

## Exemption from disclosure of information under RTI Act

The Right to Information is a fundamental right that is guaranteed to the citizens of India under Article 19(a) of the Indian Constitution. The Right to Information Act, 2005 (herein referred to as RTI) mandates timely response to citizen's requests for information from public authorities. The basic objective of this Act is to ensure that information sought is given to the citizens in a timely manner and empower them so that they can hold the public authorities accountable for their actions.

### **1. Exemptions under the Act: Section 8**

As stated earlier, information is a fundamental right and must be given in all situations but still there are certain exemptions to that. Not all information can be accessed by citizens. In this template, we will have a look on the various exemptions and how these exemptions have been misused by the public authorities to deny information. Information can only be rejected under two sections that are Section 8(1) and Section 9. This list the probable causes and circumstances under which information can be rejected.

Section 8(1) of the RTI Act provides for ten exemptions under which application for information can be denied under the Act. These exemption are discussed in detail below-

- A. Section 8(1)(a):** *"Notwithstanding anything contained in this Act, there shall be no obligation to give any citizen information, disclosure of which would prejudicially affect the sovereignty and integrity of India, the security, strategic, scientific or economic interests of the State, relation with foreign State or lead to incitement of an offence"*

The Public Information Officer (hereinafter referred to as the PIO) can dismiss an application for information on the grounds that the information, if disclosed, may disturb the sovereignty, integrity, security, strategy, scientific or economic interest of the state or its relations with a foreign state, that may lead to the commitment of any offence.

If the PIO uses this section, he must clearly state how the disclosure of that information can prejudicially affect the sovereignty, integrity or any other abovementioned factor to the Indian state.

*Example-* Information such as the formation of the army, information on weapons, nuclear codes and other such sensitive information can be denied under this clause. Information of this sort is often labelled, '**confidential**' and

the PIO refuses to share that information. However, under the RTI act, there is no provision exclusively for confidential information.

The thumb rule is all information must be shared except for the exempted portion. In case a PIO uses this clause to refuse sharing information, the applicant can file an appeal with the First Appellant Authority (hereinafter referred to as FAA) and in that appeal the appellant can seek the reason on which the PIO denied to share the said information, and how sharing this information will affect the country's sovereignty. In case the PIO fails to prove that, the relevant information must be shared.

In *Delhi Metro Rail Corporation Ltd. v. Sudhir Vohra*, the High Court of Delhi has held that since the information on all structural drawings of both the pile foundation and the super structure, including all steel reinforcement details, foundation details, engineering calculations and soil tests pertaining to the cantilevered bracket of Metro Pillar No. 67, was given to engineers, contractors, sub-contractors and other people working in field, there had been disclosure of such information earlier and therefore, Section 8(1)(a) of Act was not attracted as disclosure and furnishing of information could not prejudicially affect scientific and economic interests of State.

- B.** Section 8(1)(b) of the RTI Acts states, *“Notwithstanding anything contained in this Act, there shall be no obligation to give any citizen information which has been expressly forbidden to be published by any court of law or tribunal or the disclosure of which may constitute contempt of court”*.

You must also note, the Act clearly states information which has been expressly forbidden from publication would not be disclosed.

This includes information regarding some case details which the courts specifically say cannot be shared or disclosed. Please note that the law here did not exempt *sub judice* information. *Sub judice* is defined as, *‘it is under judicial consideration and therefore is illegal for anyone to talk about it publicly’*.

While the definition itself mentions *sub judice* information as being illegal to talk about, the RTI Act does not. If information is in public record, the PIO must furnish the information. *Sub judice* cannot be used as a clause to deny information.

The Hon'ble CIC in the case titled *AK Goel v RN Sharma* held that the public authority is required to decide which information would cause contempt of court before applying this provision of the RTI Act. **However, disclosing information on matters which are *sub judice* does not constitute contempt of Court, unless there is a specific order forbidding its disclosure.**

There have been many instances where PIOs have used section 8(1) (b) to deny information. While in some cases it can be true, but in a lot of cases it has been observed to not hold any ground. PIO generally quote this section and say information is *sub judice*, hence cannot be disclosed.

In such a situation where *sub judice* clause is used, the applicant needs to file an appeal with the appellate authority and in their appeal seek from the PIO to prove the consequences. In case PIO cannot, they must declare the information as the Act does not forbid *sub judice* information.

