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Claim of file missing or not traceable has no legality as it is not recognized as exception by RTI Act. By practice 'missing file' cannot be read into as exception in addition to exceptions prescribed by RTI Act. It amounts to breach of Public Records Act, 1993 and punishable with imprisonment up to a term of five years or with fine or both.

Public Authority has a duty to initiate action for this kind of loss of public record, in the form of 'not traceable' or 'missing'. The Public Authority also has a duty to designate an officer as Records Officer and protect the records. A thorough search for the file, inquiry to find out public servant responsible, disciplinary action and action under Public Records Act, reconstruction of alternative file, relief to the person affected by the loss of file are the basic actions the Public Authority is legitimately expected to perform.

Duty of the public authority

The public authority has a duty to designate "**Public Records Officer**" as per Public Records Act 1993. This Act is made to regulate the management, administration and preservation of public records of the Central Government, Union Territory Administrations, public sector undertakings, statutory bodies and corporations, commissions and committees constituted by the Central Government or a Union Territory Administration and matters connected therewith or incidental thereto.

The definition of "Public Records" U/S 2(e) of Public Records Act, 1993 (PRA 1993) is almost identical with the definition of Records under the RTI Act 2005. These Records can be sought under the RTI Act, 2005 as "Information" through RTI Application.

S 5 (1) Every records creating agency shall nominate one of its officers as records officer to discharge the functions under this Act.

Sec 6(1) The records officer shall be responsible for

1. Proper arrangement, maintenance and preservation of public records under his charge;
2. periodical review of all public records and weeding out public records of ephemeral value;
3. appraisal of public records which are more than twenty five years old in consultation with the National Archives of India or, as the case may be, the Archives of the Union territory with a view to retaining public records of permanent value;
4. destruction of public records in such manner and subject to such conditions as may be prescribed under subsection (1) of section 8;
5. compilation of a schedule of retention for public records in consultation with the National Archives of India or, as the case may be, the Archives of the Union Territory;
6. periodical review for downgrading of classified public records in such manner as may be prescribed;
7. adoption of such standards, procedures and techniques as may be recommended from time to time by the National Archives of India for improvement of record management system and

- maintenance of security of public records;
- 8. compilation of annual indices of public records;
- 9. compilation of organizational history and annual supplement thereto;
- 10. assisting the National Archives of India or, as the case may be, the Archives of the Union territory for public records management;
- 11. submission of annual report to the Director General or, as the case may be head of the Archives in such manner as may be prescribed;
- 12. transferring of records of any defunct body to the National Archives of India or the Archives of the Union Territory, as the case may be, for preservation.

Sec 7(1) The records officer shall, in the event of any unauthorized removal, destruction, defacement or alteration of any public records under his charge, forthwith take appropriate action for the recovery or restoration of such public records.

S 9. Whoever contravenes any of the provisions of section 4 or section 8 shall be punishable with imprisonment for a term which may extend to five years or with fine which may extend to ten thousand rupees or with both.

The public records act and rules ban government departments from destroying documents that are more than 25 years old, unless they have been “appraised”.

The National Archives of India, under the Culture Ministry, and similar bodies at the State level are required to keep tabs on “public records”, and help government departments separate worthless files from those that must be saved.

The documents considered to be of “permanent nature” — but no longer required by the department which created them — are then shifted to the archives for safekeeping. There, they can be seen by research scholars.

Loss of records that are required to be kept and maintained permanently, if considered as evidence in a case, its missing should invite criminal complaint against officials under sections 201 of IPC (punishable with imprisonment which is directly proportional to the seriousness of the offence charged from 7 years to 10 years and for life).

If these files are part of public record and forms evidence, in any case, its destruction would be a serious crime of destruction of evidence. Otherwise, also it brings in the liability under Public Records Act 1993 which can extend to imprisonment up to five years and up to fine of Rs 10,000. Reading Right to Information Act, 2005 with Public Records Act, 1993 and Indian Penal Code, will lead to serious consequences for those who lose the records, besides the disciplinary action from the top administration.

