

CENTRAL INFORMATION COMMISSION
2nd Floor, 'B' Wing, August Kranti Bhavan,
Bhikaji Cama Place, NEW DELHI-110 066
TEL: 011-26186535

Complaint No. CIC/CC/C/2016/000029

Complainant:

Mr. Venkatesh Nayak,
R/o. 55A, 3rd Floor,
Siddharth Chamber-1,
Kalu Sarai,
New Delhi-110016.

Respondent:

Central Public Information Officer,
Ministry of Home Affairs,
North Block,
New Delhi 110001.

Date of Hearing:
Date of Decision:

20.09.2016
20.09.2016

ORDER

RTI application:

1. The complainant filed RTI application dated 23.9.2015 seeking information/documents related to framework agreement between the Government of India and the National Socialist Council of Nagaland, a list of all files including electronic files and emails indicating the subject matter, and date of opening of each file in relation to the said framework agreement along with total number of pages. The CPIO responded on 18.12.2015. The complainant filed a complaint on 30.12.2015 with the Commission.

2. Earlier the matter was heard in the Commission on 27.7.2016. The respondent was directed to give detailed justification on points 1 to 4 and 6 to 7 of the RTI application to the Commission with a copy to the complainant. The respondent was also directed to provide information on

point 5 of the RTI application or justification for its denial if they withhold the information.

3. Both the parties gave their written submissions.

4. The respondent Ministry of Home has submitted written submission as under:-

“2. The detailed justification of MHA i.r.o point No. 1 to 4 of the RTI application is given as below:

“The issue being highly sensitive and the final agreement is yet to be reached, a copy of the Framework Agreement cannot be provided in national security interest. Hence, the information is exempted under Section 8(1) (a) of Chapter-II of the RTI Act, 2005.”

3. Reply of MHA i.r.o point No.5 of the RTI application is as under:-

“Government of India Interlocutor is also the Chairman, Joint Intelligence Committee, National Security Council Secretariat. He is not paid any remuneration or allowance on account of Interlocutor’s responsibility. The following officials are working in the office of Govt. of India Representative for Naga Peace Talks. Their salary details are enclosed as Annexure-A.

1. Shri S. Sachdeva-Consultant

2. Shri M.L. Saha-Consultant.”

4. The detailed justification of MHA i.r.o. point No.6 of the RTI application is given as below:

“The issue is sensitive and of national security and cannot be revealed. Hence, the information is exempted under Section 8(1)(a) of Chapter-II of the RTI Act, 2005”.

5. The detailed justification of MHA i.r.o. point No.7 of the RTI application is given as below:-

“NCN representative made their own arrangements for travel and logistics”.

In view of above, it is requested that the appeal may kindly be disposed off.”

5. The written submission of complainant is as follows:

“1) that this Complainant is not satisfied with the justification provided by the Respondent Public Authority for reasons explained below, onwards of para #5, and is desirous of pressing this complaint before this Hon’ble Commission for making a determination as to whether or not to allow the relief prayed for in the complaint dated 29/11/2015 which has resulted in the instant case;

2) that the Respondent Public Authority has given the following similarly worded “detailed justification” for denying access to information sought at points #1 to 4 and 6 of the Complainant’s RTI application dated 23/09/2015:

“The issue being highly sensitive and the final agreement is yet to be reached, a copy of the Framework Agreement cannot be provided in national security interest. Hence the information is exempted under Section 8(1)(a) of Chapter II of the RTI Act, 2005”;

3) that this Complainant, for reasons explained onwards of para #5.1, below, believes that the Respondent Public Authority has not adequately discharged its burden of proving why the information ought not to be disclosed under the RTI Act, despite an express direction to so do by this Hon’ble Commission:

3.1) that Section 8(1)(a) of the RTI Act prescribes a strict harm test for the purpose of denying access to information on the grounds mentioned therein. Section 8(1)(a) is reproduced below:

“8. (1) Notwithstanding anything contained in this Act, there shall be no obligation to give any citizen,—

(a) information, disclosure of which would prejudicially affect the sovereignty and integrity of India, the security, strategic, scientific or economic interests of the State, relation with foreign State or lead to incitement of an offence; [emphasis supplied];

