

कार्यालय : मुख्य निर्वाचन अधिकारी, उत्तराखण्ड

विश्वकर्मा भवन, प्रथम तल, सचिवालय परिसर 4-सुभाष रोड़, देहरादून- 248001

Email id- ceo_uttaranchal@eci.gov.in

फोन न० (0135) - 2713551

फैक्स न० (0135) -2713724.

संख्या- 1657/xxv- 12(P-11)/2021 देहरादून : दिनांक 30 सितम्बर, 2021

सूचना के अनुरोध को दूसरे प्राधिकारी को हस्तातरण के लिए प्रपत्र

सेवा में,

लोक सूचना अधिकारी/
सहायक जिला निर्वाचन अधिकारी
उधमसिंह नगर।

विषय- सूचना के अधिकार अधिनियम-2005 के तहत सूचना के सम्बन्ध में।
महोदय,

उपरोक्त विषयक कार्यालय मुख्य निर्वाचन अधिकारी उत्तर प्रदेश के पत्र संख्या-176 RTI/सी0ई0ओ0-4-69/4-2017 लखनऊ दिनांक 22.09.2021 के साथ संलग्न अनुरोधकर्ता Shri Amal Biswas 3, Devnagar Farm (Post), Sitarganj Tehsil , Udhm Singh Nagar, UK के ऑनलाइन आवेदन RTI Reg No.18666 दिनांक 10.09.2021 जो इस कार्यालय में दिनांक 29.09.2021 को प्राप्त हुआ है, की प्रति संलग्न कर इस आशय से प्रेषित की जा रही है कि चाही गयी सूचनायें आपके कार्यालय से सम्बन्धित है। अतः उक्त अनुरोध पत्र सूचना का अधिकार अधिनियम-2005 की धारा 6(3) के अन्तर्गत अग्रेत्तर कार्यवाही हेतु आपको हस्तान्तरित किया जा रहा है। कृपया अनुरोधकर्ता को वांछित सूचना अपने स्तर से नियमानुसार उपलब्ध कराने का कष्ट करें।

संलग्न-यथोपरि।

भवदीय,

B. S. Rawat
(बसन्त सिंह रावत)
अनुभाग अधिकारी एवं
लोक सूचना अधिकारी।

पू0संख्या- 1657/xxv- 12(P-11) /2021 , तददिनांक।

प्रतिलिपि:- 1- कार्यालय मुख्य निर्वाचन अधिकारी उत्तर प्रदेश चतुर्थ तल विकास भवन, जनपथ मार्केट लखनऊ को सादर सूचनार्थ प्रेषित।

2- Shri Amal Biswas 3, Devnagar Farm (Post), Sitarganj Tehsil, Udhm Singh Nagar UK को ई-मेल E-mail, govindvishwas@rediffmailmail.com सूचनार्थ प्रेषित।

B. S. Rawat
(बसन्त सिंह रावत)
अनुभाग अधिकारी एवं
लोक सूचना अधिकारी।

90/9



29/9/21

कार्यालय मुख्य निर्वाचन अधिकारी उत्तर प्रदेश।

चतुर्थ तल विकास भवन, जनपथ मार्केट लखनऊ-226001

संख्या-176 RTI(1)/सी0ई0ओ0-4-69/4-2017 लखनऊ: दिनांक: 22 सितम्बर, 2021

सेवा में,

जन सूचना अधिकारी/
कार्यालय मुख्य निर्वाचन अधिकारी,
उत्तराखण्ड।

विषय-सूचना का अधिकार, अधिनियम 2005 की धारा-6(3) के अन्तर्गत आवेदन पत्र का अन्तरण।

महोदय,

उपरोक्त विषय पर कृपया भारत निर्वाचन आयोग के आर0टी0आई0 पोर्टल के माध्यम से प्राप्त Shri Amal Biswas, 3, Devnagar, Shakthi farm (Post), Sitarganj Tehsil, Udham Singh Ngar, UK के ऑनलाइन आवेदन पत्र संख्या-18666 दिनांक 10.09.2021 (छायाप्रति संलग्न) का सूचना का अधिकार अधिनियम 2005 के अन्तर्गत चाही गयी सूचना का सन्दर्भ ग्रहण करने का कष्ट करें।

2- इस सम्बन्ध में अवगत कराना है कि उपरोक्त आवेदन पत्र दिनांक 10.09.2021 में उल्लिखित प्रश्नगत मतदाता फोटो पहचान पत्र संख्या UP/04/014/279273, 14-खटीमा, विधान सभा निर्वाचन क्षेत्र, उत्तराखण्ड से सम्बन्धित है।

अतः आवेदक द्वारा मांगी गयी सूचना आपके कार्यालय से होने के कारण उपरोक्त आवेदन को सूचना का अधिकार अधिनियम-2005 की धारा 6(3) के अन्तर्गत अन्तरित किया जा रहा है। कृपया आवेदन पत्र में वांछित सूचना आवेदनकर्ता को नियमानुसार उपलब्ध कराने का कष्ट करें।

संलग्नक-यथोक्त।

भवदीया,

(सुनीता सिंह)

सहायक मुख्य निर्वाचन अधिकारी/
जन सूचना अधिकारी।

संख्या-176 RTI(1)/सीईओ-4 तददिनांक-

प्रतिलिपि निम्नलिखित को सूचनार्थ एवं आवश्यक कार्यवाही हेतु प्रेषित:-

1. सचिव, भारत निर्वाचन आयोग, निर्वाचन सदन, अशोक मार्ग, नई दिल्ली को सादर सूचनार्थ प्रेषित।
2. Shri Amal Biswas, No.-3, Devnagar, Shakthi farm (Post), Sitarganj Tehsil, Udham Singh Ngar, UK को उनके आवेदन पत्र दिनांक 10.09.2021 के संदर्भ में इस आशय से प्रेषित है कि कृपया वांछित सूचनाएँ उपरोक्त अधिकारी से सम्पर्क/पत्र व्यवहार कर प्राप्त करने का कष्ट करें।

(सुनीता सिंह)

सहायक मुख्य निर्वाचन अधिकारी/
जन सूचना अधिकारी।



Email

ceo uttarpradesh CEO Uttar Pradesh

From : ECI RTI ONLINE PORTAL <rti@eci.gov.in>

Wed, Sep 15, 2021 05:46 PM

Subject : Application has been received by ECI that belongs to your state

To : ceo uttarpradesh <ceo_uttarpradesh@eci.gov.in>

Dear Sir/Madam,

The information sought by the applicant is related to your office. Therefore, the application is hereby transferred to your office under Section 6(3) of the Right to Information Act, 2005.