High Court Decision

Hon’ble Delhi High Court in Union Of India Vs. Vishwas Bhamburkar [2013(297)ELT500(Del.)] with regard to the plea of the Respondent authority of record being not traceable, has observed as follows :

“5. The Right to Information Act is a progressive legislation aimed at providing, to the citizens, access to the information which before the said Act came into force could not be claimed as a matter of right. The intent behind enactment of the Act is to disclose the information to the maximum extent possible

subject of course to certain safeguards and exemptions. **Therefore, while interpreting the provisions of the Act, the Court needs to take a view which would advance the objectives behind enactment of the Act, instead of taking a restrictive and hypertechnical approach which would obstruct the flow of information to the citizens.**

6. This can hardly be disputed that if certain information is available with a public authority, that information must necessarily be shared with the applicant under the Act unless such information is exempted from disclosure under one or more provisions of the Act. It is not uncommon in the government departments to evade disclosure of the information taking the standard plea that the information sought by the applicant is not available. **Ordinarily, the information which at some point of time or the other was available in the records of the government, should continue to be available with the concerned department unless it has been destroyed in accordance with the rules framed by that department for destruction of old record. Therefore, whenever an information is sought and it is not readily available, a thorough attempt needs to be made to search and locate the information wherever it may be available. It is only in a case where despite a thorough search and inquiry made by the responsible officer, it is concluded that the information sought by the applicant cannot be traced or was never available with the government or has been destroyed in accordance with the rules of the concerned department that the CPIO/PIO would be justified in expressing his inability to provide the desired information. Even in the case where it is found that the desired information though available in the record of the government at some point of time, cannot be traced despite best efforts made in this regard, the department concerned must necessarily fix the responsibility for the loss of the record and take appropriate departmental action against the officers/officials responsible for loss of the record.** Unless such a course of action is adopted, it would be possible for any department/office, to deny the information which otherwise is not exempted from disclosure, wherever the said department/office finds it inconvenient to bring such information into public domain, and that in turn, would necessarily defeat the very objective behind enactment of the Right to Information Act.

7. Since the Commission has the power **to direct disclosure of information provided, it is not exempted from such disclosure, it would also** have the jurisdiction to direct an inquiry into the matter wherever it is claimed by the PIO/CPIO that the information sought by the applicant is not traceable/readily traceable/currently traceable. Even in a case where the PIO/CPIO takes a plea that the information sought by the applicant was never available with the government but, the Commission on the basis of the material available to it forms a prima facie opinion that the said information was in fact available with the government, it would be justified in directing an inquiry by a responsible officer of the department/office concerned, to again look into the matter rather deeply and verify whether such an information was actually available in the records of the government at some point of time or not. After all, it is quite possible that the required information may be located if a thorough search is made in which event, it could be possible to supply it to the applicant. Fear of disciplinary action, against the person responsible for loss of the information, will also work as a deterrence against the wilful suppression of the information, by vested interests. It would also be open to the Commission, to make an inquiry itself instead of directing an inquiry by the department/office concerned. Whether in a particular case, an inquiry ought to be made by the Commission or by the officer of the department/office concerned is a matter to be decided by the Commission in the facts and circumstances of each such case."

CIC Decision

Based on the above discussion, the Commission thus holds: Unless proved that record was destroyed as per the prescribed rules of destruction/ retention policy, it is deemed that record continues to be held by public authority. Claim of file missing or not traceable has no legality as it was not recognised as exception by RTI Act. By practice 'missing file' cannot be read into as exception in addition to exceptions prescribed by RTI Act. It amounts to breach of Public Records Act, 1993 and punishable with imprisonment up to a term of five years or with fine or both. Public Authority has a duty to initiate action for this kind of loss of public record, in the form of 'not traceable' or 'missing'. The Public Authority also has a duty to designate an officer as Records Officer and protect the records. A thorough search for the file, inquiry to find out public servant responsible, disciplinary action and action under Public Records Act, reconstruction of alternative file, relief to the person affected by the loss of file are the basic actions the Public Authority is legitimately expected to perform.

The Commission, therefore, deems Public Authority as continuously holding the information, until and unless they prove that the information was destroyed in accordance with the existing rules provided for the same. Any claim of defence that the file is missing without any efforts to trace the same, would amount to denial of information which can be dealt with as per Section 20 of Right to Information Act, 2005.

Download the Decision: [CIC Decision on Missing files under Right to Information Act](#)

More Common terms under RTI

- [Annual Confidential Report](#)
- [Citizenship under RTI Act 2005](#)
- [Competent Authority under RTI Act](#)
- [Composite Petition under RTI Act](#)
- [Deemed PIO](#)
- [Disproportionate Diversion of Resources](#)
- [What is Fiduciary Relationship](#)
- [File Notings under RTI Act](#)
- [Grounds for Rejection](#)
- [What is Information under RTI Act](#)
- [Investigation/Inquiry reports under RTI](#)
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- [Third Party under RTI](#)
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- [Vicarious Liability](#)

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