3.2) that a bare perusal of Section 8(1)(a) of the RTI Act cited above reveals that to be able to legitimately claim the protection of that exemption clause, a public authority making such a claim must show how disclosure of information would 'prejudicially affect' any of the interests protected therein. Nothing in the "detailed justification" submitted by the Respondent Public Authority comes close to an explanation as to how any of the interests protected under Section 8(1)(a) would be attracted by disclosure of information sought in the RTI application dated 23/09/2015. In fact the Respondent Public Authority does not even claim that disclosure would "prejudicially affect" the ongoing negotiations. Instead the Respondent Public Authority has only stated that the information cannot be provided in "national security interest". This Complainant humbly submits that this is not adequate justification for the purpose of invoking the protection of Section 8(1)(a) of the RTI Act to reject access to information. The Respondent has not satisfactorily shown what prejudice would be caused by disclosure of the requested information;

3.3) that to the best of this Complainant's knowledge there is no case law emanating from the High Courts or the Supreme Court of India regarding the manner in which Section 8(1)(a) of the RTI Act may be legitimately invoked to reject access to information. However, the jurisprudence developed around other exemptions

listed in the RTI Act can serve as a guide for the present case. For example, in the matter of *Bhagat Singh vs Chief Information Commissioner & Ors.*, [146 (2008) DLT 385] the Hon'ble Delhi High Court was pleased to observe as follows regarding the harm test contained in Section 8(1)(h) of the RTI Act:

“13. ... 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 the haven for dodging demands for information.” [emphasis supplied];

3.4) Further, in the matter of *Adesh Kumar vs Union of India & Ors.*, WP (C) No. 3543/2014, judgement dated 16/12/2014, another Bench of the Hon'ble Delhi High Court was pleased to make the following observations on the manner of application of the harm test contained in Section 8(1)(h) of the RTI Act:

“6. A plain reading of the aforesaid provision [Section 8(1)(h)] indicates that information which would impede the process of investigation or apprehension or prosecution of offenders could be denied. In order to deny information, the public authority must form an affirmative opinion that the disclosure of information would impede investigation, apprehension or prosecution of offenders; a mere perception or an assumption that disclosure of information may impede prosecution of

offenders is not sufficient. In the present case, neither the FAA nor the CIC has considered as to how the information as sought for would impede the process of investigation or apprehension or prosecution of the petitioner and other accused...

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.” [emphasis supplied];

3.5) Further, in the matter of *Union of India vs. Sh. O. P. Nahar*, WP (C) 3616/2012, judgement dated 22/04/2015, another Bench of the Delhi High Court was pleased to explain in the following words, the true burden that rests on a public authority for proving that an exemption was applicable to the information requested,:

“13. A careful reading of the provision would show that the holder of the information can only withhold the information if, it is able to demonstrate that the information would “impede” the process of investigation or apprehension or prosecution of the offenders.

14. In the present case, the facts, as set out hereinabove, clearly demonstrate that the investigation is over. The charge sheet in the case was filed, as far back as on 31.12.2010.

14.1 The question then is, would the information sought for by the respondent “impede” the respondent’s apprehension or prosecution. The respondent is in court and he says that he has been granted bail by the competent court. Therefore, *prima facie*, the view of the competent court, which is trying him, is that there is no impediment in apprehending the respondent, and that he would be available as and when required by the court. The petition makes no averments as to how the information sought for by the respondent would prevent his prosecution.” [emphasis supplied];

4) that the Respondent Public Authority has given two reasons for denying access to information sought at Points #1-4 and 6 of the RTI application dated 23/09/2015, namely- that ‘the issue is highly sensitive’ and that the final agreement is yet to be reached. To the best of these Appellant’s understanding, the Respondent Public Authority has not been able to establish a reasonable nexus between these concerns and the prejudice to the interests protected under Section 8(1)(a) of the RTI Act. The Respondent Public Authority has not shown in any detailed manner how any of the protected interests under Section 8(1)(a) will be attracted. The agreement is being negotiated with the ostensible purpose of enhancing national security by reaching a consensus on contentious issues which had earlier made the non-State actors take up arms against the Indian State. Surely, the people of India including this Complainant on whose behalf the negotiations are being conducted have the right to know the broad contours of the framework accord on the basis on which further negotiations are being conducted. It is hereby clarified that this Complainant has not sought any information about the subsequent negotiating positions taken by the Government of India after the signing of the

framework agreement. Therefore the question of jeopardising the ongoing negotiations does not arise;