The information may be provided to the applicant directly. The details of concerned First Appellate Authority may also be given to the applicant.

As the application has been filed on RTI portal, the requisite fee, as prescribed under the Right to Information (Regulation of Fee & Cost) Rules, 2005 has already been deposited.

Thanks And Regards,
P N Lakra
North- III(Uttar Pradesh)
pnlakra@eci.gov.in

Note:- This is a system generated mail. Please do not reply it.

ACCU

R

(अजय कुमार शुक्ला)
मुख्य निर्वाचन अधिकारी
एवं सचिव, निर्वाचन
उत्तर प्रदेश, शासन।

रमेश चन्द्र राय (र)

R

16- रमेश चन्द्र राय (र)
विशेष सचिव निर्वाचन, एवं
अपर मुख्य निर्वाचन अधिकारी,
उत्तर प्रदेश शासन।

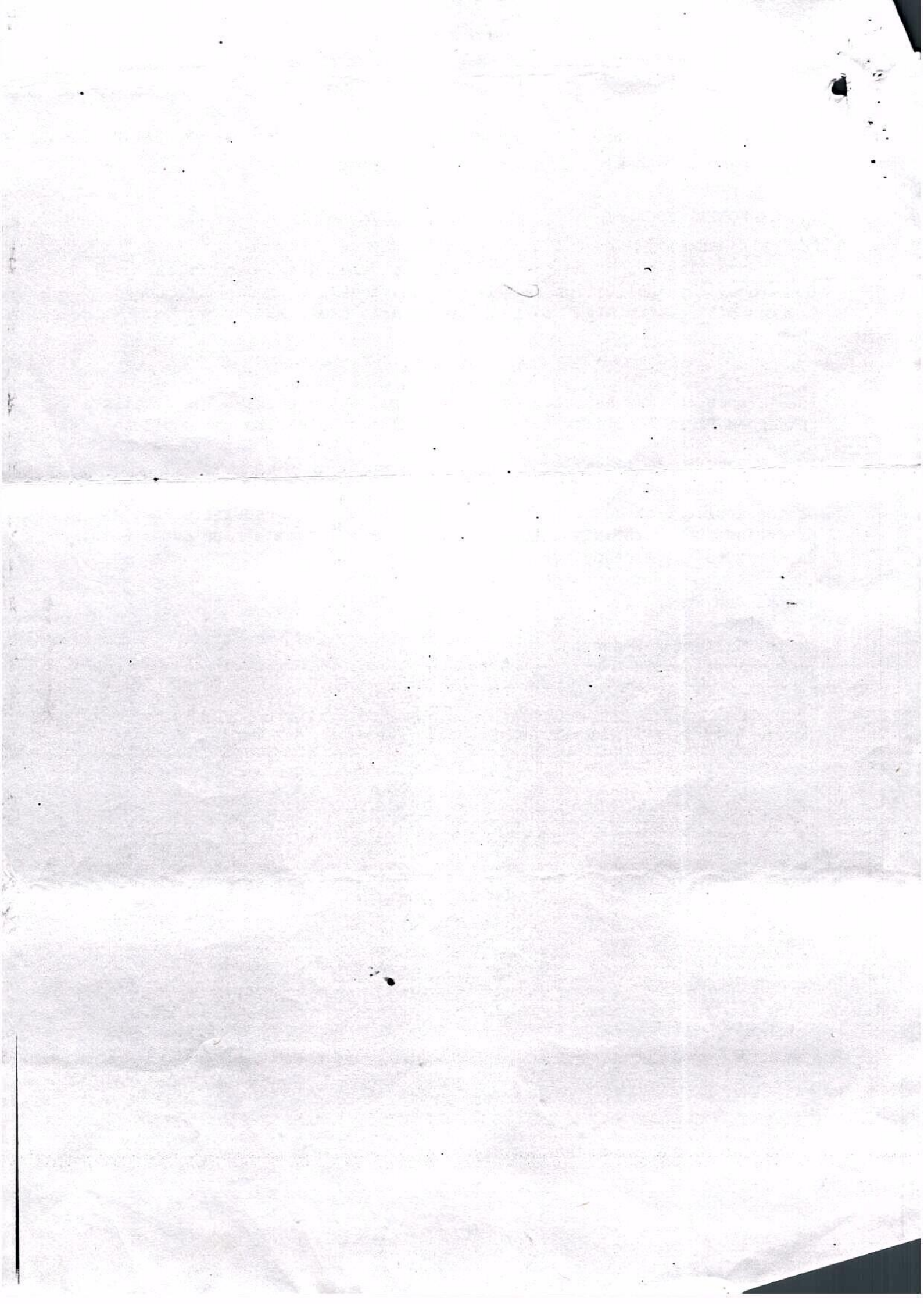
R

16.09.21

(रमेश चन्द्र राय)
संयुक्त मुख्य निर्वाचन अधिकारी
उत्तर प्रदेश

रमेश चन्द्र राय

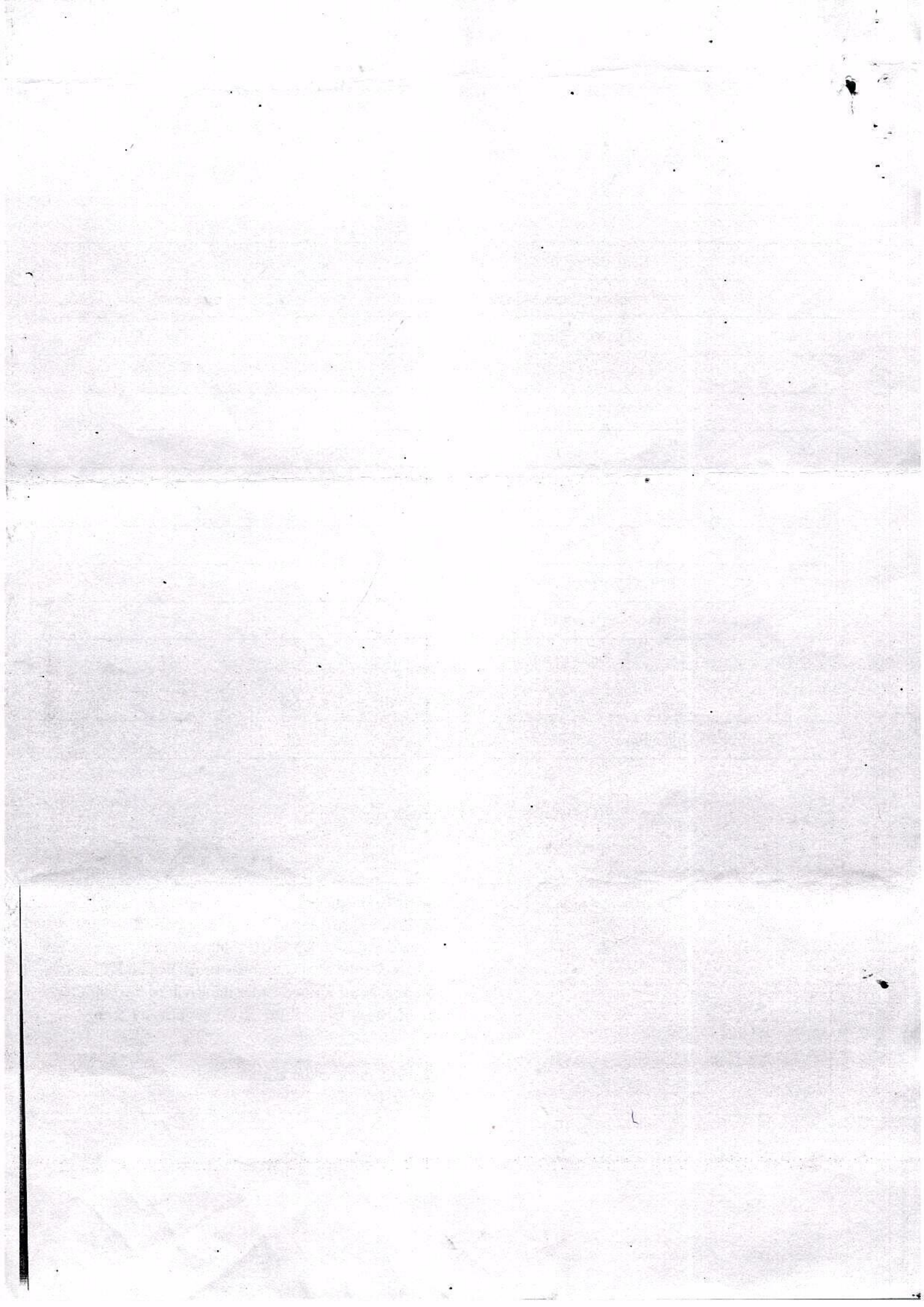
17.09.2021





SECRETARIAT OF THE
ELECTION COMMISSION OF INDIA
Nirvachan Sadan, Ashoka Road, New Delhi-110001

RTI Details	
Registration No.	18666
Applicant Name	Amal Biswas
Date of Filing	10-09-2021
Life And Liberty	No
Mobile NO. :	8077563263
Email-ID	govindvishwas@rediffmail.com
Address	3, Devnagar, Shakthi Farm (Post) , Sitarganj Tehsil, Udham Singh Nagar, UK
BPL Card No	NIL
BPL Certificate Doc	Not Applicable
Assigned Authority	P N Lakra
RTI Description	Kindly refer to the enclosed pdf
Documents Uploaded By Applicant	<u>Uploaded Docs</u>
CPIO Details P N Lakra 9540838554 North- III(Uttar Pradesh)	CPIO Remark The information sought by the applicant is related to your office. Therefore, the application is hereby transferred to your office under Section 6(3) of the Right to Information Act, 2005. The information may be provided to the applicant directly. The details of