Vigilance, it is seen that there is a reference of file No. ACB/VIG/Com-23/2014 pertaining to inquiry into the complaint dated 12/2/2014 filed by Mr. Roy D'Souza and also reference of forwarding the said file vide moment No. 198/14 dated 20/10/2014. Hence the opponent herein ought to have provided the information pertaining to the said file. However has admitted in her affidavit in rejoinder filed before this commission on 27/7/2020 at para 8 that she failed to notice initially said fact by inadvertence.
27. If the correct and timely information was provided to Appellant it would have saved valuable time and hardship caused to the Appellant herein in pursuing the said appeal before the different authorities. It is quite obvious that complainant has suffered lots of harassment and mental torture in seeking the information under the RTI Act which is denied to him till date. If the PIO has given prompt and correct information such harassment and detriment could have been avoided.

28. The PIO must introspect that non furnishing of the correct or incomplete information lands the citizen before First Appellate Authority and also before this Commission resulting into unnecessary harassment of the common men which is socially abhorring and legally impermissible.
29. However considering the fact that the PIO tried to comply the order of the First Appellate Authority and available information was made available to complaint so also upon bringing to her notice by the Complainant that the said concerned file was not available for inspection, she made efforts to trace the same and also volunteer to furnish the information no sooner it is found . The reference of the same is found in her letter dated 11/11/2019. Considering all this cumulating factors , I am of the opinion that there is not sufficient and convincing evidence on records attributing malafides on the part of opponents and hence benefits has to go in her favour. Nevertheless the opponent is hereby admonished and hereby directed to be vigilant henceforth while dealing with the RTI matters. Any such lapses found on her part will be viewed seriously henceforth.
30. Before parting, it needs to mention that it is admitted fact that the Complaint was lodged by the Complainant and the said matter i.e the file bearing No. ACB/VIG/Com-23/2014 was transferred to General Vigilance section by ACB vigilance, which have now been reported as not traceable .
31. In the nutshell it is the case of PIO and also of the other officer/staff of the said public authority that despite of efforts and search, the file bearing No.ACB/VIG/Com-23/2014 pertaining to Complaint filed by the Complainant against Shri Ashish Rege is not found in the records.

32. Hence the said information was bound to have been existed at some point of time in the records of the Public authority concerned herein which is reported now as not found /available in the office records. In this case it is only the lapse and failure of the public authority to preserve the records which has lead to non traceability of the file/documents. 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.
33. 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 ".

34. Yet in another decision the Hon'ble High Court of Bombay in writ petition No.6961 of 2012; Vivek Kulkarni V/S State of Maharashtra has observed that

“The fact that the said public records is not available was serious. It amounts to deny information to the citizen in respect of the important decision of the State and in such situations it was mandatory for public authority to set criminal law in motion as the documents could not be traced within stipulated time”.

35. Considering the above position and the file/documents as sought by the Complainant are still not available/traced now, and taking a serious note that such an important file is misplaced and not preserved properly, a thorough inquiry ought to have been initiated by the public authority concerned herein in view of the ratio laid down by the Hon'ble above courts to set the criminal law in motion and to fix responsibility for the loss of records and take action against the officers/official responsible for the loss of records. It appears that no such exercise was done by the public authority concerned herein and therefore the appropriate order is required to be passed so that the liability are fixed and records are traced.

36. In the above given circumstances and in the light of the discussion above, I dispose the above appeal with the following:-

**Order**

a) The appeal is partly allowed.

1. The Special Secretary (Vigilance) or through his authorized officer shall conduct an inquiry regarding the said missing file bearing No. ACB/VIG/Com/23-2014 pertaining to information sought vide application dated 31/7/2019 by the Complainant herein which are reported as not traced and found in the

records and to fix responsibility for missing said file/documents. He shall complete such inquiry within 6 months from the date of receipt of this order by him. The copy of such inquiry report shall be furnished to the Complainant. The right of Complainant to seek the permissible information from the PIO is kept open in case of said file is traced .

2. Copy of this order shall be sent to The Special Secretary (Vigilance), Secretariat, Porvorim-Goa and to the Director of Vigilance, Panjim-Goa for information and necessary action.

With the above directions, the complaint proceedings stands closed.

Pronounced in the open court. 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.

Sd/-

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