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Disproportionate Diversion of Resources

Disproportionate Diversion of Resources under RTI Act 2005

Section 7 (9) of RTI Act 2005 reads as under:

“An information shall ordinarily be provided in the form in which it is sought unless it would disproportionately divert the resources of the public authority or would be detrimental to the safety or preservation of the record in question.”

In following cases it has been decided by CENTRAL INFORMATION COMMISSION, NEW DELHI that Section 7(9) of the Act does not provide ground for denial of information.

1. Decision No.CIC/OP/A/2009/000204-AD dated 12-01- 2010

.....As for information having been denied since its is voluminous, the Commission holds that Section 7(9) of the Act does not allow denial of information but denial of providing the same in the form in which it has been sought in the event this leads to disproportionate diversion of resources of the Public Authority.....

2. Decision dated 12-03-2009 in appeal No.CIC/WB/A/2007/01042:

This would mean only that allowance is given where compiling information already held would present the difficulties described in the law to the public authority concerned. Information can in no case be denied u/s 7(9), which has only a qualifying clause and no exemption such as is provided u/s 8 sub sec. (1). The decision of Dr. Aditya Arya is, therefore, flawed, and is set aside. He will now review his decision in light of the above observations and ensure that appellant Shri Ajit Kar is provided the information to which he is entitled under the law within twenty working days of the date of issue of this Decision Notice. Appellant Shri Ajit Kar specifically invited our attention to the information sought in Para 30, which may be taken into consideration by the First Appellate Authority Dr. Aditya Arya, Jt. Commissioner of Police (Operations) during his examination. The appeal is thus allowed.

3. Decision dated 25.2.06 in appeal No.10/1/2005-CIC

“ ...Sec 7(9) of the Act does not authorize a public authority to deny information. It simply allows the authority to provide the information in a form easy to access....”

4. Decision dated 26.3.2008 in appeal No.CIC/WB/A/2007/00349

“..It was explained to respondents that section 7(9) does not authorize refusal of information but only disclosure in a form other than that asked for, for reasons given ion that Section..”

5. Decision dated 9.1.2009 in appeal No.CIC/OK/A/2008/01256 “...The denial of information on the basis of Section 11 and Section 7 (9) of the Act was without any basis in law. Denial of information can only be under Section 8 (1) or Section 9. Section 11 sets out a procedure for giving the opportunity to a third party to give his objections and Section 7 (9) can be invoked only to state that information in the format demanded by the appellant is not possible. However the PIO would have to offer the information in an alternate format when invoking Section 7 (9)...”

6. Decision dated 22.10.08 in Appeal No. CIC/WB /A/2007/00528-SM

“...It is true that the Section 7(9) provides that information sought in a particular form should be

provided in that form unless it would disproportionately divert the resources of the public authority or would be detrimental to preservation of record in question. That means, the public authority concerned should provide the information sought in a different form if he thinks, on reasonable grounds, that the form in which it has been sought would disproportionately divert the resources of the public authority. This provision in Section 7 is not a license to deny information. ..”

7. Decision No. CIC/OK/A/2008/01256/SG/0937 dated 09-01-2009.

Denial of information can only be under Section 8 (1) or Section 9. Section 11 sets out a procedure for giving the opportunity to a third party to give his objections and Section 7 (9) can be invoked only to state that information in the format demanded by the appellant is not possible. However, the PIO would have to offer the information in an alternate format when invoking Section 7 (9). Besides the queries do not lend themselves at all to using Section 11 or Section 7 (9). The PIO is directed to give the information to the appellant. He is also warned that denying information in this casual manner will invoke the penal provisions of Section 20 of the Act. _

8. Extract from the judgement dated 07-01-2010 of HIGH COURT OF JUDICATURE AT MADRAS in W.P.NO.20372 of 2009 and M.P.NO.1 OF 2009

Available at <http://judis.nic.in/chennai/qrydisp.asp?tfnm=22544>

“13. The other objections that they are maintaining a large number of documents in respect of 45 departments and they are short of human resources cannot be raised to whittle down the citizens' right to seek information. It is for them to write to the Government to provide for additional staff depending upon the volume of requests that may be forthcoming pursuant to the RTI Act. It is purely an internal matter between the petitioner archives and the State Government. The right to information having been guaranteed by the law of Parliament, the administrative difficulties in providing information cannot be raised. Such pleas will defeat the very right of citizens to have access to information. Hence the objections raised by the petitioner cannot be countenanced by this court. The writ petition lacks in merit.”

9. Judgement dated 30-08-2010 of Hon’ble Kerala High Court in WP(C).No. 6532 of 2006(C)

25. The Standing Counsel for the Public Service Commission

also raises a contention that if all the candidates apply for copies of

answer papers, it would disproportionately divert the resources of the public authority and therefore disclosure of the same is exempt under Section 7(9) of the Act. I am of the opinion that the said contention is misconceived. That Section reads thus:

"7. Disposal of request

.....
.....
.....
.....

(9) An information shall ordinarily be provided in the form in which it is sought unless it would disproportionately divert the resources of the public authority or would be detrimental to the

safety or preservation of the record in question."

That Section does not even confer any discretion on a public authority to withhold information, let alone any exemption from disclosure. It only gives discretion to the public authority to provide the information in a form other than the form in which the information is sought for, if the form in which it is sought for would disproportionately divert the resources of the public authority. In fact there is no provision in the Act to deny information on the ground that the supply of the information would disproportionately divert the resources of the (xvii), the object of which is to facilitate easy supply of the by them for valuation of answer papers of students and the same has been followed by another learned single judge in a common judgment in W.P.(C) Nos. 33443/2007 & 6836/2009..... __

NOTE: Despite Office Memorandum NO.12/9/2009-IR dated 24-05-2010 of Department of Personnel and Training, Govt. of India, PIO cannot refuse information. He has to provide it in the form in which it is available. DoPT cannot amend RTI Act 2005.

Gist

Thus section 7.9 relates to only form in which information has to be supplied. If supplying information in form requested by applicant does not disproportionately divert resources of public authority, then information has to be supplied in the requested form only. However if there is disproportionate diversion of resources to supply in requested form, then information has to be supplied in the form it is available without changing the form. PIO will have to justify how there is disproportionate diversion of resources in changing form from existing form to requested form.

For example, if the applicant has desired information in CD form and public authority is holding information in hard copies only, then CPIO has to supply in CD form, if there is no disproportionate diversion of resources. However, if large number of papers are to be scanned which may require huge resources [say by way of manpower etc] then PIO can supply in hard copies only and not in CD.

Disproportionate diversion of resources can always be disputed by the applicant by factoring probable expenditure in changing form and total annual administrative expenditure of public authority.

Please also peruse:

<http://www.rtiindia.org/forums/blogs/abhi987/3571-understanding-section-7-9-rti-act-2005>

More Common terms under RTI

- [Annual Confidential Report](#)
- [Citizenship under RTI Act 2005](#)
- [Competent Authority under RTI Act](#)
- [Composite Petition under RTI Act](#)
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- [Vicarious Liability](#)

[TREESA IRISH vs. THE CENTRAL PUBLIC INFORMATION OFFICER \[WP\(C\).No. 6532 of 2006\]](#)

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Last update: **2023/04/15 10:53**

