

GOA STATE INFORMATION COMMISSION

'Kamat Towers', Seventh Floor, Patto, Panaji –Goa

Tel No. 0832-2437908/2437208 email: spio-gsic.goa@nic.in website:www.gsic.goa.gov.in

Appeal No. 93/2021/SCIC

Shri. Francisco Sequeira,
H.No. 265, Dias Waddo,
Nagoa, Arpora, Bardez-Goa.

.....Appellant

V/S

1. Public Information Officer,
Dy. Superintendent of Police and ACB Vigilance,
Altinho, Panaji Goa.

2. First Appellate Authority,
Superintendent of Police & Anti Corruption Branch,
Directorate of Vigilance,
Altinho, Panaji Goa.

.....Respondents

Shri. Vishwas R. Satarkar

State Chief Information Commissioner

Filed on: 15/04/2021

Decided on: 22/04/2022

FACTS IN BRIEF

1. The Appellant, Shri. Francisco Sequeira, R/o. H.No. 265, Dias Waddo, Nagoa, Arpora, Bardez, Goa by his application dated 29/01/2021 filed under section 6(1) of the Right to Information Act, 2005 (hereinafter to be referred as 'Act') sought certain from Public Information Officer (PIO), Superintendent of Police, Directorate of Vigilance, Anti Corruption Branch, Altinho, Panaji-Goa.
2. The said application was replied by the PIO on 09/02/2021 in the following manner:-

Sr. No.	Information sought by applicant	Reply/Information
1.	Copy of the action taken report	Not available
2.	Name and designation of inquiring/investigation officer.	Smt. Sucheta Dessai, Dy. SP, Anti Corruption Branch, Directorate of Vigilance.
3.	Copy of investigation done till date	Not available
4.	Any other relevant information related to the said complaint.	Not available

3. Not satisfied with the reply of the PIO, Appellant filed first appeal before the Superintendent of Police, Anti Corruption Branch, Directorate of Vigilance, Altinho, Panaji Goa being the First Appellate Authority (FAA).
4. The FAA by its order, upheld the reply of the PIO, and dismissed the first appeal on 31/03/2021.
5. Being aggrieved with the order of FAA, the Appellant landed before the Commission with this second appeal under section 19(3) of the Act, with the prayer to issue direction to the PIO to furnish the information free of cost, to impose the penalty and recommend disciplinary action against the Respondents.
6. Parties were notified, pursuant to which the PIO, Ms. Sucheta Dessai appeared and filed her reply on 04/06/2021. The representative of FAA appeared and placed on record the reply of FAA.
7. According to the Appellant, through his RTI application, he sought information with regards to his complaint lodged before the PIO on 01/11/2019 for fraud, cheating and illegalities by Deputy Town Planner, Town and Country Planning Department at Mapusa Goa. Further he claims that the matter was being followed up with public authority since long, however the PIO has been giving tame excuses to the Appellant. He filed the present RTI application to know the outcome of his complaint. However the PIO refuse to divulge the information without any reason.
8. On the other hand, the PIO contended that, since no documents are prepared, information sought for is not available. She further contended that she replied to the RTI application within stipulated time and available information has been provided to the Appellant.
9. Perused the pleadings, reply and considered the oral arguments advanced by the rival parties.

10. Learned Counsel, Adv. Siddharth Madgaonkar appearing on behalf of Appellant argued that information sought for can be denied only on the basis of exemption clause provided under section 8(1) or section 9 of the Act. However the PIO has denied the information on a mere blanket statement not supported by any cogent material or reasoning, therefore the PIO has failed to discharge the burden placed upon her under section 19(5) of the Act to prove that denial of information was reasonable.

Further according to him, the complaint was filed on 04/11/2019 and sought information from the Vigilance Department of fraud, cheating and illegalities and even after the lapse of 2 ½ years, the Appellant has not seen any concrete action in respect of the said complaint.

He further argued that Respondent No. 2, FAA did not act as judicious authority but endorsed the view expressed by the PIO and argued that he is entitled for the information sought for and to support his case he placed on reliance on the judgement of High Court of Delhi in the case **Bhagat Singh v/s Chief Information Commissioner & Ors. (W.P. (c) 3114/2007)**; the judgement of High Court of Delhi in the case **Union of India v/s Balendra Kumar ((2012) 277 ELT 322)**.

11. The PIO, Sucheta Desai argued that, RTI Act does not cast any obligation on the public authority to collect and collate such non-available information and furnish it to the Appellant and she relied upon the speaking order passed by the FAA.

12. On perusal of the RTI application it is seen that the Appellant has sought information on four points. The information at point No. 1 and 3 is replied as 'Not available'. In a given reply neither she cited exact provision of the Act nor gave any reasoning as why the said information is not available. Since the Right to

Information is a fundamental right, denial of information has to be backed by the strong reason. While denying the request for information under the Act, the PIO must have cogent reasons for doing so which must necessarily come within the purview of section 8(1) and section 9 of the Act.