concerned First Appellate Authority may also be given to the applicant. As the application has been filed on RTI portal, the requisite fee, as prescribed under the Right to Information (Regulation of Fee & Cost) Rules, 2005 has already been deposited. Document Uploaded for CEO's CPIO(if any): Nill 17:46 pm 15-09-2021 IN



Through On-line

From: Amal Biswas, No.3, Shaktifarm (Devnagar), Shaktifarm Post Sitarganj Tehsil, Udham SinghNagar- 263151 Uttarakhand Mobile-8077563263 Email- govindvishwas@rediffmail.com	To: The CPIO, Election Commission of India, Nirvachan Sadan, Ashoka Road, New Delhi-28.
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Dear CPIO,

Sub: Application u/s 6 (1) of the RTI Act, 2005 -reg

This application is registered to provide the following information in a tabular column as given-below **by the reproducing the points as they are**. The authentic interpretation of the Act, the notes and the Information Commission's observation enclosed in this application are to be taken into account.

Sl No	Points	Reply and supply details in English only
	<p>I. Background Matter of this application is: My father Shri. Nagendra Bishwas (late) S/o Shri.Jogendra Biswas (late) was issued voter id Card by the Election Commission of India.</p> <p>I have enclosed (vide Annexure II and II respectively) the copy both sides of my father's Voter's Identity Card issued with the facsimile Signature of Electoral Registration Officer for 14-Khatima A.C. on behalf of the Election Commission of India vide No.UP/04/014/279273 on 01.05.1995 at Khatima.</p> <p>So as to obtain the Voter's ID Card, he should had been submitted the application (as prescribed by the guidelines /Acts concerned) to the officer's concerned.</p>	

