

No. RTI/GoI/CabSectt/2015/1

From,  
Venkatesh Nayak  
55A, 3<sup>rd</sup> Floor  
Siddharth Chambers-1  
Kalu Sarai  
New Delhi- 110 016

To,  
The Central Public Information Officer  
Cabinet Secretariat  
Rashtrapati Bhawan  
Raisina Hill  
New Delhi- 110 001

Date: 19/01/2015

**अव्ययना COUNTERFOIL**

इसे फाड़कर ब्रेचक अपने पास रख ले ।  
To be detached and kept  
by the Sender.

**पोस्टल आर्डर**  
**रुपए 10.00 Rs.**  
**POSTAL ORDER**

किसके अलावा करण  
To whom payable *A/o*  
*Cabinet Secretariat*

किस डाकघर में  
At what Office *CPD, New Delhi*

क्या इसे क्रास किया है  
Whether crossed *No*

बेजने की तारीख  
Date sent *19/1/15*

**23F 468356**

Dear sir,

Sub: Request for information under the *Right to Information Act, 2006*

I would like to obtain the following information from your public authority:

- 1) A clear photocopy of all the topics discussed in the meeting of the Union Cabinet from 10<sup>th</sup> August, 2014 till date. This information is contained in the Minutes Register of the Cabinet, being the register of topics discussed by the Union Cabinet.
- 2) A list of Ministries and Departments that have not submitted their monthly summaries for the months of October, November and December in the year 2014, as required under Rules 10 of the Rules of Procedure in Regard to Proceedings of the Cabinet;
- 3) A copy of all communication sent to the Ministries and Departments referred to in para #2 above reminding them about the requirement of submission of the monthly summaries for the months mentioned above;
- 4) A list of Ministries and Departments that have submitted their monthly summaries for the months of October, November and December in the year 2014; and
- 5) A clear photocopy of the monthly summaries referred to in para #4 above.

I am a citizen of India. I have attached an IPO (bearing #23F 468356) for Rs. 10/- towards payment of the prescribed application fee. I would like to receive the information described above at my postal address mentioned above. Kindly inform me of the additional fee payable for obtaining this information.

Kindly note that I am in lawful possession of a copy of the Rules of Procedure in Regard to Proceedings of Cabinet pursuant to the order that the Hon'ble Central Information Commission was pleased to pass in the RTI matter – *Venkatesh Nayak vs CPIO, Cabinet Secretariat*, Appeal File No. CIC/WB/A/2009/00099-SM, decision dated 04 March 2011.

Thanking you,

Yours sincerely,

*S.S. Venkatesh Nayak*  
19/1/15  
Venkatesh Nayak

भारतीय डाक  
SP HAUZ KHAS <110016>  
ED573610718IN India Post  
Counter No:1, OP-Code:DP26  
To: CPIO,  
NEW DELHI, PIN:110001  
From: VENKATESH NAYAK, ND  
Wt: 20grams,  
Amt: 17.00 , 19/01/2015 , 14:47  
Taxes: Rs. 2.00 << Track on [www.indiapost.gov.in](http://www.indiapost.gov.in)



**Government of India (Bharat Sarkar)**  
**Cabinet Secretariat (Mantrimandal Sachivalaya)**  
**Rashtrapati Bhavan, New Delhi**

No.F-12015/56/2015-RTI

5<sup>th</sup> February, 2015

To  
**Shri Venkatesh Nayak,**  
**55A, 3<sup>rd</sup> Floor, Siddharth Chambers-1,**  
**Kalu Sarai, New Delhi-110016.**

**Subject: Information under Right to Information Act, 2005.**

Sir,

I am to refer to your request dated 19.01.2015 on the subject mentioned above received on 03.02.2015.

2. The point wise information is as under:

Request	Response
Point No.1	Cabinet papers including records of deliberations of the Council of Ministers, Secretaries and other officers are exempted from disclosure under Section 8(l)(i) of the RTI Act, 2005. The sponsoring Ministries/Departments are best placed to decide whether they can provide the desired information related to Cabinet papers after ensuring that the matter is complete or over.
Point No.2 to 5	The information sought is not available in a compiled manner and any effort towards such compilation from individual records would result in disproportionate diversion of resources of the office as mentioned in section 7 (9) of the Right to Information Act, 2005. You may specify the name of the Ministry about which you seek information.

