

Date: 27/07/2017

To,
The Public Information Officer
Department of Home
Civil Secretariat, Srinagar
Jammu and Kashmir

Dear Sir/Madam,

Sub: Submission of application for information under the J&K Right to Information Act, 2009
Please provide me the following information under the J&K RTI Act, 2009:

- A clear photocopy of the latest version of the Rules framed under the J&K Public Safety Act, 1978 (J&K-PSA);
- A clear photocopy of the Standard Operating Procedures (SOPs) that provide guidance to the District Magistrate for the purpose of making decisions regarding the detention of any person under the J&K-PSA, based on police reports/dossiers;
- The total number of persons detained under J&K-PSA from 04 March, 2016, till date and the complete list of detainees indicating the name, age, parentage, postal address and grounds for detention and exact place of lodgement of each detainee;
- A clear photocopy of any official document that contains the procedure for ascertaining the age of a detainee under J&K-PSA when such person is suspected to be a minor;
- Inspection of all detention orders issued under J&K-PSA and the related police reports and dossiers related to such detainees as on the date of this RTI application.
- A clear photocopy of an official document that contains the details of the Chairman and the Members of the Advisory Board of J&K PSA .

We are residents of J&K. We have enclosed an IPO (bearing no.) for Rs. 10/- towards payment of the prescribed application fee. We would like to receive the information specified above at our postal address mentioned below. Kindly inform us of the additional fee payable for obtaining the information specified above. Your reply may be addressed to Adeela Firdous Shah who is one of the signatories mentioned below.

Yours sincerely,

Adeela Shah, Naveed Bukhtiyar
R/o Shah e jeelan colony, House no-1 ,Budshah Nagar, Natipoar
Srinagar, Jammu and kashmir -190015



Government of Jammu and Kashmir
Civil Secretariat, Home Department
Jammu/Srinagar

Adeela Shah and Naveed Bukhtiyar
R/o Shah e Jeelan Colony,
House No-1, Budshah Nagar,
Natipora, Srinagar.
190015.

No. Home/RTI/331/2016/ 7388

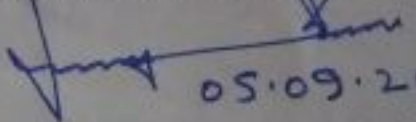
Dated 05-09-2017

Sub: - Information under the Jammu and Kashmir Right to Information Act, 2009.

Kindly refer to your RTI application dated 27.07.2017, received in the Home Department on 07.08.2017. The postal order annexed with the application is payable to PIO, Department of Home, Civil Secretariat, Srinagar, J&K, which is contrary to rule 3 of the J&K RTI Rules, 2012. For ready reference, the said rule is reproduced below:-

"3. A request for obtaining information under sub-section(1) of section 6 shall be accompanied by an application fee of rupees ten by way of cash against proper receipt or by demand draft or bankers cheque or Indian Postal Order payable to the Accounts Officer of the Public authority..."

Having regard to the above rule position, I am to inform you that the Information sought vide your aforesaid RTI application cannot be provided. You may choose to file fresh RTI application alongwith the requisite fee in accordance with the rules. In case, you are aggrieved of the above decision, an appeal against the same can be filed before Shri Muzaffar Ahmad Wani, Special Secretary to Government, Home Department, First Appellate Authority within a period of 30 days from the date of receipt of the instant communication.


05.09.2017

(Syed Sarfaraz Rizvi)
Public Law Officer, Home Department
(Public Information Officer)
Room No 455, 4th Floor
Civil Secretariat, J&K, Srinagar

Copy for information to the:-

1. Special Secretary (M) to the Government, Home Department.
2. Pvt. Secretary to the Principal Secretary to Government, Home Department.