5) that, that the non-State actors with whom the negotiations are being conducted by Government of India have not elected to hold their silence on the said negotiations is evident from multiple media reports published this year. In an interview published on 08 July, 2016, on its front page, a prominent English language national daily, reported as follows:

“Thuingaleng Muivah (82), general secretary of the National Socialist Council of Nagalim (Isak-Muivah), which signed a framework agreement with the government last year, told *The Hindu* that the outfit had not given up its demand for sovereignty.

Mr. Muivah also said that a separate flag and passport for Nagas was not just a “demand” but a right as the “Nagas were never under Indian rule.”

“No, no. The understanding on shared sovereignty has been arrived [at] because the uniqueness of Naga history is recognised. We are not giving up on the demand of sovereignty,” Mr. Muivah said in a rare interview since the signing of the agreement, and perhaps the first after the death of NSCN (I-M) chairman Isak Chishi Swu.”

Earlier, another prominent English language national daily reported as follows:

“VS Atem, an emissary of the NSCN-IM’s central leadership and a key figure in the talks, had told HT earlier: “If Kashmir can have a separate flag, why not Nagas? China also has separate flags for Macau, Hong Kong and Taiwan.”

6) that it is extremely unfortunate that the popularly elected Government, represented by the Respondent Public Authority, that is negotiating with non-State actors, has chosen to remain silent on the framework agreement whereas the non-State actors have full sway over the print and electronic media revealing their positions publicly, as shown above. Disclosure of information sought in the RTI application dated 23/09/2015 will have the effect of making official known the mind of the Government of India, thereby assuaging any concerns that the citizenry may have about the negotiations based on skewed information being released in the public domain from non-official sources;

7) that it is crucial for the citizenry, of which this Complainant is a part, to have access to official information about the framework agreement on the basis of which negotiations are being conducted with non-State actors. Should this Hon'ble Commission become impressed by the submission of the Respondent Public Authority that the information sought at points #1-4 and 6 of the RTI application dated 23/09/2015 is not fit for disclosure, it may be pleased to apply the public interest test contained in Section 8(2) of the RTI Act to direct the disclosure of all information in the larger public interest on the grounds argued at paras # 5.3, 6 & 7 above. The information sought in the Complainant's RTI application dated 23/09/2015 is essential for the citizenry to conduct an informed debate on the core issue of the settlement of the long-standing dispute. The objective of creating an informed citizenry is mentioned in the Preamble of the RTI Act itself;

8) that the response provided by the Respondent Public Authority in relation point #5 of the RTI application dated 23/09/2015 is also unsatisfactory. This Complainant has not sought the compensation package provided to the Government Interlocutor

with specific relation to the conduct of the negotiations with the non-State actors. The Query at #5 of the RTI application is general in nature- it is about the compensation package and remuneration package provided to the Government Interlocutor, *per se*. The Respondent Public Authority has not provided this information in its response. As taxpayer funds sourced from citizens like this Complainant are being spent on making payments to the Government Interlocutor, the Complainant has every right to know the details of the compensation package paid to the Government Interlocutor. Further, as the Respondent Public Authority has not invoked any exemption under the RTI Act to reject access to this information in its “detailed justification”, this Hon’ble Commission may please direct the CPIO to disclose detailed information about the compensation package and monthly remuneration paid to the Government Interlocutor.

Amended prayers:

9) In view of the long duration for which the disposal of the matters raised in the RTI application dated 23/09/2015, that forms the basis of this complaint, has been pending, and with a view to avoiding further imposition on the precious time and resources of this Hon’ble Commission by coming back to it with an appeal against any future decision of the Respondent Public Authority, and also because the Respondent Public Authority has supplied some information in relation to point #5 of the said RTI application, this Complainant seeks this Hon’ble Commission’s leave to amend prayer #3 included in the Complaint dated 29/11/2015, as follows:

3) that this Hon’ble Commission may be pleased to direct the Respondent Public Authority to disclose all the information

sought in the RTI application dated 23/09/2015 for reasons argued onwards of para #5 above;

10) that this Complainant respectfully leaves it to the best judgement of this Hon'ble Commission to pass such orders, as it may find appropriate, on the remaining prayers included in the Complaint dated 29/11/2015.”