3. For the purpose of Section 19 of the RTI Act., 2005, Ms. Sanjukta Ray, Director, Cabinet Secretariat is the First Appellate Authority.

Yours faithfully,

(K. Bandyopadhyay)  
 CPIO & Under Secretary  
 Tele: 2301 7634

Copy to:

1. Section Officer, RTI, Cabinet Secretariat, Rashtrapati Bhavan.



**Before the Designated First Appellate Authority**

**and Director, Cabinet Secretariat**

**Rashtrapati Bhavan, New Delhi- 110001**

**Appeal filed under Section 19(1) of the Right to Information Act, 2005**

**In the matter of**

**Venkatesh Nayak v CPIO, Cabinet Secretariat**

**Date of submission : 16/03/2015**

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**Before the Designated First Appellate Authority**

**and Director, Cabinet Secretariat**

**Rashtrapati Bhawan, New Delhi- 110001**

**Appeal filed under Section 19(1) of the Right to Information Act, 2005**

**Date: 16/03/2015**

- 1) Name and address of the appellant :** Venkatesh Nayak  
#55A, 3<sup>rd</sup> Floor, Siddharth Chambers-1  
Kalu Sarai  
New Delhi- 110 016
- 2) Name and address of the Central Public Information Officer (CPIO) to whom the Application was addressed :** The Central Public Information Officer  
Cabinet Secretariat  
Rashtrapati Bhawan  
Raisina Hill  
New Delhi- 110 001
- 3) Name and address of the Public Information Officer who gave reply to the Application :** Shri K. Bandyopadhyaya  
CPIO and Under Secretary  
Cabinet Secretariat  
Rashtrapati Bhawan  
New Delhi- 110 001
- 4) Particulars of the RTI application-**
- a) No. and date of submission of the RTI application :** No. RTI/GOI/CabSectt/2015/1 dated 10/01/2015
- 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 :** Communication No. F-12015/56/2015-RTI dated 05/02/2015
- 6) Brief facts leading to the appeal :**

**6.1** On 10/01/2015 this Appellant despatched by Speed Post a request for information to the CPIO mentioned at para #2 above along with the prescribed application fee, stating as follows (**Annexe 1**):

"I would like to obtain the following information from your public authority:



- 1) A clear photocopy of all the topics discussed in the meeting of the Union Cabinet from 10<sup>th</sup> August, 2014 till date. This information is contained in the Minutes Register of the Cabinet, being the register of topics discussed by the Union Cabinet.
- 2) A list of Ministries and Departments that have not submitted their monthly summaries for the months of October, November and December in the year 2014, as required under Rules 10 of the Rules of Procedure in Regard to Proceedings of the Cabinet;
- 3) A copy of all communication sent to the Ministries and Departments referred to in para #2 above reminding them about the requirement of submission of the monthly summaries for the months mentioned above;
- 4) A list of Ministries and Departments that have submitted their monthly summaries for the months of October, November and December in the year 2014; and
- 5) A clear photocopy of the monthly summaries referred to in para #4 above...

Kindly note that I am in lawful possession of a copy of the Rules of Procedure in Regard to Proceedings of Cabinet pursuant to the order that the Hon'ble Central Information Commission was pleased to pass in the RTI matter – *Venkaatesh Nayak vs CPIO, Cabinet Secretariat*, Appeal File No. CIC/WB/A/2009/00099-SM, decision dated 04 March 2011."

**6.2** On 05/02/2015 the CPIO mentioned at para #3 above sent this Appellant a communication in response to the said RTI application stating as follows (**Annexe 2**):

"Request	Response
Point No. 1	Cabinet papers including records of deliberations of the Council of Ministers, Secretaries and other officers are exempted from disclosure under Section 8(1)(i) of the RTI Act, 2005. The sponsoring Ministries/Departments are best placed to decide whether they can provide the desired information related to Cabinet papers after ensuring the matter is completed or over.
Point No. 2	The information sought is not available in a compiled manner and any effort towards such compilation from individual records would result in disproportionate diversion of resources of the office as mentioned in section 7(9) of the Right to Information Act, 2005. You may specify the name of Ministry about which you seek information."