1	Let be supplied me the certified copy of his application submitted to apply for the Voter's ID Card.	
2	If the records of the above-application are weeded out after its retention period, then let be supplied me the certified copy of the orders of the Competent Authority to weed out the records and its order book/register-entry. It is to be noted that the record destruction Register etc are qualified for permanent-preservation	
3	Let be known me whether digitalised records is being preserved in your department in respect of the application submitted for issuing the Voter's Identity Card.	
4	If the application submitted for issuing the Voter ID CARD is transferred to the Archives' Department let this RTI application be transferred to the department concerned within 5 days by intimating me as per Section 6 (3) of the RTI Act.	
II. Background statement: Before taking the photo of my father, your official got his signature/thumb impression in a register/application.		
5	Let be supplied me the certified copy of the record in which his signature/thumb impression was obtained before taking photo of my father.	
6	If the records of the above are weeded out after its retention period, then let be supplied me the certified copy of the orders of the Competent Authority to weed out the records and its order book/register-entry. It is to be noted that the record destruction Register etc are qualified for permanent-preservation	
7	Let be known me whether digitalised records is being preserved in your department in respect of the application	

	submitted/signature obtained for taking the photo to append in the Voter's ID Card	
8	If the signature/thumb impression obtained records for taking the photo was already transferred to the Archives' Department let this RTI application be transferred to the department concerned within 5 days by intimating me as per Section 6 (3) of the RTI Act.	
II. Background statement: While supplying the Voter's ID Card signed acknowledgement in a prescribed formation or in a register is being received from the person to whom it was issued.		
9	Let be supplied me the certified copy of the acknowledgement or register extract in which he appended signature/thumb impression while receiving the Voter's ID Card.	
10	If the records of the above-application are weeded out after its retention period, then let be supplied me the certified copy of the orders of the Competent Authority to weed out the records and its order book/register-entry. It is to be noted that the record destruction Register etc are qualified for permanent-preservation	
11	Let be known me whether digitalised records is being preserved in your department in respect of the acknowledgement signature/thumb impression received from the Voter concerned.	
12	If the application submitted for issuing the Voter's ID Card is transferred to the Archives' Department, let this RTI application be transferred to the department concerned within 5 days by intimating me as per Section 6 (3) of the RTI Act.	
III.13. Let be supplied me all the available records re the Voter's ID Card of my father.		
IV. 14. I require my father's signature/thump impressed document copy for some other legal		

purposes. Hence, I am seeking your assistance in accordance with Section 5 (3) of the RTI Act.	
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Let be listed out me the actions taken by you to supply the desired-information.	
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Note-1: My father's personal information is not a third party information to me. In other words, I father's personal information is my own information. Hence, the exemption section 8 (1) (j) will not be applicable. Further, Section 8 (3) of the RTI Act is reproduced below:

Subject to the provisions of clauses (a), (c) and (i) of sub-section (1), any information relating to any occurrence, event or matter which has taken place, occurred or happened twenty years before the date on which any request is made under section 6, shall be provided to any person making a request under that section:

This means that clauses (b), (d), (e), (f), (g), (h), and (j) are not applicable if 20 years are over. In other words, if the information is being held by the public authority beyond 20 years, it cannot deny it on the grounds of it being exempt under clauses (b), d),(e), (f), (g), (h), and (j).

Note-2: Providing the information is a rule and denial is an exception. No information to be denied without citing relevant exemption clause. A PIO should not supposed be empowered to innovate a new clause for the exemption. Further, the RTI act does not state that queries must not be answered, nor does it stipulate that prefixes such as 'why, what, when and whether' cannot be used. The observation of the Central Information Commission dated 09.02.2009 in this regard (Copy enclosed for the ready reference vide **Annexure III**) is **mutatis mutandis applicable to the points of this application** also.

Note-3: If anything destroyed/weeded out, either fully or partly, due to any unfortunate events or after its retention period that does not necessarily result into destruction of all the information contained in that record. It is possible that the information generated in a record may be available in the form of an OM, a letter or in any other form. The Govt OM dated 31.10.2007 interprets and speaks about these aspects under the subject "Disclosure of information relating to occurrence/even/matter which took place 20 years back". The copy of OM 31.10.2007 is enclosed vide **Appendix IV** for your ready reference. As

such, the information requested should not be denied by citing any lame-excuses like diligent search made to search but..... etc.

Note-4: When the requested information is already destroyed after completion of its preservation period, then the Copies of Competent Authority's orders to weed out the records concerned and its Register Entry need to be supplied. It is to be noted that records after its preservation can be weeded out only after the orders of the Competent Authority as per the rulings and guidelines framed in your organisation in consonance with Public Records Act, 1993 or other related Acts. It is well known that the Register and the orders to weed out the records after its preservation period do not have any preservation period i.e., they are to be preserved permanently as per the rulings and guidelines framed in your organisation in consonance with The Destruction of Records Act, 1917. The CIC decision dated 08.08.2018 is enclosed vide **Annexure V** and its observation has to be taken into account in this regard.

Note-5: Reference is invited to the provisions of the Section 4 (1) (d) issued under the obligation of the Public Authorities which says: *provide reasons for its administrative or quasi judicial decisions to affected persons*; and Section 7 (8) (i) of the Act. Both the provisions mandate to the Public Authorities to provide cogent and substantial reasons for the denial of information.

Note-6: I would like to bring to your kind attention that a PIO must reply as expeditiously as possible though the maximum-time allowed is 30 days (Section 7 (1) of the Act refers). Further, if the information is provided after 30 day period, no further fee has to be paid for the information (section 7 (6) of the Act refers). I would like to pay the additional fee through on-line only and hence, the option available in the portal should be chosen please.

Note-7: Section 5 (3) of the RTI Act says: *Every Central Public Information Officer or State Public Information Officer, as the case may be, shall deal with requests from persons seeking information and render reasonable assistance to the persons seeking such information.*

This is an important provision which fixes the responsibility on the PIO to deal with Right to Information applications. It also puts the duty on the PIO to assist the citizen in seeking information. I require my father's signed/thumb impressed document copy for some other legal purposes. Hence, you need to

pay attention to this sub-section and to render reasonable assistance to me in the interest of justice.

Note-8: I, Amal Biswas, hereby verified that the aforementioned facts are true to the best of my knowledge. I also declared that I am ready to appear before you , in accordance with your direction,

- a. to show the enclosed documents in original.
- b. for any purposes, as may be decided by you, to render reasonable assistance to me
- c. to submit an affidavit as may otherwise be required to supply the information requested.

