

OFFICE OF THE FIRST APPELLATE AUTHORITY
(Appointed under the Right to Information Act, 2005)
The Institute of Company Secretaries of India
ICSI House, C-36, Institutional Area, Sector-62,
Noida - 201 309 (U.P.)

Appeal No. 04/2022

IN THE MATTER OF:

Shanti Kumar Jain
FE-257,
Sector III Salt Lake City
Kolkata- 700106
West Bengal

Appellant

Vs.

Central Public Information Officer
The Institute of Company Secretaries of India
ICSI House
22, Institutional Area, Lodi Road
New Delhi - 110 003

Respondent

Date of Order: 24th February, 2022

ORDER

1. The Appellant has filed first appeal on 27.01.2022 under Section 19(1) of the Right to Information Act, 2005 in connection with response Ref. No. RTI 2005/5234(22) dated 24.01.2022 against the Central Public Information Officer (CPIO) (hereinafter referred to as Respondent) of the Institute of Company Secretaries of India.
2. The Appellant vide his application dated 08.01.2022 has requested to provide the information under the RTI Act, 2005.
3. The Appellant has requested in the instant appeals that "Provided Incomplete, Misleading or False Information."
4. The reply of the Respondent against the instant appeal is as under: -

"Regarding reply to the query no. 01:-

Since the query is not clear that what exactly applicant (appellant herein) wanted to asked for. Therefore, the contents made in the RTI reply stands as it is as the RTI Act, 2005 does not make it obligatory on the part of the Public Authority to interpret the information for the purpose of its extraction/dissemination. However, it is pertinent to mentioned that The Company Secretaries Act, 1980 has not defined the word Governance Professional.

Further, it is necessary to mention that he is seeking information afresh in the first appeal by providing / mentioning the manner for information which he had not asked in the RTI application earlier; for which he may seek the information, anew by mentioning the specific manner for the information.

Regarding reply to the query nos. 02, 12, 13 and 15:-

Our earlier reply is reiterated as the appellant has used the expression "Whether" in his RTI queries. Therefore, the query is plainly in the nature of seeking clarification.

Quoting the judgement (CIC/SS/A/2013/000838-YA) dated 28th May, 2014 passed by the Hon'ble Central Information Commission (CIC) in the matter of Shri G. Senthil Kumar, Puducherry V/S Directorate of Health & Family Welfare Services, Puducherry concerning the queries starts with the word "Whether" is attached herewith for ready reference which was given the decision that:-

"The public authority is not bound to answer queries like whether he would be considered for the post since he has crossed the age limit or whether he will be granted any age relaxation

and whether his merit will be considered or not. Interrogative queries viz. "How/Why/When" do not come under the ambit of RTI Act."

The said judgement has referred the case of Dr. Celsa Pinto Vs. Goa State Information Commission (W.P. No. 419 of 2007), the High Court of Bombay, in its order dated 03.04.2008, held:- "The definition (of information) cannot include within its fold answers to the question "why" which would be the same thing as asking the reason for a justification for a particular thing. The Public Information Authorities cannot expect to communicate to the citizen the reason why a certain thing was done or not done in the sense of a justification because the citizen makes a requisition about information. Justifications are matter within the domain of adjudicating authorities and cannot properly be classified as information."

Therefore, the RTI Act, 2005 does not make it obligatory on the part of the Public Authority to create information. The information which is not in existence cannot be created and designed, therefore, the reply to the query cannot be provided in the manner and wish of the appellant. The CPIO can only reply, if the query satisfies the parameters of the definition of "information" as given in Section 2(f) of the RTI Act, 2005.

Regarding reply to the query no. 03:-

Our earlier reply is reiterated as the requisite information has already been provided to the applicant. Further, it is necessary to mention that he is seeking information afresh in the first appeal by providing / mentioning the manner for information which he had not asked in the RTI application earlier; for which he may seek the information, anew by mentioning the specific manner for the information.

Regarding reply to the query no. 04, 08, 09, 10 and 11:-

The contents made in the RTI reply stands the as query is in the nature of seeking clarification/opinion and therefore, does not fall within the definition of "information" under Section 2(f) of the Right to Information Act, 2005. The RTI Act, 2005 does not make it obligatory on the part of the Public Authority to create information or to interpret the information for the purpose of its extraction/dissemination.

Regarding reply to the query nos. 07:-

The grounds raised by the appellant is not clear. Further, the ICSI is governed by Company Secretaries Act, 1980 and not by Companies Act, 2013 and the contents made in the RTI reply stands as it is as query is interrogative in nature and seeking clarification and therefore, does not fall within the definition of "information" under Section 2(f) of the Right to Information Act, 2005. The RTI Act, 2005 does not make it obligatory on the part of the Public Authority to create information or to interpret the information for the purpose of its extraction/dissemination.

Regarding reply to the query nos. 09:-

Our earlier reply is reiterated as the period for requisite information has not been mentioned, therefore, the same has considered as unspecific.

Regarding reply to the query nos. 17, 18 and 20:-

Our earlier reply is reiterated and the contents made in the RTI reply stands as it is as query is interrogative in nature and seeking clarification and therefore, does not fall within the definition of "information" under Section 2(f) of the Right to Information Act, 2005. The RTI Act, 2005 does not make it obligatory on the part of the Public Authority to create information or to interpret the information for the purpose of its extraction/dissemination.

Regarding reply to the query no. 01:-

Our earlier reply is reiterated as it is not clear that what exactly applicant (appellant herein) wanted to asked for.

Reference case w.r.t. query nos. 02, 04, 07, 08, 09, 10, 11, 12, 13, 15, 17, 18 and 20 the above-mentioned replies:

Please refer the para number 35 of CIVIL APPEAL NO.6454 OF 2011 [Arising out of SLP [C] No.7526/2009] in the matter of Central Board of Secondary Education & Anr. ... Appellants Vs. Aditya Bandopadhyay & Ors. ... Respondents:-

“35. At this juncture, it is necessary to clear some misconceptions about the RTI Act. The RTI Act provides access to all information that is available and existing. This is clear from a combined reading of section 3 and the definitions of ‘information’ and ‘right to information’ under clauses (f) and (j) of section 2 of the Act. If a public authority has any information in the form of data or analysed data, or abstracts, or statistics, an applicant may access such information, subject to the exemptions in section 8 of the Act. But where the information sought is not a part of the record of a public authority, and where such information is not required to be maintained under any law or the rules or regulations of the public authority, the Act does not cast an obligation upon the public authority, to collect or collate such non-available information and then furnish it to an applicant. A public authority is also not required to furnish information which require drawing of inferences and/or making of assumptions. It is also not required to provide ‘advice’ or ‘opinion’ to an applicant, nor required to obtain and furnish any ‘opinion’ or ‘advice’ to an applicant. The reference to ‘opinion’ or ‘advice’ in the definition of ‘information’ in section 2(f) of the Act, only refers to such material available in the records of the public authority. Many public authorities have, as a public relation exercise, provide advice, guidance and opinion to the citizens. But that is purely voluntary and should not be confused with any obligation under the RTI Act. The content made in the RTI reply stands as it is and are candid.”

Therefore, the appeal deserves to be dismissed in-limine.”

5. This Office has carefully considered the application, the response, the appeal and the records made available and finds that the matter can be decided based on the material available on record.
6. This Office concurs with the submission of the Respondent.

The appeal is accordingly disposed of.

Sd/-
(Ankur Yadav)
First Appellate Authority

Copy to :

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3. Directorate of IT - For publishing on the website