Before the Designated First Appellate Authority
Home Department, Government of Jammu and Kashmir
Civil Secretariat, Srinagar, Jammu and Kashmir

Appeal filed under Section 16(1) of
Jammu and Kashmir Right to Information Act, 2009

In the matter of

Adeela Firdous shah & Naveed Bukhtiyar.

v

State Public Information Officer, Home Department

Date of submission : 30/08/2017

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Before the Designated First Appellate Authority
Home Department, Government of Jammu and Kashmir
Civil Secretariat, Srinagar, Jammu and Kashmir

Appeal filed under Section 16(1) of
Jammu and Kashmir Right to Information Act, 200

Date: 30/08/2017

- 1) Name and address of the Appellants : Adeela Shah, Naveed Bukhtiyar
R/o Shah e jeelan colony, House no-1
Budshah Nagar, Natipoar
Srinagar, Jammu and kashmir -190015
- 2) Name and address of the State Public Information Officer (CPIO) to whom the Application was addressed : Th Public Information Officer
Department of Home
Government of Jammu and Kashmir
Civil Secretariat, Srinagar
- 3) Name and address of the State Public Information Officer who gave reply to the Application : NA
- 4) Particulars of the RTI application-
- a) No. and date of submission of the RTI application : NA
- b) Date of payment of additional fee (if any) : Not applicable.
- 5) Particulars of the order(s) including number, if any against which the appeal is preferred : NA
- 6) Brief facts leading to the appeal :

6.1) On 29/07/2017 this Appellants despatched by Speed Post a request for information to the PIO mentioned along with the prescribed application fee, stating as follows (**Annexe 1**):

"Please provide me the following information under the J&K RTI Act, 2009:

- A clear photocopy of the latest version of the Rules framed under the J&K Public Safety Act, 1978 (J&K-PSA);
- A clear photocopy of the Standard Operating Procedures (SOPs) that provide guidance to the District Magistrate for the purpose of making decisions regarding the detention of any person under the J&K-PSA, based on police reports/dossiers;
- The total number of persons detained under J&K-PSA from 04 March, 2016, till date and the complete list of detainees indicating the name, age, parentage, postal address and grounds for detention and exact place of lodgement of each detainee;
- A clear photocopy of any official document that contains the procedure for ascertaining the age of a detainee under J&K-PSA when such person is suspected to be a minor;
- Inspection of all detention orders issued under J&K-PSA and the related police reports and dossiers related to such detainees as on the date of this RTI application.

6.2) This Appellants are aggrieved by the non response of the said PIO against the instant RTI application for reasons explained below.

7) Prayers or relief sought :

This Appellant prays that this First Appellate Authority be pleased to:

- 1) admit this appeal and inquire into the matters raised herein;
- 2) order the disclosure of all the information sought in the said RTI application, free of charge in accordance with Section 7(6) of the J&K RTI Act; and
- 3) make a reference against the PIO specified above to the J&K State Information Commission for imposition of penalty vide Section 16(3) read with Section 17(1) of the J&K RTI Act.

8) Grounds for the prayer or relief :

8.1)) According to Section 16(1) of the J&K RTI Act, any person who doesn't receive a decision within the time specified in sub-section(1) or clause(a) of sub-section (3) of section 7, may within thirty days from the expiry of such period may prefer a first appeal to an officer, senior in rank to him. This first appeal is being submitted on the 30th day of the expiry of the PIO's non disclosure of the information which is well within the statutory

deadline stipulated in Section 16(1) of the J&K RTI Act. This Appellant is aggrieved with the non response of the PIO for reasons explained below:

8.1.1) Further, Section 5(3) of J&K RTI Act places a duty on every PIO to render reasonable assistance to persons seeking information. Instead of providing reasonable assistance to this Appellant, the PIO has not disclosed the information and has not responded to the application. **Hence the submission of this first appeal to this Hon'ble First Appellate Authority.**

8.1.2) Further, Section 7(6) of the J&K RTI Act entitles an RTI applicant to receive all information free of charge if the same is not provided within the timeline of 30 days stipulated in Section 7(1) of the J&K RTI Act. More than 30 days have gone by since the submission of the instant RTI application to this Public Authority. This Appellant seeks to invoke his right recognised under Section 7(6) of the Act and demands access to all information requested, free of charge. **Hence the submission of this first appeal to this Hon'ble First Appellate Authority.**

