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# Pendency of Investigation



The authority withholding information must show satisfactory reasons as to why the release of such information would hamper the investigation process. Such reasons should be germane, and the opinion of the process being hampered should be reasonable and based on some material.

**.....The 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. This burden the Respondent has failed to discharge.”**

**Hon’ble High Court Delhi in Bhagat Singh v. CIC & Ors. <sup>1)</sup> has held that:**

*“13. Access to information, under Section 3 of the Act, is the rule and exemptions under Section 8, the exception. Section 8 being a restriction on this fundamental right, must therefore be strictly construed. It should not be interpreted in manner as to shadow the very right itself. Under Section 8, exemption from releasing information is granted if it would impede the process of investigation or the prosecution of the offenders. It is apparent that the mere existence of an investigation process cannot be a ground for refusal of the information; the authority withholding information must show satisfactory reasons as to why the release of such information would hamper the investigation process. Such reasons should be germane, and the opinion of the process being hampered should be reasonable and based on some material. Sans this consideration, Section 8(1)(h) and other such provisions would become a haven for dodging demands for information.”*

**Hon’ble High Court of Delhi in B.S. Mathur v. PIO <sup>2)</sup> had held that :**

*“19. The question that arises for consideration has already been formulated in the Court's order dated 21st April 2011: Whether the disclosure of the information sought by the Petitioner to the extent not supplied to him yet would “impede the investigation” in terms of Section 8(1)(h) RTI Act“ The scheme of the RTI Act, its objects and reasons indicate that disclosure of information is the rule and non-disclosure the exception.*

*A public authority which seeks to withhold information available with it has to show that the information sought is of the nature specified in Section 8 RTI Act. As regards Section 8(1)(h) RTI Act, which is the only provision invoked by the Respondent to deny the Petitioner the information sought by him, it will have to be shown by the public authority that the information sought “would impede*

*the process of investigation.” The mere reproducing of the wording of the statute would not be sufficient when recourse is had to Section 8(1)(h) RTI Act. The burden is on the public authority to show in what manner the disclosure of such information would 'impede' the investigation.....*

*22. ....The 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. This burden the Respondent has failed to discharge.”*

**Delhi High Court “Adesh Kumar vs Union Of India & Ors. on 16 December, 2014” has held that <sup>3)</sup>**

*“10. A bare perusal of the order passed by the FAA also indicates that the aspect as to how the disclosure of information would impede prosecution has not been considered. Merely, citing that the information is exempted under Section 8(1)(h) of the Act would not absolve the public authority from discharging its onus as required to claim such exemption. Thus, neither the FAA nor the CIC has questioned the Public Authority as to how the disclosure of information would impede the prosecution.”*

## Other case laws and exceptions

- 1. Information can not be disclosed if action for prosecution of offenders is initiated <sup>4)</sup>**
- 2. Information can not be disclosed to an offender against whom prosecution under Cr PC is lodged in the court of law. <sup>5)</sup>** - Public authority cannot be obligated to explain its process of investigation and decision making to the litigant with whom it is engaged in a legal matter. <sup>6)</sup>
- 3. When investigations are in progress, documents can not be disclosed.** The case of Dr. B.L. Malhotra Vs. The National Small Industries Corporation Ltd. <sup>7)</sup>
- 4. Information on ongoing investigation (Sections 8(1)(g) and 8(1)(h) of the RTI Act.** In the case of Ravinder Kumar vs. B.S. Bassi, Joint Commissioner, Police <sup>8)</sup>, it ruled that the disclosure of information, in cases under investigation by the police was exempted, according to the provisions of Sections 8(1)(g) and 8(1)(h) of the RTI Act. It is justified not to disclose information in cases of ongoing police investigations (which have not yet been completed), because such a disclosure could hamper the investigation process.
- 5. Disclosure in case of pending departmental enquiry Section 8(1)(h) of the RTI Act.** The case of Sarvesh Kaushal Vs. F.C.I and others <sup>9)</sup>. The departmental enquiry, which was in progress against him, was a pending investigation under law, and the same attracted the provisions of Section 8(1)(h).
- 6. Public authority to disclose information if public interest out weighs the harm to the protected interests (Section 8 (1)(g) and 8(1)(h) of the RTI Act).** The case of S.R. Goyal vs. PIO, Services Department, Delhi <sup>10)</sup>
- 7. There is no justification at this stage to interfere with the process of Disciplinary Proceedings, which is a quasi-judicial function. The denial of information sought under Section 8(1)(h) of the RTI Act, 2005 is therefore justified.** The case of Shri B.S. Manian Vs. Department of Posts <sup>11)</sup>
- 8. Disclosure of information to a person involved and responsible for contributing to the fraud is exempt under Section 8(1)(h) of the RTI Act, 2005. <sup>12)</sup>**

**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
  - Justification for Denial of Information is mandatory
  - Missing Files under RTI Act
  - Pendency of Investigation
  - Prescribed
  - Privacy Rights of Public Servants
  - What is Privacy under RTI
  - Public Authority
  - What is Public Interest
  - Refund of Fees
  - RTI Act or Statutory Rules for giving information under RTI Act 2005
  - Severability
  - Substantially Financed
  - Suo Moto Disclosure under RTI
  - Third Party under RTI
  - Transfer of Application to other PIO
  - Vicarious Liability
- 
- Twitter
  - Facebook
  - Google+
  - LinkedIn
  - Tumblr
  - Reddit
  - StumbleUpon
  - Telegram
  - Email

1)

[WP\(C\) 3114/2007, Bhagat Singh Vs. CIC & Anrs](#)

2)

[Hon'ble High Court of Delhi in B.S. Mathur v. PIO in W.P. \(C\) 295 of 2011 dated 03.06.2011](#)

3)

[Adesh Kumar Vs Union of India](#)

4)

[Shri Vinod Kumar Vs Directorate General of Central Excise Intelligence \(No.CIC/AT/A/2010/000910/SS dated 31.05.2011](#)

5)

[Case No. CIC/SS/A/2011/000684 Shri L.S. Chandalia V/s Directorate General of Central Excise](#)

Intelligence, New Delhi

<sup>6)</sup>

The case of Shri Milap Choraria V/s CBDT(No.CIC/AT/C/2008/00025 dated 27-7-2009)

<sup>7)</sup>

No. 783/IC(A)2007 dated 06.06.2007

<sup>8)</sup>

F.No. CIC/AT/A/2006/00004, dated 30.06.2006

<sup>9)</sup>

Appeal Nos. 243 /ICPB /2006 and 244 / ICPB /2006, dated 27.12.2006

<sup>10)</sup>

S.R. Goyal vs. PIO, Services Department, Delhi (Appeal No. CIC / WB/A/20060523, dated 26.3.2007

<sup>11)</sup>

Shri B.S. Manian Vs. Department of Posts, (Decision No. 92/IC(A)/2007 F. No.CIC/PB/A/2007/00405 dated, 20.06.2007

<sup>12)</sup>

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Last update: **2018/06/03 05:38**