- C. Section 8(1)(c) of the act states, *"Notwithstanding anything contained in this Act, there shall be no obligation to give any citizen information, the disclosure of which would cause a breach of privilege of Parliament or the State Legislature"*

This is an exemption that is used specifically in cases where the Parliament or the legislature needs to be presented with reports or papers.

**Example-** Budget papers of States or the Union before they are presented will come under this clause. The Union government and the State governments usually appoint commissioners/judges to head committees whose job is to produce such reports. While the reports might be exempted for a while, under Section 3(4) of the Commission of Inquiry Act, all such reports need to be placed in public domain within 6 months of placing it in the parliament/legislature.

As per Section 3 (4) of the Commissions of Inquiry Act, *"The appropriate Government shall cause to be laid before each House of Parliament or, as the case may be, the Legislature of the State the report, if any, of the Commission on the inquiry made by the Commission under sub-section (1) together with a Memorandum of the action taken thereon, within a period of six months of the submission of the report by the Commission to the appropriate Government."*

So, in case the PIO uses section 8(1) (c) to deny commission of inquiry reports, the applicant can use this clause to file an appeal. Under the appeal they can say, since the Commission of Inquiry Act states that information such as

inquiry reports should be declared *suo motu* after 6 months, and since 6 months have elapsed, this report must be declared to the general public.

- D. Section 8(1)(d) of the act states, “*Notwithstanding anything contained in this Act, there shall be no obligation to give any citizen information including commercial confidence, trade secrets or intellectual property, the disclosure of which would harm the competitive position of a third party, unless the competent authority is satisfied that larger public interest warrants the disclosure of such information*”.

To qualify for this exemption, the PIO must first assess if the information being asked is a trade secret or an intellectual property. Also, the PIO must assess if disclosing this information can harm the competitive position of any business.

*Example-* Tomorrow if government invests in the secret recipe of *Coca-Cola* and then someone asks for the secret recipe of *Coca-Cola* under the RTI Act, that information cannot be revealed since it would harm the competitive position of *Coca-Cola*.

Similarly, if someone asks for information regarding Air India’s intellectual property that cannot be disclosed as Air India also has competitors and disclosure of such information can harm their competitive position.

However such a clause cannot apply for Indian Railways as they do not have any competition and have the status of being a monopoly. Therefore, if in an RTI application, the PIO ever responds with this exemption, the applicant can argue under the appeal saying, the PIO first needs to prove that this information has been shared in commercial confidence and disclosing such information will harm their competitive position.

In the case of *Institute of Chartered Accountants of India v. Shaunak H. Satya and Ors.*, the Supreme Court of India has held that Section 8(1) (d) of RTI Act did not bar or prohibit disclosure of question papers model answers solutions to questions and instructions, if any, given to examiners and moderators after examination and after evaluation of answer scripts was completed as at that stage they would not harm competitive position of any third party.

In *Shonkh Technology International Ltd. v. State Information Commission Maharashtra Konkan Region, and United Telecom Limited v. State Information Commission Maharashtra Konkan Region and Ors.*, (W.P. Nos. 2912 and 3137 of 2011 ), the Hon’ble High Court of Bombay passed a combined ruling in these matters that agreements entered into by the Department with the third parties for

providing the driving licence smart cards, optical smart cards and registration book smart cards, cannot be denied under Section 8(1) (d) of RTI Act since disclosure of such agreements would not result in disclosure of trade secrets or intellectual property. Disclosure of such information would enable public scrutiny of process and contracts and therefore, it is desirable in larger public interest that information is provided.

- E. Section 8(i)(e) of the act states, *“Notwithstanding anything contained in this Act, there shall be no obligation to give any citizen information available to a person in his fiduciary relationship, unless the competent authority is satisfied that the larger public interest warrants the disclosure of such information”*

A fiduciary relationship means a relationship where one person places some type of trust, confidence, and reliance on another person. The person who is delegated trust and confidence would then have a fiduciary duty to act for the benefit and interest of the other party”

*Example-* Details of personal bank accounts, medical records of patients, relation between a lawyer and client etc.

However, most public information which has been shared with public authority is not from a fiduciary capacity but is a statutory requirement. For example, the information that a company shares with the Ministry of Corporate Affairs is an obligation and not a trust based relation. The company does not have an option to not share the information. So therefore that information must be shared with the general public if sought under RTI.

PIOs generally use ‘fiduciary’ as a blanket exemption for a lot of RTI queries. In such a case, the applicant can file an appeal and seek an explanation that how the information with the PIO affects the fiduciary relationship, else all such information shared with them should be made available to the public.