**6.3** This Appellant is aggrieved by the response provided by the said CPIO against the said 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, in the manner described at para #8.4 below; and**
- 3) issue an official memorandum to the CPIO to discharge his statutory responsibilities under the RTI Act with greater care and diligence in future.**

**8) Grounds for the prayer or relief :**

**8.1)** According to Section 19(1) of the RTI Act any person who is aggrieved by a decision of the CPIO may prefer a first appeal to an officer, senior in rank to him, within 30 days of receiving the decision. This Appellant received the decision of the CPIO mentioned at para #3 above in the evening of the 14<sup>th</sup> of February, 2014. A copy of the online consignment tracking report downloaded from the website of the Department of Posts is attached (**Annexe 3**). This first appeal is being submitted on the 30<sup>th</sup> day of receipt of the CPIO's response. This Appellant is aggrieved by the response of the CPIO for the reasons explained below.

**8.2)** The CPIO mentioned at para #3 above has failed to appreciate the exact nature of the information described at para #1 of the RTI application in question. This Appellant has not sought a copy of any record or Note submitted by any Ministry or Department to the Union Cabinet. The topics of the meeting of the Union Cabinet are drawn up by this public authority itself for the use of the Union Cabinet. These topics are listed in the specific register maintained by this public authority for such purpose. This Appellant was permitted inspection of the said Register in 2009 following which on several occasions in the past and particularly during the years 2009, 2010 and 2012 copies of the list of topics on the agenda of the Cabinet's meetings were furnished under the RTI Act. More recently in 2014, this Hon'ble Appellate Authority was pleased to order disclosure of similar information vide her order no. F No. 12015/205/2014-RTI dated, 08/05/2014. As this Hon'ble Appellate Authority is most likely to retain a copy of the said order in the public authority's records of the said case, a copy of the same is not being annexed to this appeal letter in order to save paper. The CPIO has not appreciated that the information sought at para #3 of the instant RTI application has been disclosed in the past. **To invoke the protection of Section 8(1)(i) against disclosing information belonging to the same category amounts to misinterpretation and misuse of that provision.** In fact this information ought to be disclosed publicly to the citizens of India at least after the completion of each meeting so that there is adequate awareness about the working of the highest decision-making body in Government. The CPIO's reply falsifies the promise of the present government to conduct its business in a transparent manner. It also renders the promise of transparency made by the Hon'ble Prime Minister through his official website (at: <http://pmindia.gov.in/en/quest-for-transparency/>) nugatory. It is a sad state of affairs that the assurance made by such a high constitutional authority is left to the mercy of a junior official to fructify. ***Hence the filing of this first appeal before the Hon'ble First Appellate Authority.***



**8.3)** Further, the information sought at para #2 to 5 of the instant RTI application are intended to assist this public authority to ensure that all Ministries and Departments comply with the reporting requirement under Rule 10 of the Rules of Procedure in regard to Proceedings of Cabinet. When this Appellant sought copies of monthly summaries submitted by 10 specific Ministries through an RTI application submitted to this public authority, previously in 2014, the then CPIO was pleased to transfer the request to 27 departments vide communication no. – F-12015/604/2014-RTI dated 17<sup>th</sup> September 2014. The subsequent responses from the said departments revealed that while some of them were complying with the requirement of Rule 10, others were either submitting NIL reports or simply had not prepared such reports despite the statutory obligation. One of the objectives of the RTI Act as described in its Preamble is to enable citizens to hold Government and its instrumentalities accountable to the governed. It would be difficult for citizens to hold government departments accountable if they do not have access to information that is essential to perform this role recognised in the RTI Act. This Appellant concedes that the information sought at para #2 may not be available in material form with this public authority for obvious reasons. However if it is the contention of the CPIO that no mechanism exists for monitoring instances of non-compliance with Rule 10, then an RTI applicant has every right to know at least that there is no such mechanism put in place. However, if such a monitoring mechanism exists, then the CPIO is duty bound to provide all information sought not only at para #2 but also those sought at para #3-4 of the instant RTI application. The CPIO has not applied his mind adequately to these serious issues of compliance with statutory obligations under the Rules of Procedure in Regard to Proceedings of Cabinet which the instant RTI application seeks to establish in accordance with the expectation expressed in the Preamble of the RTI Act. ***Hence the filing of this first appeal before the Hon'ble First Appellate Authority.***

