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Privacy Rights of Public Servants

Hon'ble Delhi High Court¹⁾ with regard to privacy rights of Public servants had observed that :

A bare consideration of the right of individuals, including public servants, to privacy would seem to suggest that privacy rights, by virtue of [Section 8\(1\)\(j\)](#) whenever asserted, would have to prevail. However, that is not always the case, since the public interest element, seeps through that provision.

Thus when a member of the public requests information about a public servant, **a distinction must be made between “official” information inherent to the position and those that are not**, and therefore affect only his/her private life. This balancing task appears to be easy; but in practice, not so, having regard to the dynamics inherent in the conflict. Though it may be justifiably stated that protection of the public servant's private or personal details as an individual, is necessary, provided that such protection does not prevent due accountability, there is a powerful counter argument that public servants must effectively waive the right to privacy in favour of transparency.

Thus, if public access to the personal details such as identity particulars of public servants, i.e. details such as their dates of birth, personal identification numbers, or other personal information furnished to public agencies, is requested, the balancing exercise, necessarily dependant and evolving on case by case basis may take into account the following relevant considerations, i.e.

- whether the information is deemed to comprise the individual's private details, unrelated to his position in the organization, and,

1. whether the disclosure of the personal information is with the aim of providing knowledge of the proper performance of the duties and tasks assigned to the public servant in any specific case;
2. whether the disclosure will furnish any information required to establish accountability or transparency in the use of public resources.

A private individual's right to privacy is undoubtedly of the same order as that of a public servant. Therefore, it would be wrong to assume that the substantive rights of the two differ. Yet, inherent in the situation of the latter is the premise that he acts for the public good, in the discharge of his duties, and is accountable for them.

The character of protection, therefore, which is afforded to the two classes public servants and private individuals, has to be viewed from this perspective. The nature of restriction on the right to privacy is therefore of a different order;

in the case of private individuals, the degree of protection afforded is greater; in the case of public servants, the degree of protection can be lower, depending on what is at stake. Therefore, if an important value in public disclosure of personal information is demonstrated, in the particular facts of a case, the protection afforded by Section 8(1)(j) may not be available; in such case, the information officer can proceed to the next step of issuing notice to the concerned public official, as a “third party” and consider his views on why there should be no disclosure.

The onus of showing that disclosure should be made, is upon the individual asserting it; he cannot merely say that as the information relates to a public official, there is a [public interest](#) element. Adopting such a simplistic argument would defeat the object of Section 8(1)(j); the legislative intention in carving out an exception from the normal rule requiring no “locus” by virtue of Section 6, in the case of exemptions, is explicit through the non obstante clause.

The article on [What is Privacy under RTI](#) may also be read.

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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¹⁾

Vijay Prakash Vs. Union of India [AIR2010Delhi7]

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