8.1.3) Further, according to Section 16(3) of the J&K RTI Act, at the time of deciding an appeal if the first appellate authority forms an opinion that the PIO whose order is challenged under the terms of Section 16(1) of the J&K RTI Act, has obstructed in any manner the furnishing of information under the Act, he shall make a reference to that effect to the State Information Commission. This Appellant has explained above how the non responsible behaviour of the PIO are aimed at causing obstruction to access to information under the Act. This Appellant believes that this is a fit case for reference to the J&K State Information Commission for initiating appropriate action for imposition of penalty under Section 17(1) of the J&K RTI Act. **Hence the submission of this first appeal to this Hon'ble First Appellate Authority.**

9) I hereby verify that the aforementioned facts are true to the best of my knowledge. I also declare that I have authenticated the Annexes to this appeal.

Signature of the Appellant:

(Adeela Firdous Shah, Naveed Bukhtiyar)



OFFICE OF THE FIRST APPELLATE AUTHORITY UNDER
THE J&K RTI ACT, 2009

First Appeal titled Adeela Shah and Naveed Bukhtiyar Vs PIO, Home
Department.

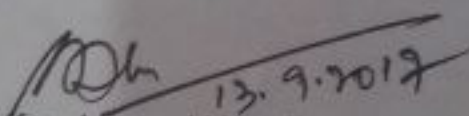
Notice for appearance

To,

✓ Adeela Shah and Naveed Bukhtiyar
R/o Shah e Jeelan Colony,
House No-1, Budshah Nagar,
Natipora, Srinagar.
190015.

Sir,

The afore-titled first appeal shall be taken up for consideration and hearing on 19th September, 2017 at 2 PM. You are accordingly requested to appear in person before the undersigned on the scheduled date and time in support of the averments made in the appeal, in Room No 449, 4th Floor, Civil Secretariat, Srinagar. In case of default, the matter shall be disposed of in your absence without any further notice.


(Muzaffar Ahmad Wani)
First Appellate Authority
Home Department

NO; HOME/PB-V/RTI/07/2017 Dated 13-09-2017.

Copy to the PIO, Home Department for information and similar necessary action. He is further advised to produce the record file in which the application of the Appellant was processed and disposed.



Government of Jammu and Kashmir
Civil Secretariat, Home Department
Srinagar

**OFFICE OF THE FIRST APPELLATE AUTHORITY UNDER
The J&K RTI ACT, 2009**

First Appeal titled Adeela Firdous Shah & Naveed Bukhtiyar
vs.

PIO, Home Department

Appellant present in person

PIO, Home Department in person.

Dated 20-09-2017

ORDER

Whereas, an appeal dated 30.08.2017 of Adeela Shah and Naveed Bukhtiyar R/o Shah e Jeelan Colony, House No-1, Budshah Nagar, Natipora, Srinagar, was received in the office of undersigned on 08.09.2017(Afternoon); and

2. Whereas, the contents of the appeal indicated that the appellants are aggrieved of the alleged non response of the PIO, Home Department against the RTI application and filed First appeal in terms of Section 16(1) of the RTI Act, 2009 before the First Appellate Authority, praying, inter-alia, for the following reliefs:-

- 1) *Admit this appeal and inquire into the matter raised herein.*
- 2) *order the disclosure of all the information sought in the said RTI application, free of charge in accordance with Section 7(6) of the J&K RTI Act; and*
- 3) *Make a reference against the PIO specified above to the J&K State Information Commission for imposition penalty vide Section 16(3) read with Section 17(1) of the J&K RTI Act.*

3. Whereas, a notice for appearance to the appellants with a copy to the PIO, Home Department was issued on 13.09.2017 asking them to appear in person on 19.09.2017 at 2 p.m. PIO, Home department was advised to produce the record file in which the application of the Appellant were processed and disposed of. The PIO, Home Department

9/2017

as well as appellants were present in person. The applicants and PIO, Home Department were heard in person by the First Appellate Authority.

