

GOA INFORMATION COMMISSION
Ground Floor, "Shrama Shakti Bhavan", Patto Plaza, Panaji.

Complaint No. 07/2007-08/Police

Shri Joao C. Pereira
H. No. 40, Acsona, Utorda,
Majorda, Salcete - Goa.

..... Complainant.

V/s.

1. Dy. Inspector General of Police - II,
Police Headquarters,
Panaji - Goa.
2. Director of Prosecution,
VII Floor, Shrama Shakti Bhavan,
Panaji - Goa.

..... Opponents.

Appeal No. 08/2007-08/Police

Shri Joao C. Pereira
H. No. 40, Acsona, Utorda,
Majorda, Salcete - Goa.

..... Appellant.

V/s.

1. The Public Information Officer,
Suptd. of Police (South),
Town Police Station,
Margao - Goa.
2. First Appellate Authority,
Dy. Inspector General of Police,
Police Headquarters, Panaji - Goa.

..... Respondents.

CORAM:

Shri A. Venkataratnam
State Chief Information Commissioner
&
Shri G. G. Kambli
State Information Commissioner

(Per A. Venkataratnam)

Dated: 29/06/2007.

The Complainant/Appellant present in person.

Opponent No. 2 present in person.

Opponent No. 1/Respondent No. 1 represented by Shri Nolasco Raposo,
P.I., Verna Police Station with authorisation.

ORDER

The Appellant by request dated 11/1/2007 requested the Public Information Officer to give him 61 documents in a criminal case No. 08/2007. The Public Information Officer, Respondent No. 1 herein, has given all the

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documents except document No. 13. This relates to an opinion given by the Director of Prosecution in a criminal case No.74/05. The reason given by the Public Information Officer is that the furnishing of document will impede the process of prosecution of offenders and it is exempted from disclosure under Section 8(1)(h) of the Right to Information Act, 2005 (for short "the Act"). In his letter indicating the rejection of the request, the Public Information Officer as well as the first Appellate Authority have forgotten to mention the sub-section (1) of Section 8. This was already pointed out in a number of cases earlier when the Police Officers persist in not mentioning correct section under which the requests are refused. This shows a callous and careless attitude on their behalf. The Appellant has appealed to the first Appellate Authority, Dy. Inspector of General - II (DIG - II), on 1/3/2007 against the refusal order. On 16/4/2007, the first Appellate Authority upheld the refusal to disclose the information by the Public Information Officer. Against this, the present second appeal was filed on 23/4/2007.

2. The Appellant has also filed the separate complaint No. 7/2007 on the same subject. This time, it is against the DIG-II and Director of Prosecution. As the matter is not against the Public Information Officer and also invokes two different public authorities, he has made this complaint. As mentioned above, this complaint also deals with not furnishing him the opinion given by the Director of Prosecution in the same criminal case. The original opinion is lying with DIG - II. Hence, we are combining this appeal as well as the complaint together and we proceed to pass following order.

3. In the case of the complaint, the Complainant approached the Opponent No. 2 on 19/2/2007 with a request to furnish the opinion given by her to the Opponent No. 1. The Opponent No. 2, initially rejected the request immediately on the next day itself because "the original copy of the opinion is not with her and the same cannot be granted". The Complainant has approached the Law Secretary on 9/4/2007 who is the first Appellate Authority of Opponent No. 2. The Law Secretary as Appellate Authority passed his order on 9/4/2007 and directed the Public Information Officer, i.e. Opponent No. 2 herein to transfer the original request under Section 6(3) of the Act "to the concerned officer in whose possession the original opinion is lying and from where the certified copy of the same can be collected, for the said concerned authority to decide the application of the Appellant, in accordance with law". The Opponent No. 2 has transferred the request on 10/4/2007 which was originally rejected by her to the DIG-II who is the Opponent No. 1 herein.

On 18/4/2007, the Opponent No. 1 rejected the request citing the same under Section 8(h) of the RTI Act. In this case apparently, the DIG - II, Opponent No. 1, herein, did not give any opportunity to the Complainant though he appeared to have done so in appeal No. 08/2007.

4. In both the cases, the Respondents/Opponents have submitted their written statements. On the other hand, the Appellant/Complainant mentioned that opinion given by the Director of Prosecution is included in the definition of information under Section 2(f) of the RTI Act and he is entitled for the copy of the opinion. It is interesting to note that the Opponent No. 2 herself who has given the opinion does not have any objection if the opinion is given to the Appellant. Her only reason for the rejection of the request of the Complainant is that the original copy of the opinion given by her is not with her as it was forwarded to the Opponent No. 1 and now forms part of his record. She was ready to furnish photocopy of the advice without certifying it and which is not acceptable to the Complainant. On the other hand, the Police Department which is holding back the information, did not give any valid reason to show how the document will impede the process of prosecution of offenders apart from making a bland statement that it does. Section 2(f) of the RTI Act states as follows: -

“information” means any material in any form, including records, documents, memos, emails, opinions, advices, press releases, circulars, orders, logbooks, contracts, reports, papers, samples, models, data material held in any electronic form and information relating to any private body which can be accessed by a public authority under any other law for the time being in force”.

It is very clear from the bare reading of the definition, that all opinions on the record of public authority are covered under the definition of the information and all information has to be given to the citizens unless exempted under Section 8 or other sections of the Act. We have already mentioned that the Police Department has not given any cogent reason for withholding the information except to say that the furnishing of the opinion will impede the process of prosecution of offenders. We are afraid that this is not a valid argument as it is not substantial. The Public Information Officer of the Police Department has not made out a case to hold back the information. Accordingly, we direct that the document in question be given to the Complainant/Appellant within one week's time from the date of the receipt of

this order. Both the second appeal and the complaint are allowed and the order dated 18/4/2007 of the DIG - II and letter dated 07-08/02/2007 of the Public Information Officer are hereby quashed and set aside. Parties to be informed.

Sd/-
(A. Venkataratnam)
State Chief Information Commissioner

Sd/-
(G. G. Kamblī)
State Information Commissioner