**8.4)** Further, this Appellant temporarily concedes the CPIO's contention that Section 7(9) is applicable to the information sought at paras #2-5 without prejudice to his right to revise such position in future for justifiable reasons. However, as under the scheme of Section 7(1) of the RTI Act a request may be rejected only for reasons specified in Section 7 and 9 the CPIO has correctly desisted from issuing a rejection order. However this Appellant is not satisfied with the alternate mode of access to information provided by the CPIO in his reply. The form of access suggested by the CPIO is "specification of the Ministry for which information is required". This suggested form defeats the very public interest that this Appellant is pursuing through this RTI intervention, namely inquiring about the status of compliance of all Ministries and Departments with Rule 10 of the Rules of Procedure in Regard to Proceedings of Cabinet. However this Appellant will be satisfied if this public authority provides access to all the information in the following form:

- a) uploading henceforth information about the status of compliance with Rule 10 for every Ministry and Department on a monthly basis on the official website of this public authority; and**
- b) uploading henceforth those portions of the said monthly reports that are not exempt under Section 8 of the RTI Act on the official website of this public authority or**



- c) directing all ministries and departments to publish the said monthly reports at a conspicuous part of their respective official websites and monitoring compliance with such directive from time to time.

Under Section 4(2) of the RTI Act, this public authority as well as others under its jurisdiction have a duty to disclose as much information as possible *suo motu* so that the need for citizens to take recourse to RTI applications for seeking information is reduced. This Appellant would be satisfied if the mechanisms described above for the proactive disclosure of all information requested in the instant RTI application are directed to be put in place by this Hon'ble First Appellate Authority. This Appellant will be satisfied if a combination of the forms (a) and (b) or (a) and (c) are directed. ***Hence the filing of this first appeal before the 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:

*S.S. Venkatesh Nayak*  
16/3/15  
(Venkatesh Nayak)

No.F-12015/56/2015-RTI  
Government of India  
Cabinet Secretariat  
Rashtrapati Bhavan

New Delhi  
Dated 17<sup>th</sup> April, 2015

**APPEAL DECISION IN RESPECT OF FIRST APPEAL UNDER SECTION 19 OF THE  
RIGHT TO INFORMATION ACT, 2005**

Reference: Appeal dated 16.03.2015 received on 23.03.2015 with reference to response dated 05.02.2015 from the CPIO, Cabinet Secretariat

In the application dated 19.01.2015, received on 03.02.2015, Shri Venkatesh Nayak sought information as under:

- (1) Photocopy of all topics discussed in meeting of Union Cabinet from 10.08.2014 till date
- (2) List of Ministries and Departments that have not submitted monthly summaries for months of October, November and December, 2014
- (3) Copy of all communication sent to Ministries and Departments referred to in para 2 above reminding them about monthly summaries
- (4) List of Ministries and Departments that have submitted monthly summaries for months of October, November and December, 2014
- (5) Photocopy of monthly summaries referred to in para (4) above

2. The CPIO, Cabinet Secretariat, in response dated 05.02.2015 invoked exemptions under Section 8(1)(i) of the RTI Act, 2005 in respect of point (1). Regarding point (2) to (5), the CPIO, while drawing reference to Section 7(9) of the Act, requested that the name of the Ministry be specified.