Whereas, perusal of the record reveals that the Appellants/Applicants vide RTI application dated 27.07.2017, which as per the records was received in the Home Department on 07.08.2017, had sought the following information from the PIO, Home Department:-

- i) A clear photocopy of the latest version of the Rules framed under the J&K Public Safety Act, 1978 (J&K-PSA).
- ii) A clear photocopy of the Standard Operating Procedures (SOPs) that provide guidance to the District Magistrate for the purpose of making decisions regarding the detention of any person under the J&K-PSA, based on police report/dossiers.
- iii) The total number of persons detained under J&K-PSA from 04 March, 2016 till date and the complete list of detainees indicating the name, age, parentage, postal address and grounds for detention and exact place of lodgment of each detainee.
- iv) A clear photocopy of any official document that contains the procedure for ascertaining the age of a detainee under J&K-PSA which such person is suspected to be a minor.
- v) A clear photocopy of any official document that contains the procedure for ascertaining the age of a detainee under J&K-PSA which such person is suspected to be a minor.
- vi) Inspection of all detention orders issued under J&K-PSA and the related police reports and dossiers related to such detainees as on the date of this RTI application.
- vii) A clear photocopy of an official document that contains the details of the Chairman and members of the Advisory Board of J&K, PSA.

Whereas, perusal of the communication dated 05.09.2017 of PIO, Home Department addressed to the applicants reveal that the PIO, Home Department has disposed of the application of the appellants within the statutory period of 30 days as prescribed under the J&K RTI Act, 2009 and the rules made thereunder and has, therefore, not committed any lapse. The information provided to the applicants by PIO, Home Department is reproduced as under:-

"Kindly refer to your RTI application dated 27.07.2017, received in the Home Department on 07.08.2017. The postal order annexed with the application is payable to PIO, Department of Home, Civil Secretariat, Srinagar, J&K, which is contrary to rule 3 of the J&K RTI Rules, 2012. For ready reference, the said rule is reproduced below:-

"3. A request for obtaining information under sub-section(1) of section 6 shall be accompanied by an application fee of rupees ten by way of cash against proper receipt or by demand

25.9.2017

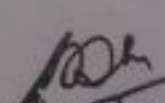
draft or bankers cheque or Indian Postal Order payable to the Accounts Officer of the Public authority... "

Having regard to the above rule position, I am to inform you that the information sought vide your aforesaid RTI application cannot be provided. You may choose to file fresh RTI application alongwith the requisite fee in accordance with the rules. In case, you are aggrieved of the above decision, an appeal against the same can be filed before Shri Muzaffar Ahmad Wani, Special Secretary to Government, Home Department, First Appellate Authority within a period of 30 days from the date of receipt of the instant communication."

Now, therefore, after going through the record and hearing the appellants, it is held that there is no delay in disposing of the application of the appellants by the PIO, Home Department as the application dated 27.07.2017 has been received in the Department on 07.08.2017 and the same has been disposed of by PIO, Home Department vide letter No. Home/RTI/331/2016/7388 dated 05.09.2017, so there is no delay on this count. The PIO has also given liberty to the applicant to file a fresh application alongwith the requisite fee in accordance with rules, which is appreciable.

The appeal is, accordingly disposed of.

By order.

 25.9.2017
(Muzaffar Ahmad Wani)
Special Secretary to Government
Home Department
First Appellate Authority
Civil Secretariat, J&K, Srinagar

No. Home/PBV/RTI/07/2017/

Dated 25-09-2015

Copy for information to the:-

1. Registrar, Jammu and Kashmir, State Information Commission, Srinagar;
2. PIO, Home Department;
3. Adeela Shah and Naveed Bukhtiyar R/o Shah e Jeelan Colony, House No-1, Budshah Nagar, Natipora, Srinagar. 190015.
4. Office order file.

**Appeal submitted to the Jammu and Kashmir State
Information Commission Under Section 16 of the J&K
Right To information Act, 2009**

In the matter of

Adeela Firdous shah & Naveed Bukhtiyar.

