

Right to Information and Good Governance

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Lecture - 57

Exempted Information - 11

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Sec. 8 (1) (g): endangering the life and physical safety



- Supply of statement of witnesses was under Section 8(1)(g) of the RTI and whether camera recording done in the police station is exempted. The said provision stipulates that information disclosure of which would endanger life and physical safety of any person or identity, the source of information or assistance given in confidence for law enforcement and security purposes need not be supplied. The Information Commissioner keeping in mind Section 8(1)(g) of the Right to Information Act, 2005 has directed that the name of the witnesses need not be disclosed. In fact the order passed by the Information Commissioner seeks to rely upon section 10, which permits withholding of certain portions of information by applying severability principle.
- The movement of witness, if the information of the witness is disclosed it may leads to endanger the life of the witness. The CIC has held that if such video is disclosed than it can leads to the danger and can affect the safety of the witness. So the video can't be disclosed. Hence, it was held that there is no obligation of Delhi Police to disclose the camera recording to the appellant.



Friends, under Section 8, amongst the list of exempted information is information, the disclosure of which would endanger the life or physical safety of any person, or identify the source of information or assistance given in confidence to law enforcement or security purposes, is exempted under Section 8(1)(g).

As you notice that any information, if it is disclosed, endangers the life and physical safety of any individual or identifies the source of any information, such information is not available under Section 8(1)(g) of the Right to Information Act. Section 8(1)(g) very clearly states that a public information officer may decide whether to disclose any information on this ground or whether not to disclose any information on this ground.

For example, in one instance, you look at say, the statement of witnesses that is generally recorded in the police station or if there is a video that is taken about what the witnesses say, can a copy of the video be provided Right to Information Act or can a copy of the statement or the witness be provided under the Right to Information Act?

What happens is in these such cases, when witnesses give a statement or if their statement is recorded in a video, it is definitely something that if provided under the Right to Information Act, may endanger the life and the physical safety of the witness himself or herself and hence, most public information officers in the police and the security agencies would use Section 8(1)(g) to deny the said information under the Right to Information Act.

So, I think, protecting the physical safety of persons, protecting the confidentiality of the identity of individuals or the source of information are something that the government is duty-bound to do and they cannot provide the said information under the Right to Information Act.

And hence, you will notice that the Information Commission may apply the exemptions and also may apply the doctrine of severability provided under Section 10 wherein they may say that the information can be provided however, this name or identity of the witness maybe withheld or may not be disclosed.

And hence, the Information Commission will have to decide what information should be made available and what should not be available, especially because the public information officer and Information Commission are duty-bound to know and protect any kind of threat that maybe there for the individuals as witnesses in any kind of given state investigation.

So, I think, these are some of the very relevant factors that one will have to consider and I think, the RTI equips the public information officer with various provisions under which he can exercise their non-disclosure norm.

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Information can not be disclosed till the investigations are over



- Vinod Kumar Jain V/s Directorate General of Central Excise Intelligence, New Delhi Appeal No.CIC/AT/A/2010/000969/SS. In this case it was held that **Information can not be disclosed if action for prosecution of offenders is initiated, being exempt under Section 8(1)(h).**



Also, under Section 8(1)(h), one will notice that information cannot be disclosed till the investigation is complete. Now, I think this is important considering the fact that very often than not, investigations are a very essential part of any process like we have seen in the cases that we have discussed about the CBI. Like the CBI, other agencies that are dealing with intelligence or investigation also have to apply those provisions under Section 8(1)(h) wherein probably they are seeking exemptions for the simple reason is that if such information is provided, it may actually impede the process of investigation or impede the prosecution of offender as the case may be.

And hence, in Vinod Kumar Jain versus the Director-General of Central Excise Intelligence, it was held that information cannot be disclosed and is exempted under Section 8(1)(h). And I think, rightly so, because I think, the said information is something that may affect the investigation process conducted by the Director-General of Central Excise Intelligence.

Now, what had happened in this Vinod Kumar Jain case is important for us to understand. The applicant, in this case, had sought details of the complete proceedings and records of investigation being carried out against himself, that is, the applicant. So, he was a concerned individual.

And this was regarding certain issues regarding the check post at Jammu and Kashmir and at Punjab and this was done by the excise department, Central Excise Intelligence Department. And he was concerned that the investigation was not completing and he wanted that information so that it will help in his own process.

Now, however, whether you are an aggrieved individual or not, I think till the investigation is ongoing and till it may affect the process of investigation, the government and its agencies are duty-bound to not disclose the said information under the Right to Information Act.