3. In his appeal, Shri Venkatesh Nayak has stated that in respect of para (1) of the RTI application, he has not sought copy of any record or note and that topics of the meeting are listed in a register maintained for the purpose. Further, while conceding that Section 7(9) is applicable to information sought in para (2) to (5), the appellant has further stated that he is not satisfied with the alternate mode of access to information provided by the CPIO in his reply. He has further stated that he will be satisfied if this public authority provides access to all information in the following form:



(a) uploading henceforth information about the status of compliance with Rule 10 for every Ministry and Department on a monthly basis on the official website of this public authority

(b) uploading henceforth those portions of the said monthly reports that are not exempted under Section 8 of the RTI Act on the official website of this public authority

(c) directing all Ministries and Departments to publish the said monthly reports at a conspicuous part of their respective official websites and monitoring compliance with such directive from time to time.

4. Requests at 3 (a) to (c) above have been made at first appeal stage, however, these are being considered. It has been provided that the monthly summary shall be prepared for the information of the Members of the Council of Ministers. This is to be prepared by Ministries/Departments. However, no provision was made that such information is to be widely shared even between Ministries/Departments. It would therefore not be in order that Ministries/Departments upload any such material on the official website of this public authority or on their official websites.

5. Appeal is disposed of hereby.

  
Sanjukta Ray  
Director & First Appellate Authority

Appellant: Shri Venkatesh Nayak,  
55A, 3<sup>rd</sup> Floor, Siddharth Chambers-1,  
Kalu Sarai,  
New Delhi- 1100016

# Before the Central Information Commission

2<sup>nd</sup> Floor, 'B' Wing, August Kranti Bhawan, Bhikaiji Cama Place, New Delhi- 110 066

Appeal submitted under Section 19(3) of *The Right to Information Act, 2005*

In the matter of

***Venkatesh Nayak vs Cabinet Secretariat***

Date of submission: 16/07/2015

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1





# Before the Central Information Commission

2<sup>nd</sup> Floor, 'B' Wing, August Kranti Bhawan, Bhikaiji Cama Place, New Delhi- 110 066

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Appeal submitted under Section 19(3) of *The Right to Information Act, 2005*

Date: 16/07/2015

- |  |          |   |
|--|----------|---|
| <b>1) Name and address of the Appellant cum Complainant</b>  | <b>:</b> | Venkatesh Nayak<br>#55A, 3 <sup>rd</sup> Floor<br>Siddharth Chambers-1<br>Kalu Sarai<br>New Delhi-110016                  |
| <b>2) Name and address of the Public Information Officer to whom the Application was addressed</b> | <b>:</b> | The Central Public Information Officer<br>Cabinet Secretariat<br>Rashtrapati Bhawan<br>Raisina Hill<br>New Delhi- 110 001 |
| <b>3) Name and address of the Public Information Officer who gave reply to the Application</b>     | <b>:</b> | Shri K. Bandyopadhyaya<br>CPIO and Under Secretary<br>Cabinet Secretariat<br>Rashtrapati Bhawan<br>New Delhi- 110 001     |
| <b>4) Name and address of the First Appellate Authority to whom the first appeal was submitted</b> | <b>:</b> | The First Appellate Authority<br>Cabinet Secretariat<br>Rashtrapati Bhawan<br>Raisina Hill<br>New Delhi- 110 001          |
| <b>5) Name and address of the First Appellate Authority who decided the first appeal</b>           | <b>:</b> | Smt. Sanjukta Ray<br>Director<br>Cabinet Secretariat<br>Rashtrapati Bhawan<br>New Delhi- 110 004                          |
| <b>6) Particulars of the RTI application</b>   | <b>:</b> |   |
| <b>a) Date of submission of the RTI application</b>  | <b>:</b> | 19/01/2015  |

**b) Date of payment of additional fee (if any)** : Not applicable

**7) Particulars of the order(s) including number, if any against which the appeal is preferred** :

**1)** Decision issued by the CPIO of No. F-12015/56/2015-RTI dated 05/02/2015

**2)** Decision issued by the FAA of No. F-12015/56/2015-RTI dated 17/04/2015

**8) Brief facts leading to the appeal :**

**8.1)** On 19/01/2015 this Appellant despatched by Speed Post a request for information to the CPIO mentioned at para #2 above, along with the prescribed application fee, stating as follows (**Annexe 1**):