Hearing:

6. Both the parties participated in the hearing personally.

7. The complainant stated that there is inadequate justification for invoking section 8(1) (a) of the RTI Act. The respondents have not adequately explained the harm that would be caused to any of the protected interest u/s 8(1)(a) of the RTI Act. The complainant pointed out case law relating to the application of the 'harm test' explained by various High Courts while interpreting section 8(1) (h) of the RTI Act as possible guide in this case. The complainant also pointed out that the detailed justification given by the respondent seems to indicate that the records are held by the o/o the 'Government Representative of India for Naga Peace Talk'. The respondent must clarify whether that office is a separate Public Authority under the RTI Act.

8. The respondent stated that talks are still going on. They do not have the documents, which have been asked. All documents are available with the Office of the Chairman, Joint Intelligence Committee.

9. The complainant pointed out that while in the detailed justification the respondent has invoked the protection of section 8(1)(a) of the RTI Act for rejecting the request for information, during the hearing the representative of the respondent argued that they do not hold any of the records in their office. The two arguments are contradictory in nature.

10. The complainant stated that compensation package and remuneration paid to the government interlocutor are in the nature of information that should be pro-actively disclosed u/s 4(1)(b) of the RTI Act.

Discussion/Observations:

11. From the statement of the respondent Ministry of Home it appears that they do not have the documents sought for by the complainant as all documents are available with the Office of the Chairman, Joint Intelligence Committee.

12. The respondent may clarify whether the Chairman, Joint Intelligence Committee is part of the Ministry of Home or it is an independent Public Authority. The respondent may categorically indicate whether they have the documents sought for by the complainant. Further, if required, respondent may explain the harm that may be caused by disclosing the document, if they are holding it with them.

Decision:

13. The respondent is directed to take action as per para 12 above.

The matter is adjourned for hearing. A separate hearing notice will be issued to the parties.

Sd/-
(Radha Krishna Mathur)
Chief Information Commissioner

Authenticated true copy

Sd/-

(Subhash Chander Sharma)
Deputy Registrar

ADJUNCT ORDER DATED 20.01.2017

Hearing:

1. Both the parties were personally present in the hearing.
2. Earlier the matter was heard in the Commission on 20.09.2016. The respondent was directed to clarify whether the Chairman, Joint Intelligence Committee is part of the Ministry of Home or it is an independent Public

Authority. The respondent may categorically indicate whether they have the documents sought for by the complainant. Further, if required, respondent may explain the harm that may be caused by disclosing the document, if they are holding it with them.

3. The complainant had placed on record his written submissions dated 20.01.2017.

4. The respondent had sent their written submissions dated 28.12.2016, as per the direction of the Commission's order dated 20.09.2016.

5. The relevant parts of written submission of the complainant is as follows:

“a. the respondent Public Authority has also stated that for RTI queries relating to the Office of the Interlocutor and GOI Representative for Naga Peace Talks, the same will be answered by NE Division of Ministry of Home Affairs in consultation with his office. This complainant believes that the said clarification filed by the respondent Public Authority indicates clearly that the Office of the Interlocutor and GOI Representative for Naga Peace is not an independent public authority within the meaning of the term “public authority” as defined in Section 2(h) of the RTI Act. It may therefore be inferred that the Office of the Interlocutor and GOI Representative for Naga Peace Talks is an attached office to the respondent Public Authority. Further, the absence of a CPIO appointed in the office of the Interlocutor GOI Representative for Naga Peace Talks and the candid admission by the Respondent Public Authority about the existence of the consultative arrangement between the said office and itself, for the purpose of responding to RTI queries relating to the Office of the Interlocutor and GOI Representative for Naga Peace Talks, both indicate that the ultimate responsibility for making a decision on the information request contained in the instant RTI application vests in the Respondent Public Authority.

b. para 3 of the clarification submitted by the Respondent Public Authority to this Hon'ble Commission pursuant to its directions issued on 20/9/2016 clearly indicates that the CPIO of the Respondent Public Authority has consulted with the Office of the Interlocutor and GOI Representative for