Encl: As above

Thanking you,

Date: 10.09.2021

Yours faithfully,

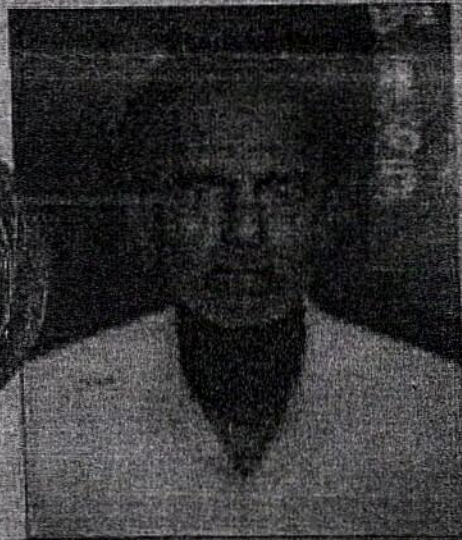
(Amal Biswas)



भारत निर्वाचन आयोग
ELECTION COMMISSION OF INDIA

पहचान पत्र
IDENTITY CARD

UP/04/014/279273



निर्वाचक का नाम : मनिन्दर विश्वास
Elector's Name : Manindar Vishvas
पिता/माता/पति का नाम : नगेन्द्र
Father's/Mother's/
Husband's Name : Nagender
लिंग / Sex : पुरुष Male
1.1.1995 को आयु : 40
Age as on 1.1.1995

पता

घ.सं. : 194
ग्राम/मोहल्ला : देवनागर
तहसील : सितारगंज
जिला : नैनीताल

Address

H.No. : 194
Vill/Mohalla : Devnagar
Tehsil : Sitarganj
Dist. : Nainital



निर्वाचक रजिस्ट्रीकरण अधिकारी
के हस्ताक्षर की अनुकृति
निर्वाचन क्षेत्र 14-खटीमा
Facsimile Signature of
Electoral Registration Officer
for 14-Khatima A.C.

स्थान : खटीमा
Place : Khatima

दिनांक
Date : 01/05/95

इस पत्र को विभिन्न सरकारी योजनाओं के अन्तर्गत पहचान
पत्र के रूप में प्रयोग किया जा सकता है।
This card can be used as an Identity Card under
different Government Programmes.

Appendix-III (Downloaded from Commission's Website)

CENTRAL INFORMATION COMMISSION

**Room No. 415, 4th Floor,
Block IV, Old JNU Campus,
New Delhi -110067.**

Tel: + 91 11 26161796

Decision No. CIC /SG/A/2008/00347+00277/1554

Appeal No. CIC/SG/A/2008/00347+00277

Relevant Facts emerging from the Appeal

Appellant : Mr. T.B.Dhorajiwala,
232, Maulana Azad Road,
2nd Floor, Room No. 26,
Mumbai - 400008.

Respondent 1 : Dr. Indu Saxena,
Deputy Registrar(Admn) & P.I.O,
Indian Institute of Technology Bombay,
Powai, Mumbai - 400076.

RTI application filed on : 25/08/2008
PIO replied : 24/09/2008
First appeal filed on : 06/10/2008
First Appellate Authority order : 03/11/2008
Second Appeal filed on : 01/12/2008

The appellant had asked in RTI Application regarding Tender for disposal of Unserviceable equipments of Chemical Engineering Department, IIT Powai. Tender No. MD/CD/DISP/001/07/REG/L/ due was on 24/08/2007.

Detail of required information:-

1. What happened of Tender No. MD/CD/DISP/001/07/REG/L/ which was due on 24/08/2007. for disposal of Unserviceable equipments.
2. Let me know why you had not Re-Invite of above tender.
3. Let me know what stage the matter is at present.
4. Let me know what action you had taken against offender.
5. Let me know person name who had involved in this matter.

The PIO replied.

"The RTI Act does not cast on the Public Authority any obligation to answer queries, in which a petitioner attempts to elicit answer to the questions with prefixes, such as, why, what, when and whether. The petitioner's right extends only to seeking information as defined in section 2(f) either by pinpointing the file, document, paper or records, etc, or by mentioning the type of information as may be available with the specified public authority.

You may only ask for specific information under RTI Act, 2005 rather than questioning the action of public authority.

Please note that the appellate authority for IIT Bombay, under the Right to Information Act, is Shri B.S. Punalkar, offg. Registrar, IIT Bombay and your appeal, if any, should reach with in 30 days from the receipt of this letter.

The First Appellate Authority ordered:-

“With reference to your appeal as mentioned above, it is stated that the CPIO has taken right stand in dealing with your application dt. 25/08/2008.

However, you may mention what exact information as defined under Section 2(f) read with section 2(i) & 2(j) of the RTI Act, which will be provided.

The IPO's No. 68 E 009314 & 68 E 009315 dt. 05/09/2008 submitted with the appeal is being return..”

Relevant Facts emerging during Hearing:

The following were present

Appellant: Absent

Respondent: Absent

The respondent has sent a written submission in which he repeats the grounds for denying the information by the PIO and also adds that the appellant had stated in his appeal that he was seeking ‘clarification of his queries’.

The PIO and the first appellate authority have erred in their interpretation of what constitutes ‘information’ as defined under the RTI act. Section 2 (f) of the act states,

“information” means any material in any form, including records, documents, memos, e-mails, 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;’.

The PIO has states, ‘The RTI Act does not cast on the Public Authority any obligation to answer queries, in which a petitioner attempts to elicit answer to the questions with prefixes, such as, why, what, when and whether. The petitioner’s right extends only to seeking information as defined in section 2(f) either by pinpointing the file, document, paper or records, etc, or by mentioning the type of information as may be available with the specified public authority.

You may only ask for specific information under RTI Act, 2005 rather than questioning the action of public authority.’

The RTI act does not state that queries must not be answered, nor does it stipulate that prefixes such as ‘why, what, when and whether’ cannot be used. The PIO is right in accepting that what is asked must be a matter of record, but errs in imposing a new set of non-existent exemptions.

The Commission now looks at the queries of the appellant:

1. What happened of Tender No. MD/CD/DISP/001/07/REG/L/ which was due on 24/08/2007. for disposal of Unserviceable equipments.

Commissions direction: If there was such a tender, it will be on records and the PIO must provide the information.

2. Let me know why you had not Re-Invite of above tender.

Commission’s direction: If the tender was there and there are any reasons on record why it was not re-invited, the PIO must provide them.