"I would like to obtain the following information from your public authority:

- 1) A clear photocopy of all the topics discussed in the meeting of the Union Cabinet from 10<sup>th</sup> August, 2014 till date. This information is contained in the Minutes Register of the Cabinet, being the register of topics discussed by the Union Cabinet.
- 2) A list of Ministries and Departments that have not submitted their monthly summaries for the months of October, November and December in the year 2014, as required under Rules 10 of the Rules of Procedure in Regard to Proceedings of the Cabinet;
- 3) A copy of all communication sent to the Ministries and Departments referred to in para #2 above reminding them about the requirement of submission of the monthly summaries for the months mentioned above;
- 4) A list of Ministries and Departments that have submitted their monthly summaries for the months of October, November and December in the year 2014; and
- 5) A clear photocopy of the monthly summaries referred to in para #4 above.

I am a citizen of India. I have attached an IPO (bearing #23F 468356) for Rs. 10/- towards payment of the prescribed application fee. I would like to receive the information described above at my postal address mentioned above. Kindly inform me of the additional fee payable for obtaining this information.

Kindly note that I am in lawful possession of a copy of the Rules of Procedure in Regard to Proceedings of Cabinet pursuant to the order that the Hon'ble Central Information Commission was pleased to pass in the RTI matter – *Venkatesh Nayak vs CPIO, Cabinet Secretariat*, Appeal File No. CIC/WB/A/2009/00099-SM, decision dated 04 March 2011. "



**8.2)** On 14/02/2015, this Appellant received a reply dated 05/02/2015 from the CPIO referred to at para #3(1) above stating as follows (**Annexe 2**):

"Request	Response
Point No. 1	Cabinet papers including records of deliberations of the Council of Ministers, Secretaries and other officers are exempted from disclosure under Section 8(1)(i) of the RTI Act, 2005. The sponsoring Ministries/Departments are best placed to decide whether they can provide the desired information related to Cabinet papers after ensuring the matter is completed or over.
Point No. 2	The information sought is not available in a compiled manner and any effort towards such compilation from individual records would result in disproportionate diversion of resources of the office as mentioned in section 7(9) of the Right to Information Act, 2005. You may specify the name of Ministry about which you seek information."

**8.3)** On 16/03/2015, this Appellant submitted a first appeal with the designated First Appellate Authority referred to at para #4 above with the following prayers (**Annexe 3**):

**"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, in the manner described at para #8.4 below; and**
- 3) issue an official memorandum to the CPIO to discharge his statutory responsibilities under the RTI Act with greater care and diligence in future."**

This Appellant substantiated the aforementioned prayers with the following grounds:

**"8.1)** According to Section 19(1) of the RTI Act any person who is aggrieved by a decision of the CPIO may prefer a first appeal to an officer, senior in rank to him, within 30 days of receiving the decision. This Appellant received the decision of the CPIO mentioned at para #3 above in the evening of the 14<sup>th</sup> of February, 2014. A copy of the online consignment tracking report downloaded from the website of the Department of Posts is attached (**Annexe 3**). This first appeal is being submitted on the 30<sup>th</sup> day of receipt of the CPIO's response. This Appellant is aggrieved by the response of the CPIO for the reasons explained below.

**8.2)** The CPIO mentioned at para #3 above has failed to appreciate the exact nature of the information described at para #1 of the RTI application in question. This Appellant has not sought a copy of any record or Note submitted by any Ministry or Department to the Union Cabinet. The topics of the meeting of the Union Cabinet are drawn up by this public authority itself for the use of