This exemption of fiduciary relationship was pleaded by CBSE in the case of *Central Board of Secondary Education v. Aditya Bandopadhyay* but this was rejected as an examining body cannot be in a fiduciary relationship with reference to students who take the exam. Therefore, there existed no exemption under the Section, and answer books had to be provided to the student.

- F. Section 8(1)(f) of the act states, *“Notwithstanding anything contained in this Act, there shall be no obligation to give any citizen information received in confidence from foreign government”*.

This refers to the information that has been shared by a foreign government in confidence. *Example-* In case of Rafael Jets, this was the exemption used to deny information under RTI.

However, some information shared by foreign government can be exempted if they are specifically shared in confidence. Wherever possible, the government needs to share information.

In case a PIO uses this exemption, the applicant can file an appeal asking that the PIO prove the information was shared in confidence by a foreign government.

In the case *Shri Suhas Chakma v. Ministry Of External Affairs* where information pertaining to commission rotatories was sought but was denied by the PIO citing this section. After which the Hon'ble CIC held that:

*“Considering that the Indian Government is itself trying to propagate a transparent disclosure of information and also in view of the fact that the issue at hand is not merely the concern of an individual but one which involves national interest there can be no doubt that public interest is paramount in this case and the information sought must be provided”*.

- G. Section 8(1)(g) of the act states, *“Notwithstanding anything contained in this Act, there shall be no obligation to give any citizen 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 for law enforcement or security purpose;”*

This exemption refers to information the disclosure of which will cause or endanger the life, physical safety of a person.

This exemption can be involved in cases where whistle-blowers are involved or information has been shared about wrong-doing the disclosure of which can cause harm to the individual. But there has to be certain proof that disclosing this information can cause harm, it cannot be a mere imagination.

Even in such cases, the RTI act allow for information to be shared after reducing the details which can reveal a person's identity to protect them. Hence, if a PIO uses this clause, the applicant can file an appeal and they can argue that the

PIO must first prove that there is just cause to believe disclosing this information can cause harm.

In *Sujit Kumar Mazumder Advocate v. Cbi*, where the informant sought Detail of CBI officers against whom the complaint are registered or contemplated and inquiry conducted or in progress was sought. It was rejected by PIO under this exemption but then the Hon'ble CIC ordered for the disclosure of such information as it did not fall under the said exemption.

- H. Under section 10 of the RTI Act, the PIO can also redact the name of the individual to protect them" Section 8(1)(h) of the act states, "*Notwithstanding anything contained in this Act, there shall be no obligation to give any citizen information which would impede the process of investigation or apprehension or prosecution of offenders*"

This exemption is clear in its words. It refers to a situation where revealing information can *impede* the process of investigation. Unless there is conclusive proof that revealing this information can impede the process of investigation, or prosecution of the offenders, information cannot be withheld.

This exemption is usually used in police matters where the PIO says information cannot be revealed because it will impede in the investigation.

The applicant can in that case file an appeal stating that the PIO cannot withhold information unless there is conclusive proof that revealing this information can impede in the process of investigation.

In *B.S. Mathur v. Public Information Officer of Delhi High Court*, the Hon'ble High Court of Delhi has held that 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

- I. Section 8(1)(i) of the act states that, "*Notwithstanding anything contained in this Act, there shall be no obligation to give any citizen cabinet papers including records of deliberations of the Council of Ministers, Secretaries and other officers: Provided that the decisions of Council of Ministers, the reasons thereof, and the material on the basis of which the decisions were taken shall be made public after the decision has been taken, and the matter is complete, or over: Provided further that those matters which come under the exemptions specified in this section shall not be disclosed;*"

This section is often misconstrued as a blanket ban on all cabinet papers, deliberations. The Act clearly states that the information and the papers on the basis of which the council of minister of have taken their decision will be made public once the decision is taken.

As this is not a blanket ban on the matter, PIOs cannot refuse to share information once the decision has been taken. If still denied, the applicant can file an appeal and highlight the issue and argue that how the information needs to be shared, once the decision has actually been taken.

- J. Section 8(1)(j) of the act states, *“Notwithstanding anything contained in this Act, there shall be no obligation to give any citizen information which relates to personal information the disclosure of which has not relationship to any public activity or interest, or which would cause unwarranted invasion of the privacy of the individual unless the Central Public Information Officer or the State Public Information Officer or the appellate authority, as the case may be, is satisfied that the larger public interest justifies the disclosure of such information:*

*Provided that the information, which cannot be denied to the Parliament or a State Legislature, shall not be denied to any person”*

This is often one of the most misused exemptions under RTI. PIOs often tend to refuse all personal information under RTI as private. Unfortunately there is no clear distinction between *personal* and *private* and this has been misused by officials.