Naga Peace Talks regarding the request for information in the instant RTI application.

c. that the said para #3 of the clarification submitted by the Respondent Public Authority clearly indicates that the Office of the Interlocutor and GOI Representative for Naga Peace Talks had communicated to the Respondent Public Authority that the 'document' sought in the instant RTI application is a 'secret document' and is exempt under Section 8 (1)(a) of the RTI Act.

d. that the consultation conducted by the Respondent Public Authority with the Office of the Interlocutor and GOI Representative for Naga Peace Talks regarding the contents of the instant RTI application takes the colour of assistance sought by the CPIO from any other officer under Section 5(4) of the RTI Act.

e. that the Office of the Interlocutor and GOI Representative for Naga Peace Talks has provided its opinion on whether or not disclose the information in the negative.

f. that the CPIO of the Respondent Public Authority is now required to apply her mind independently to advice received from Office of the Interlocutor and GOI Representative for Naga Peace Talks to the contents of the instant RTI application in light of the requirements for making a decision on the instant RTI application.

g. in the matter of ***J P Agrawal vs Union of India & Ors., [2011 VII AD (Del.) 625]***, the Hon'ble Delhi High Court was pleased to explain the ambit of Sections 5(4) and 5(5) vis-à-vis the statutory responsibilities of the CPIO under Section 7(1) of the RTI Act in the following terms:

"7. Section 4 of the Act obliges every public authority to publish inter alia the particulars of facilities available to citizens for obtaining information and the names, designations and other particulars of the PIOs. Section 5 requires the public authorities to designate PIO to provide information to persons requesting for information under the Act. Such PIOs, under Section 5(2) of the Act are to receive applications for information and under Section 5(3) of the Act are to deal with request from persons

seeking information and render reasonable assistance to the information seekers. The Act having required the PIOs to "deal with" the request for information and to "render reasonable assistance" to the information seekers, cannot be said to have intended the PIOs to be merely Post Offices as the Petitioner would contend. The expression "deal with", in *Karen Lambert v. London Borough of Southwark* (2003) EWHC 2121 (Admin) was held to include everything right from receipt of the application till the issue of decision thereon. Under Section 6(1) and 7(1) of the RTI Act, it is the PIO to whom the application is submitted and it is he who is responsible for ensuring that the information as sought is provided to the applicant within the statutory requirements of the Act. Section 5(4) is simply to strengthen the authority of the PIO within the department; if the PIO finds a default by those from whom he has sought information, the PIO is expected to recommend a remedial action to be taken. The RTI Act makes the PIO the pivot for enforcing the implementation of the Act.

8. Even otherwise, the very requirement of designation of a PIO entails vesting the responsibility for providing information on the said PIO. As has been noticed above, penalty has been imposed on the Petitioner not for the reason of delay which the Petitioner is attributing to Respondent No. 4 but for the reason of the Petitioner having acted merely as a Post Office, pushing the application for information received, to the Respondent No. 4 and forwarding the reply received from the Respondent No. 4 to the information seeker, without himself "dealing" with the application and/or "rendering any assistance" to the information seeker. The CIC has found that the information furnished by the Respondent No. 4 and/or his department and/or his administrative unit was not what was sought and that the Petitioner as PIO, without applying his mind merely forwarded the same to the information seeker. Again, as aforesaid the Petitioner has not been able to urge any ground on this aspect. The PIO is expected to apply his / her mind, duly analyse the material before

him / her and then either disclose the information sought or give grounds for non-disclosure. A responsible officer cannot escape his responsibility by saying that he depends on the work of his subordinates. The PIO has to apply his own mind independently and take the appropriate decision and cannot blindly approve / forward what his subordinates have done.”

h. that there is clear indication of the intention of transparency regarding the Naga Framework Agreement in the press release caused to be published by the Prime Minister’s Office on 03/08/2015 soon after the agreement was signed. The said para states:

“Within this framework agreement, details and execution plan will be released shortly.”

i. that this Complainant humbly requests for the amendment of the original prayers submitted in the original Complaint dated 29/11/2015 and as amended in the counter filed on 14/9/2016 as follows: that this Hon’ble Commission grant leave for converting this Complaint into an appeal under Section 19(3) of the RTI Act;

j. that there is precedent for the conversion of a complaint into an appeal under Section 19(3) of the RTI Act. In the matter of *Venkatesh Nayak vs CPIO, Ministry of Rural Development*, Decision No. CIC/YA/C/2015/000246/SB, dated 20/06/2016, this Hon’ble Commission in a similar case where the Respondent Public Authority denied the existence of the requested information permitted this Complainant to covert the original complaint into an appeal under Section 19(3) of the RTI Act.”