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No disclosure of third-party confidential information (Section 8(1)(j) of the RTI Act)



- Can employee question the decision of superior Officer under RTI Act. Dr. K.C. Vijayakumaran Nair Vs Department of Post 2017 CIC
- In the case of A.P. Singh vs. Punjab National Bank (Appeal No. 12/IC(A)/2006, dated 14.3.2006) the appellant had sought information regarding the bank account of another person with whom the applicant had no professional or business relationship.



Non-disclosure of third-party confidential information is provided and the public information officer may rely on Section 8(1)(j). Now, if you look at Section 8(1)(j), I think it is probably one of the most important sections under the Right to Information Act because it exempts information which relates to personal information or we would say that here is where under Section 8(1)(j), the right to privacy is being attempted to be protected under the Right to Information Act.

So, under the Right to Information Act, you cannot seek the information that may in you know, violate the privacy of individual or those that are personal in nature. And hence, they, these are exempted information as the case may be. And hence, the public information officers generally deny personal related information under Section 8(1)(j).

Now, the biggest question has always arisen, whether an employee in an organization and his information or the details of the employee or employee-related information can be provided under the Right to Information Act or not. Now, you will notice that for a long period of time, an employee was considered as a public servant and any information that is in relation to a public servant was considered or deemed to be provided under the Right to Information Act,

though there would be a very important line of distinction between what is personal and what is not personal information.

For example, family-related information can be treated as personal whereas anything to do with salary or appointment or transfer would definitely be considered as public information, which should be provided under the Right to Information Act. However, you know, privacy is an important right, it is kind of a fundamental right. And the definition of privacy is definitely something that is very, very important and we do not want RTI to invade privacy.

And so, a delicate balance between competing claims, the competing claims on one side is to protect personal information or protect the privacy. On the other side, the competing claim under the Right to Information Act for accountability and transparency also has to be balanced in those circumstances. And hence, Section 8 1j and its interpretation becomes very crucial or critical in the discussion while we take the right information debate forward.

Now, interestingly, when government holds certain information, which is not government information but a third-party information; as I told you, under Section 11 of the Right to Information Act, a third party could be any individual or any legal entity whose information is held by the government as a regulator or as an agency that provides licenses and privileges to an individual to actually function.

And hence, when we talk about third-party information, third-party information, generally, the third party would seek exemption either under Section 8(1)(j), which is in relation to personal information or under Section 8(1)(d) which relates to information that is held in a commercial confidence. And under 8(1)(d) and 8(1)(j), , the third party would raise objections and probably state that the said information should not be provided.

Now, for example, if you look at the case of A. P. Singh versus Punjab National Bank; banks hold information in fiduciary capacity as well. And hence, in this case, when the appellant had sought information regarding bank account of another person with whom the applicant had no professional or business relationship, you would notice that this is a third-party information, banks hold it in fiduciary capacity; the said information would impede or affect commercial confidence and hence the said information may not be provided.

Now, these are cases when the banks also hold a lot of personal information like a phone number, like address, like the transaction details, so on, and so forth. So, the banks also are duty-bound to hold personal information of their clients and to hold them in a protective environment and not disclose this under the Right to Information Act.

So, we have a lot of agencies that hold our personal information, it could be like information that I have given to agency that issues ration card, there could be personal information that I have given to Aadhaar, there could be personal information that has been shared during passport.

All of these, then get adjudicated by the fact that scan say the Ministry of External Affairs that issues passport, whether the department of food or public distribution system can give information about ration cards or the details of personal information that is given under the ration card or not. And these are pertinent and important for us to adjudicate whether, under Right to Information Act, such information can be accessed.

You will also notice that when we talk about Section 8(1)(j),, very often than not, under the Right to Information Act, citizens have been seeking information about employees who are working in government organizations, the public servants. And you will notice that interestingly, even employees are using RTI. Now, one of the interesting cases that came before the CIC in 2017 was Dr. K. C. Vijayakumaran Nair versus the Department of Post, decided by the CIC in 2017.

Now, in this case, the employee was working in the Department of Post, he had certain grievances against a superior officer. And so, you know, he thought that Right to Information can be utilized to seek information. And what he did was he sought the following information.

He said, give me the name of the officer who raised the query as to whether the appellant had taken permission for joining a Ph.D. course. So, he wanted the name of the person who had complained to a superior officer about why did he join a Ph.D. program or the Ph.D. course, the name of the officer who took the decision to relieve the appellant while he was posted at Shimla and whether the officer was competent to take such a decision.