3. Let me know what stage the matter is at present.

Commission’s direction: If there is any record of this it must be given.

4. Let me know what action you had taken against offender.

5. Let me know person name who had involved in this matter.

Commission’s direction: If there is any offender identified in the matter details of point 4 and 5 would have to given based on the records.

On the other hand if there are no records about any of the above points, the PIO must state this categorically.

Decision:

The Appeal is allowed.

The PIO will give the information as outlined above to the appellant before 25 February 2009.

This decision is announced in open chamber.

Notice of this decision be given free of cost to the parties.

Shailesh Gandhi
Information Commissioner
February 09, 2009.

(In any correspondence on this decision, mentioned the complete decision number.)

App-IV (Downloaded from DoPT Website)

No.1/14/2007-IR

Government of India

Ministry of Personnel, Public Grievances & Pensions

Department of Personnel & Training

New Delhi, the 31st October, 2007

OFFICE MEMORANDUM

Subject: **Disclosure of information relating to occurrence/event/matter which took place 20 years back.**

Attention is invited to sub-section (3) of section 8 of the Right to Information Act, 2005 (Act) which, provides that 'subject to the provisions of clauses (a), (c) and (i) of sub-section(1), any information relating to any occurrence, event or matter which has taken place, occurred or happened twenty years before the date on which any request is made under Section 6 shall be provided to any person making a request under that section'. References have been received in this Department seeking clarification whether the above provision of the Act requires all the records to be preserved for more than a, period of 20 years. The Second Administrative Reforms Commission, in its First Report titled the 'Right To Information - Master Key to Good Governance', has also expressed an apprehension about interpretation of the above provision with reference to the retention schedule of the files.

2. The RTI Act does not prescribe a record retention schedule. The records are to be retained by a public authority as per the record retention schedule applicable to that public authority. **It is however, important to note that weeding out of a file or any other record does not necessarily result into destruction of all the information contained in that file or record. It is possible that information generated in a file may be available in the form of an OM or a letter or in any other form even after the file has been weeded out.** The above referred provision of the Act requires-furnishing of information so available after the lapse of 20 years even if such information was exempt from disclosure under sub- section (1) of Section 8. It means that the information which, in normal course, is exempt from disclosure under sub-section (1) of Section 8 of the Act, would cease to be exempted if 20 years have lapsed after occurrence of the incident to which the information relates. However, the following types of information would continue to be exempt and there would be no obligation, even after lapse of 20 years, to give any citizen –

- (i) Information disclosure of which would prejudicially affect the sovereignty and integrity of India, the security, strategic, scientific or economic interest of the State, relation with foreign State or lead to incitement of an offence;
- (ii) Information the disclosure of which would cause a breach of privilege of Parliament or State Legislature; or
- (iii) Cabinet -papers including records of deliberations of the Council of Ministers, Secretaries and other Officers subject to the conditions given in proviso-to clause (i) of sub-section (1) of Section 8 of the Act.

3. Contents of this OM may be brought to the notice of all concerned.

Sd/-
(K.G. Verma)
Director

Appendix-V (Downloaded from the Commission's Website)

Central Information Commission

T S Sivakumar vs Department Of Posts on 8 August, 2018

Author: Madabhushanam Sridhar Acharyulu

CENTRAL INFORMATION COMMISSION

(Room No.313, CIC Bhawan, Baba Gangnath Marg, Munirka, New Delhi-110067)

Before Prof. M. SridharAcharyulu (Madabhushi Sridhar), CIC

Second Appeal No.: CIC/POSTS/A/2018/119469

Shri T S Sivakumar

Appellant

Versus

CPIO, Department of Posts

Respondent

Order Sheet: RTI filed on 17.08.2017, CPIO replied on 11.09.2017, FAO on 03.01.2018, S appeal filed on 26.03.2018, Hearing on 01.08.2018;

Proceedings on 06.06.2018: Appellant absent, Public Authority represented by CPIO. Mr. Raghunathan, SSPO and CPIO. Directions issued and Show-cause issued.

Proceedings on 01.08.2018: Appellant absent, Public Authority represented by CPIO. Mrs Raghunathan, CPIO from NIC Erode:

Date of Decision - 08.08.2018: Penalty imposed.

ORDER

FACTS:

1. The appellant sought certified copies of delivery receipts of postal articles that were addressed to the applicant's name and address along with 'Delivery receipt', number of the postal articles, date of the respective postal articles delivered to the applicant and the name and/or pincode number of the origin post office from where the respective 37 Postal articles were sent. The CPIO on 11.09.17 replied that in respect of postal articles from Sl.01 to 21, it is intimated that the records relating to the postal articles delivered to the applicant are not available as the preservation period was over. In respect of postal articles from Sl.No.22 to Sl.No.37 the applicant may kindly credit a sum of Rs. 54/- (27X2) for the supply of attested/certified copy of delivery receipt. The appellant, being dissatisfied, filed the first appeal on 19.11.17. The FAA on 03.01.2018 upheld the decision of the CPIO. Being dissatisfied, the applicant approached this Commission.

2. The Commission's order dated 08.06.2018:

2. Mr. S. Raghunathan, SSPO and CPIO, submitted that the delivery slips of the postal articles as referred to by the appellant were available as on date of RTI CIC/POSTS/A/2018/119469 Page 1 application and even on date of first appeal. The records were physically segregated for the process

of weeding-out, but thereafter they were weeded out, because of expiry of preservation period.

3. If the public authority has weeded out the documents/files/letters as per their record retention and removal policy, that amounts to 'not holding' of the documents which were sought under RTI and hence need not be provided. They have to, however, furnish the extract from the Register of removal of records, showing date and time of removal of such record, as proof of their claim. But, if they have not weeded out as on the date of RTI application, though retention scheduled time was exhausted, it means they were holding the record and hence they shall share the same. Removing the papers after RTI has filed for them amounts to breach of RTI of the appellant and necessitates invocation of penalty Section 20 of RTI Act for destroying the papers sought under RTI Act. In this case the public authority has segregated the papers for removal but did not remove. When the CPIO preferred to refuse the information and First Appellate Authority received the first appeal, the papers were lying with the public authority. But they refused to share. Hence, the Commission finds that the CPIO has violated the provision of the RTI Act by not furnishing the delivery slips which had not been weeded out on the date of RTI application. The CPIO had a duty to share the available records which had been merely segregated instead of denying the information sought and weeding out of records during the pendency of application is clearly a violation of the provisions of the RTI Act.