The word 'Not available' is vague in as much as it does not suggest whether any action is proposed by the public authority or forwarded for any other authority for further action. Such a vague reply cannot be accepted as a response under section 7(1). The reply should be specific so that the seeker can pursue his grievance properly.

13. On the basis of her own admission in reply, she was appointed as investigating Officer, therefore it is evident that action is initiated on the complaint of the Appellant and information has been generated with the public authority. It is no where the case of the PIO that action was not at all initiated in the matter. It cannot be therefore held that no information is generated or exist with public authority. If the action is initiated it is the legal right of the Appellant to know the outcome of his complaint.
14. Learned counsel for the Appellant has relied upon the judgement of High Court of Delhi in the case of **Bhagat Singh v/s Chief Information Commissioner & Ors. (Supra)**. The High Court of Delhi has observed in para No. 12 and 13 that:-

"12. The Act is an effectuation of the right to freedom of speech and expression. In an increasingly knowledge based society, information and access to information holds the key to resources, benefits, and distribution of power. Information, more than any other element, is of critical importance in a participatory democracy. By one fell stroke, under the Act, the maze of procedures and

official barriers that had previously impeded information, has been swept aside. The citizen and information seekers have, subject to a few exceptions, an overriding right to be given information on matters in the possession of the state and public agencies that are covered by the Act. As is reflected in its preambular paragraphs, the enactment seeks to promote transparency, arrest corruption and to hold the Government and its instrumentalities accountable to the governed. This spirit of the Act must be borne in mind while construing the provisions contained therein.

13. Access to information, under [Section 3](#) of the Act, is the rule and exemptions under [Section 8](#), the exception. [Section 8](#) being a restriction on this fundamental right, must therefore be strictly construed. It should not be interpreted in manner as to shadow the very right itself. Under [Section 8](#), exemption from releasing information is granted if it would impede the process of investigation or the prosecution of the offenders. It is apparent that the mere existence of an investigation process cannot be a ground for refusal of the information; the authority withholding information must show satisfactory reasons as to why the release of such information would hamper the investigation process. Such reasons should be germane, and the opinion of the process being hampered should be reasonable and based on some material. Sans this consideration, [Section 8\(1\)\(h\)](#) and other such provisions would become the haven for dodging demands for information.”

15. In an another identical judgement the High Court of Delhi in the case of **B.S. Mathur v/s Public Information Officer of Delhi High Court (2011 (125) DRJ 508)**, has held that:-

22..... The mere pendency of an investigation or inquiry is by itself not a sufficient justification for withholding information. It must be shown that the disclosure of the information sought would "impede" or even on a lesser threshold "hamper" or "interfere with" the investigation. This burden the Respondent has failed to discharge."

16. The PIO has refused to provide the information on the ground that information 'Not available'. In the present case the PIO has given no reason for denying the information. Section 19(5) of the RTI Act reads as under:-

"19(5)- *In any appeal proceedings, the onus to prove that a denial of a request was justified shall be on the Central Public Information Officer or State Public Information Officer, as the case may be, who denied the request."*

Above provision of law has been upheld by High Court of Delhi in the case **State Bank of India v/s Mohd. Shahjahan (W.P. No. 9810/2009)** at para No. 22:-

"22. The very object and purpose of the RTI Act is to make the working of Public Authorities transparent and accountable for the purpose of RTI Act all information held by a Public Authority is accessible except to the extent such information is expressly exempted from disclosure as provided in the RTI Act itself. In other words, unless the Public Authority is able to demonstrate why the information held by it should be exempt from disclosure, it should normally be disclosed.

The burden therefore is entirely on the Public Authority to show why the information sought from it should not be disclosed."

17. In the present case, admittedly the complaint was lodged by the Appellant on 01/11/2019. It is also admitted fact that PIO herself was designated as investigation Officer, however the PIO while denying the information did not show at what stage inquiry is pending, whether it is in preliminary stage or advance stage or concluded the matter. They have even failed to substantiate how the disclosure of information is likely to influence the investigation. They have not shown us how and why the release of such information would cause prejudice to the investigation. In the absence of any convincing reason, I cannot accept the denial of information is proper and appropriate.

18. Considering the nature of information sought, no matter whether the investigation has been completed or not, the Appellant was not exploring the course of action that will be adopted or is adopted in the investigation. The Appellant is merely seeking the access to action that has been initiated in pursuance of the complaint lodged by him on 01/11/2019 before Vigilance Department. I hereby direct the PIO to release the information sought on the basis of material available and collected by the public authority within the period of **FIFTEEN DAYS**.

With this discussion and considering the precedents and position of law the appeal is partly allowed.

- Proceeding closed.
- Pronounced in the open court.
- Notify the parties.

Sd/-

(Vishwas R. Satarkar)

State Chief Information Commissioner