Vs

***Public Information Officer, First Appellate Authority J&K
Home Department***

Date of submission : 24/05/2017

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Appeal submitted to the Jammu and Kashmir State
Information Commission Under Section 16 of the J&K
Right To information Act, 2009

-

- 1) Name and address of the Appellants : Adeela Shah, Navend Bukhriyar
R/o Shah e jeelan colony, House no-1
Budshah Nagar, Natipour
Srinagar, Jammu and Kashmir -190015
- 2) Name and address of the State Public Information Officer (CPIO) to whom the Application was addressed : The Public Information Officer
Home Department, Civil Secretariat
Srinagar.
- 3) Name and address of the State Public Information Officer who gave reply to the Application : Syed Sarfaraz Rizvi
Public Law officer, Home department
- 4) Particulars of the RTI application-
- a) No. and date of submission of the RTI application : 29/07/2017
- b) Date of payment of additional fee (if any) : Not applicable.
- 5) Particulars of the PIO order(s) including number, if any against which the appeal is preferred : No.Home/RTI/331/2016/7388
Dated : 05/09/2017
- 6) Name and address of First Appellate Authority : Muzaffar Ahmad Wani
First Appellate Authority
Home Department

7) Particulars of the First Appeal -

a) No. and date of submission of the First appeal : Date: 30/08/2017

b) No. And date of FAA order (if any) : Date : 25-09-2015
No.Home/PBV/RTI/07/2017

8) Brief facts leading to the appeal :

8.1) On 29/07/2017 this Appellants despatched by Speed Post a request for information to the PIO mentioned along with the prescribed application fee, stating as follows (**Annexe 1**):

"Please provide me the following information under the J&K RTI Act, 2009:

1. A clear photocopy of the latest version of the Rules framed under the J&K Public Safety Act, 1978 (J&K-PSA);
2. A clear photocopy of the Standard Operating Procedures (SOPs) that provide guidance to the District Magistrate 2 for the purpose of making decisions regarding the detention of any person under the J&K-PSA, based on police reports/dossiers;
3. The total number of persons detained under J&K-PSA from 04 March, 2016, till date and the complete list of detainees indicating the name, age, parentage, postal address and grounds for detention and exact place of lodgement of each detainee;
4. A clear photocopy of any official document that contains the procedure for ascertaining the age of a detainee under J&K-PSA when such person is suspected to be a minor;
5. Inspection of all detention orders issued under J&K-PSA and the related police reports and dossiers related to such detainees as on the date of this RTI application.
6. A clear photocopy of an official document that contains the details of the chairman and the members of the Advisory of J&K PSA.

8.2) On 30/08/2017 appellants filed the First Appeal to the First Appellate Authority mentioned in para #6 in the home department after which the Appellant received the communication from PIO particulars mentioned in para #5. In a reply PIO has denied to provide the information because postal order annexed to the RTI application is payable to PIO and not to the account officer of PIO, which is contrary to the rule 3 of the J&K RTI Rules, 2012 and has also mentioned that RTI application was received by the PIO on 07/08/2017.

- 8.3) FAA sent a notice of Appearance to Appellants Dated: 13/09/2017 Letter NO. : Home/PB-V/RTI/07/2017 to appear before him on 19/09/2017. On the date hearing appellant accepted that he has received the response from the PIO but argued the non-disclosure of the information of the PIO.
- 8.4) FAA in his order appreciated the PIO particulars mentioned in para #7, the Appellant is aggrieved by the an order by FAA which appreciates the response of PIO.

9) Prayers or relief sought :

This Appellant prays that this First Appellate Authority be pleased to:

- 1) Admit this appeal and inquire into the matters raised herein;
- 2) Order the disclosure of all the information sought in the said RTI application, free of charge in accordance with Section 7(6) of the J&K RTI Act; and
- 3) Penalty to be imposed on PIO under Section 17(1) and 17(2).

10) Grounds for the prayer or relief :

10.1) According to Section 16(4) A second Appeal against the decision under sub-section (1) shall lie within ninety days from the date on which the decision should have been made or was actually received, with the state Information Commission :

10.1.2) Further according to section 5(3) Every Public Information Officer shall deal with requests from persons seeking information and render reasonable assistance to the persons seeking such information. This Appellant would like to point out that the IPO was not drawn in favour of the Accounts Officer of this Public Authority due to oversight. Instead of providing reasonable assistance to this Appellant, the PIO mentioned at para #3 above has proceeded to reject the instant RTI application in a cavalier manner without paying any heed to his assigned duty under Section 5(3) of the J&K RTI Act. This Appellant is aggrieved by the unhelpful attitude of the said PIO. **Hence the submission of this first appeal to this Hon'ble First Appellate Authority.**