4. The Commission directs the CPIO to provide the documents available at their office and the certified copy of the extract of the weeding out register, in case those documents have been weeded out.

5. The Commission was informed that the Postal Department has a policy not to remove the documents in spite of expiry of retention period, if any complaint is filed regarding the delivery of article concerned. The same policy should be adopted for the retained papers in spite of expiry of retention period, if RTI application is filed. The Commission requires the public authority to announce this policy and inform each of the CPIO not to remove the papers concerned if an RTI application is pending.

6. The Commission directs Mr. S. Raghunathan, CPIO, to show-cause why maximum penalty should not be imposed upon him for illegally denying the information sought. The CPIO is directed to submit his explanation, before 01.08.2018 and the matter is posted for compliance on the aforesaid date.

Decision :

3. Mr. S. Raghunathan, the CPIO and SSP, Erode Division, vide letter dated 24.07.2018, submitted to the Commission as under:-

Shri T.Sivakumar of Anthiyur vide his RTI application dated 17.08.2017 received by this office on 22.08.2017 had sought for copy of delivery slips in respect of 37 registered/ speed post articles that were delivered to him during the year 2015 and 2016 through AnthiyurSubPostOffice.

The applicant was addressed vide this office vide Lr No. ECCC/RTI/20,21-2017-

18/Dlgs dated 11.09.2017, to credit a sum of Rs.54/- for supply of copy CIC/POSTS/A/2018/119469 Page 2 deliveryslips for the articles under Sl 22 to 37 pertaining to the year 2016 and the same were supplied to theappellant on payment of prescribed fee vide this office letter No. dated 03.10.2017.

In respect of articles under Sl. 01 to 21 it was informed to the applicant that as thepreservation period of the records were over, it could not be supplied.

The applicant had again preferred one RTI application dated 09.10.2017, wherein he had sought for the particulars of disposal of old records citing the reply given by the CPIO videletter No ECCC/RTI/20,21-18/Dlgs dated 11.09.2017.

The applicant was given reply that as the preservation period of delivery slips of Sl no 1 to 21 of his RTI application dated 17.08.2017 was over, the same was segregated from theoffice records and dumped with the old records. The old records would then be disposed /handled as per the departmental procedure. Hence, the information sought in connection with weeding out of the above mentioned records were not available then.

Aggrieved over the reply of the CPIO, the applicant had preferred appeal vide his application dated 19.11.2017 wherein he had requested that he himself would arrange for searching of the documents sought by him from the pooled and dumped old records under the supervision of postal authorities.

The appellant authority while disposing the appeal vide its memo No.RTI/Appeal/174/2017 dated 03.01.2018 and had upheld the decision of the CPIO.

Then the applicant had approached the CIC forum against the orders of theappellateauthorities' decision.

Now, I wish to submit the following few lines before the Commission for humbleConsideration.

As per the Department rules, the preservation period of inland registered article is 18months and inland speed post articles is 6 months. When the appellant filed his RTIapplication on 11.09.2017, the records corresponding to Sl 1 to 21 were already dumped with the old records. It is submitted that Anthiyur Sub Post Office has huge mail traffic and has 10 Branch Post Offices under its operational control. The records ofboth the SubPost Officeand all the 10 Branch Post Offices which crossed the records retention periodas per prescribed schedule were bundled and dumped in sacks as old" records in aseparated from the current records.

Even though the old records were not weeded out at the time of appeal preferred by theapplicant, they were pooled and kept in bundles and not in accessible condition.In the decision of first appeal also, the first appellate authority upheld the decision takenin this case stating that there is no provision in the RTI Act to permit the appellant tosearch the wanting documents from the dumped old records which were alreadysegregated from the current records as the period of

CIC/POSTS/A/2018/119469 Page 3 preservation is over. Also; no directions have been received from the first appellate authority to supply/preserve the old records concerned. As such, adhering to the Departmental Rules the records were weeded out.

As the appellate authority while disposing the appeal preferred by the applicant had also upheld the decision of the CPIO, the process of initiating of segregation of the documents sought for by the applicant from the dumped old records was not taken up. As far as this Department is concerned, the process of weeding out of old records involves lot of procedures like assembling of old records of all the offices under one roof, issue of tender notice, finalizing the tender etc. which is a time consuming and sensitive issue. Hence even though the old records were dumped and pooled during 2016 they were weeded out only during March 2018.

In this instant case, the appellant himself provided the date of delivery of the articles which implies that all the said articles were delivered to him. As per Section 8 of RTI Act. The RTI Act does not prescribe a record retention schedule. The records are to be retained by a public authority as per the record retention schedule applicable to that public authority. It is possible that information generated in a file may be available in the form of O.M or a letter or in any other form even after the file has been weeded out, and as such this Department had complied with the said rule.

Further, apart from the copy of the delivery of requested slip, the only information that could be provided for the appellant in connection with the delivery of the requested article as the "date of delivery" which was already known to the appellant.

Since my joining as CPIO in this Division, 7 number of RTI applications have been received from Shri T.S. Sivakumar and in most of the cases, he has requested for a copy of delivery slips pertaining to the year 2013, 2014 & 2015. However, all the applications were disposed of properly by supplying available information within the prescribed time limit. During the hearing of CIC held on 06.06.2018 also, the applicant had not appeared before the forum which implies that he has not given due weightage and importance for it.

In this case, I have purely adhered to the Departmental Rule and not denied the request for information with malafide intention or knowingly given incorrect or incomplete or misleading information or purposefully destroyed the information.

As records pertaining to Sl. No. 1 to 20 of the appellant's RTI application dated 11.09.2017 were weeded out on 27.03.2018, as per the directions in Para (4) of CIC order no. CIC/POSTS/A/2018/119469 dated 08.06.2018, the records could not be provided. Hence as directed the certified copy of extract of weeding out register is submitted herewith.