6. The respondent stated that they have consulted the DoPT that whether JIC is a Public Authority or not. The respondent further stated that NSCS is exempted under Schedule-II of the RTI Act. The respondent stated that JIC is under the control of Ministry of Home Affairs.

Discussion/observation:

7. CPIO of NE Division of MHA is the concerned CPIO under the RTI Act.
8. The Commission observed that the respondent is the concerned CPIO of NE Division. Under Section 5(4) of the RTI Act, she had taken assistance of other officer and now the CPIO is required to apply her mind independently to advice received from Office of the Interlocutor and GOI Representative for Naga Peace Talks to the contents of the RTI application for making a decision on whether to provide information.
9. It is to be further noted that in case, the respondent decides that the information is not to be disclosed, then the concerned file(s) should be made available before the Commission for perusal on the next date of hearing.
10. The Commission observed that the complainant in the present matter has pursued for getting information on his RTI request from the respondent and also prayed before the Commission that his complaint should be converted into an appeal. In view of this, the abovementioned complaint may be treated as second appeal.

Decision:

11. The respondent is directed to send their written submissions with respect to para Nos. 8 and 9 above, within 30 days from the date of this order.
12. The Deputy Registrar is directed to fix the hearing after 30 days.
Separate notice will be issued to both the parties.
Copy of this order be given free of cost to the parties.

Sd/-
(Radha Krishna Mathur)
Chief Information Commissioner

Authenticated true copy

Sd/-

(S. C. Sharma)
Deputy Registrar

ADJUNCT ORDER DATED 28.04.2017

Hearing:

1. Both the parties were personally present in the hearing.
2. The respondent was directed to comply with the Commission's order dated 20.01.2017.
3. The respondent sought for some more time to furnish explanation. The complainant agreed to the same.

Discussion/Observation:

4. Upon the request made by the respondent, she is given the last chance to give information. The respondent should appear before the Commission within 5th May, 2017 and also submit a written reply, giving information as sought as well as giving an explanation for delay in reply.

Decision:

5. The respondent is directed to take action as per para 4 above.
Copy of this order be given free of cost to the parties.

Sd/-

(Radha Krishna Mathur)
Chief Information Commissioner

Authenticated true copy

Sd/-

(S. C. Sharma)
Deputy Registrar

ADJUNCT ORDER

Date of Hearing: 03.05.2017

Date of Decision: 15.05.2017

Hearing:

1. Both the parties were personally present in the hearing. Mr. R.N. Ravi, Chairman, JIC & Interlocutor & GOI representative for Naga Peace was also present in the hearing.
2. Earlier the matter was heard by the Commission on 28.04.2017 with a direction to the respondent to comply with the Commission's order dated 20.01.2017.
3. During the hearing, the respondent has shown to the Commission relevant files on the subject.
4. The complainant stated that he had filed his RTI application with Prime Minister's Office on 23.09.2015. On 01.10.2015, the CPIO of PMO vide his reply dated 01.10.2015, transferred the RTI application of the complainant to the Home Secretary, Ministry of Home Affairs for taking appropriate action in the matter. On 08.10.2015, the MHA informed the complainant that his RTI application was forwarded to their Dir. (NE-I) division. On 28.10.2015, the CPIO of PMO again confirmed that no such information is available in their records. On 18.12.2015, the CPIO of Dir. (NE-I) division in his reply dated 18.12.2015 informed the complainant that "information sought by the complainant affect the strategic and security interests of the country, which is exempt from disclosure under Section 8(1)(a) of the RTI Act, 2005". Being aggrieved with the reply of CPIO NE-I division, the complainant filed first appeal dated 18.01.2016. The FAA vide order dated 09.03.2016, upheld the reply given by the CPIO. Being aggrieved by the reply of FAA, the complainant had filed a complaint dated 30.12.2015 with the Commission with a prayer for information sought. He further stated that 4 (four) hearings had been

conducted by the Commission in the matter. First three hearings were conducted to identify the Public Authority that has the relevant records. It took almost 2 (two) years (from the date of his RTI application) to identify the concerned Public Authority. Hence, the complainant stated that it creates doubts about the transparency within the Public Authority.