The act does not place a blanket ban on all personal information and the clause of privacy cannot apply to organisations, institutes etc, it can only apply natural persons. The Act ensures, that it is not the intent to encounter unwanted invasion of privacy of the citizens. Therefore, that means information such as names, dates, age which does not cause any unwarranted invasion of privacy cannot be used to deny information.

PIOs often misconstrue the exemption and do not read the proviso in this exemption which states, *“That the information, which cannot be denied to the Parliament or a State Legislature shall not be denied to any person.* This is an important proviso which roughly translates to, if a PIO refuses information under this section, he would also not share the same information with the parliament or state legislature.

Most information in public domain is usually in a statutory capacity and must be declared *suo moto*. So in this case, an applicant can file an appeal with the concerned departments' appeal authority. In their appeal they can seek the conformation that the said information will not further be shared in the parliament. In case they cannot do that, the information must be shared with the applicant.

In the case of *AM Kalra v. Ministry Of Human Resource*, the appellant sought information regarding punishment given to Mr. R.R. Singh for submitting fake TA claims etc. The CIC however held that the information sought pertains to public interest/public activity hence it does not attract the exemptions under sec 8(1)(j).

## 2. Exemptions under the Act: Section 9

Section 9 of the RTI act states, *"Without prejudice to the provisions of section 8, a Central Public Information Officer or State Public Information Officer, as the case may be may reject a request for information where such a request for providing access would involve an infringement of copyright subsisting in a person other than the State."*

This refers to an exemption under which information related to the copyright of an individual cannot be shared.

**Example-** If an applicant asks for a censor copy of a movie, that cannot be shared since that would come under Section 9. However this copyright claim can only be applied to a private individual or corporation and cannot be applied to copyright claims of the state. No information can be denied on the ground that copyright vests with the state. In the case *Delhi Metro Rail Corporation V. Sudhir Vohra*, the court said that the words **"other than the State"** at the end of Section 9 RTI Act reflect the legislative intent that the exemption from disclosure is available only where such disclosure involves infringement of a copyright subsisting in a person other than the State. **There is no discretion to refuse when it comes to disclosure of information pertaining to a copyright subsisting in the State.** The DMRC cannot refuse the information sought even if it might involve infringement of its copyright in the design pertaining to the cantilevered bracket of Metro Pillar.

## 3. How to dodge exemption?

The RTI Act enables the citizens to seek information from public authorities but more often it seen that the PIO's tend to deny the information under the exemptions as mentioned above. In order to avoid your application being dismissed you must always keep the following points in mind-

- A. In your application, you must mention that in case the PIO believes this information is exempted under the RTI Act, he/she must respond with the reasoning as to why they think so.
- B. You can include various precedential orders of the Commissions or judgements of the judicial bodies wherein the information that you are seeking has been previously provided under the RTI Act.
- C. You can also include a point explaining why the information sought is for the larger good of public interest as under Section 8(2) which states:  
*“Notwithstanding anything in the Official Secrets Act, 1923 nor any of the exemptions permissible in accordance with sub-section (1), a public authority may allow access to information, if public interest in disclosure outweighs the harm to the protected interests.”*

Sample RTI Application

**October 31, 2021**

**To,  
The Public Information Officer,  
Municipal Corporation  
New Delhi, India**

Sir/Ma'am,

The Hon'ble Delhi High Court on 02.07.2019 held in the Case of *Subhash Chandra Agarwal v. Lok Sabha Secretariat & Ors.* held that information with respect to the consultation on the extension of term for Secretary General is the public information.

In the light of the same, the following information is sought under section 6(1) of the RTI Act, 2005. Please furnish:

1. The consultation documents passed amongst the Leader of the House, Opposition and the Speaker of the House, with respect to the extension of the term of the secretary general of the Lok Sabha for the extended term.
2. The term for which the extension has been granted to the Secretary General.
3. The consent letter given by the Secretary General for the above said extension.

***Yours Faithfully,  
XYZ***

**PLEASE CONSIDER BEFORE DISPOSING OF THE APPLICATION:**

1. If required then, please '*render reasonable assistance*' for the purpose of obtaining the information **u/s 5(3)** of the Right to Information Act, 2005.
2. If the information, wholly or partially is available with any other particular department then as per the provision u/s **6(3)**, please transfer the application, wholly or partially, to the concerned department.