Also, it is humbly submitted that all offices under this Division have been instructed not to weed out the corresponding records in which a RTI was raised even if their preservation period is over based on the CIC decision CIC/POSTS/A/2018/119469 dated 08.06.2018. I assure that, I will dispose the RTI applications by following the above said decision in future CIC/POSTS/A/2018/119469 Page 4 and take extra care to provide information within prescribed rules and timelines to citizens who

exercise their Right to Information. However, I request the Commission to show me leniency as it was my only intention to dispose the case as per the Departmental Rules and lack of clarification in handling / supplying information in connection with old records as per RTI Act led to my action and not any mala fide intention or enmity to the applicant. I also submit that I will continue to carry out my duties as a responsible CPIO.

4. The CPIO Mr. S. Raghunathan, Senior Superintendent of Post Offices, admitted that the records relating to points 1 - 21 were available as on the date of RTI application 17.8.2017 and that they were weeded out only in 2018 after the second appeal was filed. The CPIO tried to justify the weeding out during pendency of second appeal saying there is no provision in RTI in this regard. The Commission has to point out to him the basic tenet of the RTI Act that the public authority was under obligation to give the copies of documents held by the public authority as per section 2(f) definition of 'information' and 2(j) definition of right to information, which both the CPIO and First Appellate Authority ignored.

s2(f) "information" means any material in any form, including records, documents, memos, e-mails, 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;

s2(j) "right to information" means the right to information accessible under this Act which is held by or under the control of any public authority and includes the right to--

By non-weeding out, the public authority was holding those documents relating to 1- 21, in this case, though the weeding out period was exhausted. A set of documents which were actually and physically available cannot be presumed to have been not 'held' because the retention period is exhausted. Even after the expiry of retention period, the public authority has to actually destroy the documents by recording the fact of weeding out. The documents do not become 'non-existing' just because of expiry of weeding out period. The contention of both CPIO and FAA lacks in legal sanctity, logic and even common sense. The authorities also ignored the penal provisions under Section 20, which makes CPIO liable if 'destroyed information which was subject of the request' as one of the grounds mentioned.

CIC/POSTS/A/2018/119469 Page 5 s20(1) Where the Central Information Commission or the State Information Commission, as the case may be, at the time of deciding any complaint or appeal is of the opinion that the Central Public Information Officer or the State Public Information Officer, as the case may be, has, without any reasonable cause, refused to receive an application for information or has not furnished information within the time specified under sub-section (1) of section 7 or malafidely denied the request for information or knowingly given incorrect, incomplete or misleading information or destroyed information which was the subject of the request or obstructed in any manner in furnishing the information, it shall impose a penalty of two hundred and fifty rupees each day till application is received or information is furnished, so however, the total amount of such penalty shall not exceed twenty-five thousand rupees:

5. The documents held shall be shared subject to exceptions under Section 8 and

9. The CPIO's case is not relating to exceptions. It is proved by their admission that the documents were in existence, and were held during entire year 2017, when the appellant was pursuing with the CPIO and FAA for taking copies of those documents. And admittedly they were removed in 2018, when the matter was pending before the Central Information Commission.

6. The second proviso to Section 20 says Provided further that the burden of proving that he acted reasonably and diligently shall be on the Central Public Information Officer or the State Public Information Officer, as the case may be,

7. Thus it is the burden of CPIO to prove that he acted reasonably. The CPIO failed to prove that he acted reasonably, because he knew that the documents were held by them and he also knew that they were dumped at a particular place and remained dumped for one year, but he choose not to give them to the appellant.

8. Section 20(1) says that if the CPIO malafidely denied or knowingly destroyed information which was the subject of the request shall be recommended for disciplinary action. Though malafides are not proved, the CPIO admittedly knew the existence of the records, hence he is guilty under Section 20(1) and liable to penalty. It is regarding principle of transparency and systematic retention of documents besides providing legal access to those records to individuals seeking under RTI Act. The public authority cannot act against the letter and spirit of RTI Act. It's an issue of governance, record maintenance, retention and removal subject to sharing them under RTI Act. It is not right and proper for the CPIO to say that CIC/POSTS/A/2018/119469 Page 6 there are no such provisions in the Act. They should know to read the law properly and understand its spirit. They cannot use the provisions of law to their convenience and in contradiction with the spirit of transparency. Hence, for the above reasons the Commission holds CPIO guilty under Section 20(1) for imposition of penalty.

9. However, to decide the quantum of penalty, the Commission considers the fact that this is not a case of delay for which the penalty amount should be counted at the rate of Rs 250 per day. Considering all the reasons the CPIO has put forward, imposition of Rs 2500/- (two thousand five hundred only) fine will be appropriate to punish the act of CPIO in defiance of the norms of RTI and transparency for the purpose of establishing a rule that no public authority or CPIO shall weed out or destroy the record which was existing at the time RTI application, First Appeal or Second Appeal, which would amount to disrespect towards the law and authorities constituted under the law. Hence, the Commission imposes a token penalty of Rs. 2500/- on Mr. S. Raghunathan, the then CPIO under Section 20 of the RTI Act. The penalty of Rs. 2500/- (two thousand five hundred only) shall be deducted by the Public Authority from the salary of Mr. S. Raghunathan, the then CPIO by way of demand draft drawn in favor of "PAO CAT", New Delhi in one monthly instalment and forward the demand draft addressed to Deputy Registrar (CR-II), email: dyreger2-cic@gov.in Room No. 106, First Floor, Central Information Commission, Baba Gangnath Marg, Munirka, New Delhi-110067. The instalment should reach the Commission by 08.10.2018.

10. The Commission fails to understand why the public authority went ahead with destruction of records when applicant was demanding the papers under points number 1 to 21. It would have been better if the postal department demands actual cost of the copying and hand over the original documents under a proper acknowledgement, instead of weeding them out.

11. The Commission recommends the postal department higher officials to consider the possibility of handing over original documents which are going to be weeded out to the concerned officials/citizen-account-holders or their heirs at cost of posting and other expenses under due acknowledgment in a properly maintained CIC/POSTS/A/2018/119469 Page 7 register, instead of simply destroying them after the expiry of period of retention. The Commission views that this will help not only the owners or persons concerned with the record or their legal representatives to get their original documents, but also prevents RTI requests on this point by any person whatsoever.

SD/-

(M.Sridhar Acharyulu)
Central Information Commissioner

CIC/POSTS/A/2018/119469

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