5. The complainant stated that through the Press Information Bureau (PIB) release dated 03.08.2015, he came to know about the successful conclusion of the dialogue between the Government of India and the National Socialist Council of Nagaland (Isak-Muivah). The signing of the historic “Framework Agreement” between the Government of India (GoI) and the National Socialist Council of Nagaland Isak-Muivah (NSCN-IM) on 3 August 2015 has brought glimmers of hope amongst the Naga populace and the general public. The complainant further stated that this agreement is expected to end the oldest insurgency in the country. It will restore peace and pave the way for prosperity in the North East. It will advance a life of dignity, opportunity and equity for the Naga people, based on their genius and consistent with the uniqueness of the Naga people and their culture and traditions. There is thus a larger public interest in disclosure of information on the Framework Agreement.

6. The complainant stated that there is clear indication of the intention of transparency regarding the Naga Framework Agreement in the press release of 03.08.2015, which states that “within this framework agreement, details and execution plan will be released shortly”. However, more than 18 months have passed since the signing of the Framework Agreement, and yet no further information has been released to the public till date by the Govt.

7. The complainant further stated that there is uncertainty in the policy of the Govt. of India. The Ministry of Home Affairs maintains that while the talks have been positive, a final agreement with the NSCN (IM) will be possible only later. The Union Home Ministry, in a notification on December 30, 2016 extended the Armed Forces (Special Powers) Act 1958, in the entire area of Nagaland for another six months. The Centre was of the opinion that the area comprising the state of Nagaland was in such a “disturbed and dangerous condition that the

use of armed forces in aid of the civil power is necessary". It is thus seen that there is a gap between the official talk and the situation on the ground. Hence, there was a need to put out authentic information on the Framework Agreement for information of the general public.

8. The complainant submitted newspaper clippings indicating that in the recent Manipur election campaign, many political parties had sought the disclosure of Framework Agreement. He stated that there is a growing uncertainty among the neighboring states about the contents of the Framework Agreement. This clearly indicates a state of confusion prevalent among the voters of North-East in the absence of official information on the Agreement. The complainant stressed on the 'public interest' involved in the disclosure of the sought for information.

9. The complainant contended that whatever can be disclosed to legislature or Parliament, cannot be denied to a citizen as per proviso to Section 8(1)(j) which reads as, "provided that the information, which cannot be denied to the Parliament or a State Legislature shall not be denied to any person". He stated that the Framework Agreement had been discussed by the Interlocutor with the Legislators of Nagaland and the same is, therefore, liable to be disclosed to the general public.

10. The complainant stated that transparency of all information requested in his RTI application is imperative for the public to understand that the Govt. has a coherent policy for dealing with public order issues, especially in the Northeastern part of India. Further, disclosure would ensure that any imminent law and order situation that may arise currently may be kept in check. Therefore, the disclosure of the said information will serve the public interest well.

11. The respondent Mr. R.N. Ravi, Chairman, JIC & Interlocutor & GOI representative for Naga Peace gave a detailed briefing of the Naga situation, starting from the pre-independence period till the events leading to the instant Framework Agreement. He pointed out the salient parts of the agreement. He stated that premature release of the sought for information will be prejudicial

to the national security and hence, the information is exempted under Section 8(1)(a) of the RTI Act, 2005. The respondent further stated that the Framework Agreement between the GOI and the National Socialist Council of Nagaland is targeted to achieve a solution and it will be disruptive if it is presently disclosed in the public domain. He stated that the ground situation is sensitive and fragile. The Govt. does not wish to lose the gains arising out of the "Framework Agreement". The respondent stated that there is no ulterior motive in not disclosing the information to the general public. The objective of the Govt. is to bring enduring peace and prosperity to the entire Northeast region at the earliest.