10.1.3) According to section 7(1) " Subject to the proviso to sub Section (2) of section 5 or the proviso to sub-section (3) of section 6, the Public Information Officer on receipt of a request under section 6 shall, as expeditiously as possible, and in any case within thirty days of the receipt of the request, either provide the information (1) on payment of such fee as may be prescribed (2) or reject the request for any of the reason specified in sections 8 and 9." This section clearly mentions that application should be disposed of as expeditiously as possible and response of PIO shows that it would have taken him only 15 minute to write a reply then for what reason he has taken so much time to respond the appellants, Further Section 8 and 9 of J&K RTI Act mentions the grounds on which information can not provided, but

PIO has misinterpreted the law and their is a lack of application of Mind or PIO is having a Malafide intention of discouraging RTI applications. If PIO has worked in Good Faith he would have replied appellants as early as possible without wasting their precious time. Hence the submission of this first appeal to this Hon'ble First Appellate Authority.

- 10.1.4) Further According to the section 7(3) "Where a decision is taken to provide the information on payment of any further fee (4) representing the cost of providing the information, the Public Information Officer shall send an intimation to the person making the request, giving-
- (a) the details of further fees representing the cost of providing the information as determined by him, together with the calculations made to arrive at the amount in accordance with fee prescribed under sub-section (1), requesting him to deposit that fees, and the period intervening between the dispatch of the said intimation and payment of fees shall be excluded for the purpose of calculating the period of thirty days referred to in that sub-section
 - (b) information concerning his or her right with respect to review the decision as to the amount of fees charged or the form of access provided, including the particulars of the appellate authority, time limit, process and any other forms'. " this section imposes a duty on a PIO to send an intimation for further fee for information and the same could have been done by this PIO but he asked appellants to file new RTI application rather than paying RS 10 and for same application and get the sought information. PIO has violated the basic sprit of the RTI law and is unknown to his duties imposed by law. Hence the submission of this first appeal to this Hon'ble First Appellate Authority.

10.2) Further, Section 7(6) of the J&K RTI Act entitles an RTI applicant to receive all information free of charge if the same is not provided within the timeline of 30 days stipulated in Section 7(1) of the J&K RTI Act. More than 30 days have gone by since the submission of the instant RTI application to this Public Authority. This Appellant seeks to invoke his right recognised under Section 7(6) of the Act and demands access to all information requested, free of charge. Hence the submission of this first appeal to this Hon'ble First Appellate Authority.

10.3) According to section 17(1) "Where the State Information Commission at the time of deciding(any complaint, appeal or reference is of the opinion that the Public Information Officer has, without any reasonable cause refused to receive an application for information or has not furnished information within the time specified under sub-section (1) of section 7 or malafidely denied the request for information or knowingly given incorrect, incomplete or misleading information or destroyed information which was the subject of the request or obstructed in any manner in furnishing the information, it shall impose a penalty of two

hundred and fifty rupees each day till application is received or information is furnished, so however, the total amount of such penalty shall not exceed twenty-five thousand rupees : provided that the Public Information Officer shall be given a reasonable opportunity of being heard before any penalty is imposed on him.

Provided further that, the burden of proving that he acted reasonably and diligently shall be on the public Information Officer."

10.3.1) further according to section 17(2) Where the State Information Commission at the time of deciding any complaint, appeal or reference is of the opinion that the Public Information officer has, without any reasonable cause and persistently, failed to receive an application for information or has not furnished information within the time specified under sub-section (1) of section 7 or malafidely denied the request for information or knowingly given incorrect, incomplete or misleading information or destroyed information which was the subject of the request or obstructed in any manner in furnishing the information, it shall recommend for disciplinary action against the Public Information Officer under the service rules applicable to him

11) I hereby verify that the aforementioned facts are true to the best of my knowledge. I also declare that I have authenticated the Annexes to this appeal.

Signature of the Appellant:

(Adeela Firdous Shah, Naveed Bukhtiyar)