K.C. Vijayakumaran also asked a file notings with respect to the above. And hence, the CPIO informed him that the relieving orders were issued in compliance with the order of the DG, Department of Post and as such, the disclosure of the file noting was exempted under Section 8(1)(j), on the ground that the notice were confidential. So, know, obviously, some of these notings which relate to the personal degree persuasion of individual employees are something that are to be exempted under Section 8(1)(j).

So, I think Section 8(1)(J) is utilize to deny information on several grounds. And hence, in this K.C. Vijayakumaran case, the information that he sought was not provided for because it was held that it is confidential. So, who has passed the judgment and what reasons he or she has provided in the file may be withheld in case it is in relation to personal information.

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Personal Information: Sec. 8 (1) (j)



- Hon'ble Supreme Court of India in Girish Ramchandra Deshpande v CIC 2012 SC; wherein it was held as under:
- In his RTI application filed in August 2008, Girish Deshpande had requested copies of memos, show-cause notices and departmental actions, assets, liabilities and IT returns of an income-tax official in Maharashtra
- "The performance of an employee/officer in an organization is primarily a matter between the employee and the employer and normally those aspects are governed by the service rules which fall under the expression "personal information", the disclosure of which has no relationship to any public activity or public interest. On the other hand, the disclosure of which would cause unwarranted invasion of privacy of that individual. Of course, in a given case, if the Central Public Information Officer or the State Public Information Officer of the Appellate Authority is satisfied that the larger public interest justifies the disclosure of such information, appropriate orders could be passed but the petitioner cannot claim those details as a matter of right."



The most notable judgment under Section 8(1)(j) on personal information is the judgment of the Supreme Court in this case called Girish Ramchandra Deshpande versus the Central Information Commission. Now, in this case, Girish Deshpande had in his RTI application that he had filed in 2008, requested copies of memos, show-cause notices, and departmental actions, assets, liabilities, and IT returns of an income tax officer in Maharashtra.

Now, you know, the Supreme Court very interestingly had to take the matter about whether employee-related information can be provided under the RTI to a individual or to a citizen in general. So, employees in government are supposed to file their tax returns, and assets and

liability statement with their government organisations. And hence, this is part of the public record.

Also, every employee has a performance record that is kept in his organization. These are records vis-a-vis what is held by the government but can these records then be treated as personal information? If so, then they can be exempted to be provided under the Right to Information Act as well.

So, the Supreme Court held that the performance of an employee or an officer in an organization is primarily a matter between the employee and the employer. And normally, those aspects that govern the service rules which fall within the expression say, the employer-employee relationship, they are generally personal information. Unless there is a larger public interest, the disclosure would not be justified. And hence, disclosure of such fiduciary relationship between an employer and employee, employer and employee, there is no relation to any public activity or public image.

On the other hand, the disclosure would unnecessarily invade privacy of an individual. And hence, the Supreme Court said unless there is a larger public interest; now, what the Section 8(1)(j) say is that personal information is exempted unless there is a larger public interest that can be justified in the disclosure of the same, which would mean that privacy must yield to larger public interest under the Right to Information Act. Only then, such personal related information shall be provided. If it does not pass the test of a larger public interest, then the personal information shall not be provided.

And hence after the Girish Ramchandra Deshpande case, you will notice that under the Right to Information Act, employee-related information, whatever it may be; personal or those that in relation to employment, like memos, show-cause notices, or annual performance report as the case may be, these are generally exempted under the Right to Information Act applying the ratio held by the Supreme Court in this particular matter. So, government-held information of an employee is not to be provided under the Right to Information Act, especially if they fall within Section 8(1)(j).

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Employee related information: exempted?



- Canara Bank Rep. by its Deputy Gen. Manager v. C.S. Shyam, Civil Appeal No. 22 of 2009 dated 31.08.2017
- Supreme Court held that the information was sought on 15 parameters with regard to various aspects of transfers of clerical staff and staff of the Bank with regard to individual employees. This information was in relation to the personal details of individual employee such as the date of his/her joining, designation, details of promotion earned, date of his/her joining to the Branch where he/she is posted, the authorities who issued the transfer orders.
- DOPT circular of 2013
- Unless larger public interest is proved, cannot be shared.



Also, in the case of Canara Bank versus C. S. Shyam, a decision decided in 2017. The Supreme Court held, in this case, there were you know, those aspects of transfer of clerical staff that were sought. And these were transfers of individual employees obviously, and the applicant had sought some 15 related information.

Now, transfer of individual officers contains a lot of personal information or personal details. This would include such as date of joining, designation, promotion details, so on, and so forth; and which branch he was posted, when he was transferred, so on, and so forth; or the previous transfers as the case may be. Now, these were employee-related information about transfers.