12. The respondent Mr. R.N. Ravi, Chairman, JIC & Interlocutor & GOI representative for Naga Peace further stated that he had held discussions with the Nagaland state legislators. It does not mean that he had given them a briefing on the Framework Agreement. Hence, the complainant's statement that the Agreement was revealed to the Legislature is not correct.

13. The respondent Mr. R.N. Ravi, Chairman, JIC & Interlocutor & GOI representative for Naga Peace stated that the speeches made during (Manipur) elections are not official Govt. statements.

Discussion/Observation:

14. The complainant had sent further written submissions through e-mail dated 08.05.2017 and 10.05.2017 to the Commission after the conclusion of hearing. These cannot be taken into consideration at this stage.

15. During the hearing on 20.09.2016, it had come to the notice of the Commission that the information sought by the complainant is held with the Office of the Chairman, Joint Intelligence Committee & Interlocutor & GOI representative for Naga Peace and on 20.01.2017. It has been clarified that JIC and Interlocutor's office is under the control of Ministry of Home Affairs. It is observed that it took 2 years to identify the Public Authority that has the relevant records. It is the duty of the Public Authority to suo moto inform the general public about the information that they hold.

16. The Commission has conducted five hearings in the case. First hearing was conducted on 27.07.2016 in which the Commission directed the Ministry of Home Affairs to give justification for denial of information. Second hearing was conducted on 20.09.2016 vide which the respondent was directed to clarify whether the Chairman, JIC & Interlocutor & GOI representative for Naga Peace is part of Ministry of Home and to categorically indicate whether they have the documents sought for by the complainant. The third hearing was conducted on 20.01.2017 vide which the respondent was directed to file their written submissions in the matter as the Commission on the said date of hearing, ordered that the respondent shall be the CPIO of NE division of MHA, being the custodian of record. The Commission had also called for the relevant records for its perusal. In the fourth hearing on 28.04.2017, the respondent sought some more time to furnish explanation. This is the fifth hearing.

17. The complainant has contended that larger 'public interest' is involved in favour of disclosure. In this respect, he has drawn the attention of the Commission towards the situation prevalent in the North-Eastern region of the country. The complainant stated that at the time of election campaign in Manipur, the lack of information on the issue of Naga accord was very evident, which could be ascertained from the statements of various political leaders and the fears expressed by them. The complainant emphasized the immediate need for transparency for peace in Northeast. In the light of the above, he stated that non-disclosure of the Framework Agreement would affect the larger public interest.

18. On the other hand, the respondent has put forth the point that a Framework Agreement is in place, but the final agreement is yet to be arrived at. In such a situation, revealing the contents of the Framework Agreement would adversely impact future discourse with the various stake holders with whom the Govt. of India is in the process of having talks.

19. The Commission observed that the disclosure of the contents of the Framework Agreement would jeopardize the possibility of a final accord. An opportunity to settle the longest insurgency in the NE region may be lost. If an

accord is arrived at, it would promote long term peace and prosperity. The Commission also observes that the sought for information comes within the ambit of exemption available under Section 8(1)(a) of the RTI Act, 2005 which reads as follows:-

“1) Notwithstanding anything contained in this Act, there shall be no obligation to give any citizen,—

(a) information, disclosure of which would prejudicially affect the sovereignty and integrity of India, the security, strategic, scientific or economic interests of the State, relation with foreign State or lead to incitement of an offence.”

20. In the present case, the sovereign and integrity of India and the security, the strategic interests of the State may be prejudicially affected. The public interest served by non-disclosure has to be weighed against the immediate public interest of disclosure. The immediate disclosure would have the benefit of explaining to the public and all stake holders the current status and thus help to develop an understanding and trust in the Govt. and promote peace in North East region. Between the two competing public interests, the Commission is of the view that non-disclosure at this stage gives space to the Govt. to solve a long standing issue and bring about enduring peace and prosperity. This option is, therefore, more beneficial and is accepted by the Commission.

Decision:

21. No further intervention of the Commission is required in the matter.

The complaint is disposed of. Copy of the order be given to the parties free of cost.

(Radha Krishna Mathur)
Chief Information Commissioner

Authenticated true copy

(S.C. Sharma)
Dy. Registrar