Now, as was held in the Girish Ramchandra Deshpande case, a case decided with the Supreme Court divisional bench in 2012, in 2017, the Supreme Court in this Canara Bank versus C. S. Shyam case said, all the said above information of an employee cannot be provided under the Right to Information Act as they fall within the category of personal information. So, unless a larger public interest is proved, the same shall not be shared under the Right to Information Act.

Now, it is important for here, for us to look into a circular that was issued by the Department of Personnel and Training, which is the nodal agency for the implementation of the Right to Information Act. A circular that was issued in 2013 August, they very clearly said that, and this is a circular that was issued as an office memorandum. It said that complaints against officials or action taken against employees comes under the category of personal information.

So, any kind of adverse action that is taken against an employee will be treated as personal information and the said information shall not be provided under the Right to Information Act.

That is a very significant clarification that came from the DOPT, it was following the Girish Ramchandra Deshpande case that employee-related information, which is personal in nature, which may also include any adverse comment or reaction or action that was taken against him, including transfers as the case may be shall not be provided under the Right to Information Act unless there is a larger public interest to that effect.

Now, the issue on larger public interest is quite important, considering the fact that one is always looking at how to apply the test of the larger public interest so that the said information can be justified to be disclosed.

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Reasons for seeking exempted information under Sec.

8: Should the citizens give justification

- High Court of Delhi in the case of Union Public Service Commission v Dr. Mahesh Mangalal in 2015) held that : It is a settled law that for seeking personal information regarding any employee of the public authority the applicant must disclose a "sustainable public interest". Even Sec. 8(1) (j) was enacted to ensure that all information furnished to public authorities including personal information is not given free access to. As per this Section unless the CPIO or the State PIO or the appellate authority, as the case may be, is satisfied that the larger public interest justifies, the disclosure of any such information that invades the privacy of an individual is not permissible."



Now, one would notice that very often than not, we say under Section 6 sub clause 2 of the Right to Information Act, no reason shall be provided for seeking information. However, if reasons are provided for seeking exempted information, the citizens can obviously give justifications.

Now in the case of Union Public Service Commission versus Dr. Mahesh Mangalal decided in 2015, the Delhi High Court held that it is a settled law that for seeking personal information regarding an employee of a public authority, the applicant must disclose a

sustainable public interest or a substantial public interest as the case may be. Even Section 8(1)(j), was enacted to ensure that all information first furnished to a public authority, including personal information is not given free access to.

As per this section, unless the CPI or the API, that is, the assistant public information officer or the state public information as the case may be, is satisfied there is a larger public interest, the disclosure of such information would not be provided as it impedes or invades the privacy of individual. And hence, anything that invades the privacy of an individual is not permissible to be provided under the Right to Information Act.

And hence, obviously, to justify that there is a larger public interest, citizens may give justifications, citizens may provide reasons for seeking exempted information. And those justifications or reasons may be evaluated by the PIO in coming to a proper conclusion, whether the information should be disclosed or should not be disclosed as the case may be.

Now, larger public interest could probably mean a couple of things. The first would mean that probably the information that is sought is to curtail corruption or to expose corruption. This could be a larger public interest to ask certain information that is personal in character. Now, you will notice that mere alleging that there is corruption is not sufficient. I think there must be substantial proof of what corruption and public interest test would fall for disclosure of the said information.

So, I think, there is something more to justify in public interest which the citizen is duty-bound to do. And if the citizen fails to give the adequate justifications, the public information officer may deny the said information.

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Conclusion for exempted Information



- All the exemptions that are made by the Public Authority are discretionary and not mandatory. The public authority may take such decisions as a matter of administrative discretion, where they are not prohibited otherwise from doing so



Finally, if we have to conclude on exempted information under Section 8, one would definitely come to the conclusion that all the exemptions that are made to the public authority are discretionary in nature and not mandatory. So, there is a huge amount of discretion that can be exercised under Section 8.

Where do you find the kind of discretion that is available to a public information officer in using the exemptions are provided under Section 8? First, they are provided under Section 8(1)(d); again, over there, you will notice the kind of discretion is not with the public information officer but it is with the competent authority.

Now, section 8(1)(d) says that competent authority may give commercial confidence and trade secret in intellectual property information if there is a larger public interest. So, their first discretion is to the competent authority under Section 8(1)(d). The second discretion is under 8(1)(e), again to a competent authority for that information that are held in a fiduciary capacity.

The next set of discretion is with the public information officer, especially in relation to personal information. So, he can also decide whether there is a larger public interest in disclosing the said information or not, and he can also make a decision regarding the same.