the Union Cabinet. These topics are listed in the specific register maintained by this public authority for such purpose. This Appellant was permitted inspection of the said Register in 2009 following which on several occasions in the past and particularly during the years 2009, 2010 and 2012 copies of the list of topics on the agenda of the Cabinet's meetings were furnished under the RTI Act. More recently in 2014, this Hon'ble Appellate Authority was pleased to order disclosure of similar information vide her order no. F No. 12015/205/2014-RTI dated, 08/05/2014. As this Hon'ble Appellate Authority is most likely to retain a copy of the said order in the public authority's records of the said case, a copy of the same is not being annexed to this appeal letter in order to save paper. The CPIO has not appreciated that the information sought at para #3 of the instant RTI application has been disclosed in the past. **To invoke the protection of Section 8(1)(i) against disclosing information belonging to the same category amounts to misinterpretation and misuse of that provision.** In fact this information ought to be disclosed publicly to the citizens of India at least after the completion of each meeting so that there is adequate awareness about the working of the highest decision-making body in Government. The CPIO's reply falsifies the promise of the present government to conduct its business in a transparent manner. It also renders the promise of transparency made by the Hon'ble Prime Minister through his official website (at: <http://pmindia.gov.in/en/quest-for-transparency/>) nugatory. It is a sad state of affairs that the assurance made by such a high constitutional authority is left to the mercy of a junior official to fructify. ***Hence the filing of this first appeal before the Hon'ble First Appellate Authority.***

- 8.3)** Further, the information sought at para #2 to 5 of the instant RTI application are intended to assist this public authority to ensure that all Ministries and Departments comply with the reporting requirement under Rule 10 of the Rules of Procedure in regard to Proceedings of Cabinet. When this Appellant sought copies of monthly summaries submitted by 10 specific Ministries through an RTI application submitted to this public authority, previously in 2014, the then CPIO was pleased to transfer the request to 27 departments vide communication no. – F-12015/604/2014-RTI dated 17<sup>th</sup> September 2014. The subsequent responses from the said departments revealed that while some of them were complying with the requirement of Rule 10, others were either submitting NIL reports or had simply not prepared such reports despite the statutory obligation. One of the objectives of the RTI Act as described in its Preamble is to enable citizens to hold Government and its instrumentalities accountable to the governed. It would be difficult for citizens to hold government departments accountable if they do not have access to information that is essential to perform this role recognised in the RTI Act. This Appellant concedes that the information sought at para #2 may not be available in material form with this public authority for obvious reasons. However if it is the contention of the CPIO that no mechanism exists for monitoring instances of non-compliance with Rule 10, then an RTI applicant has every right to know at least that there is no such mechanism put in place. However, if such a monitoring mechanism exists, then the CPIO is duty bound to provide all information sought not only at para #2 but also those sought at para #3-4 of the instant RTI application. The CPIO has

not applied his mind adequately to these serious issues of compliance with statutory obligations under the Rules of Procedure in Regard to Proceedings of Cabinet which the instant RTI application seeks to establish in accordance with the expectation expressed in the Preamble of the RTI Act. ***Hence the filing of this first appeal before the Hon'ble First Appellate Authority.***

**8.4)** Further, this Appellant temporarily concedes the CPIO's contention that Section 7(9) is applicable to the information sought at paras #2-5 without prejudice to his right to revise such position in future for justifiable reasons. However, as under the scheme of Section 7(1) of the RTI Act a request may be rejected only for reasons specified in Section 7 and 9 the CPIO has correctly desisted from issuing a rejection order. However this Appellant is not satisfied with the alternate mode of access to information provided by the CPIO in his reply. The form of access suggested by the CPIO is "specification of the Ministry for which information is required". This suggested form defeats the very public interest that this Appellant is pursuing through this RTI intervention, namely inquiring about the status of compliance of all Ministries and Departments with Rule 10 of the Rules of Procedure in Regard to Proceedings of Cabinet. However this Appellant will be satisfied if this public authority provides access to all the information in the following form:

- a) uploading henceforth information about the status of compliance with Rule 10 for every Ministry and Department on a monthly basis on the official website of this public authority; and**
- b) uploading henceforth those portions of the said monthly reports that are not exempt under Section 8 of the RTI Act on the official website of this public authority or**
- c) directing all ministries and departments to publish the said monthly reports at a conspicuous part of their respective official websites and monitoring compliance with such directive from time to time.**

Under Section 4(2) of the RTI Act, this public authority as well as others under its jurisdiction have a duty to disclose as much information as possible *suo motu* so that the need for citizens to take recourse to RTI applications for seeking information is reduced. This Appellant would be satisfied if the mechanisms described above for the proactive disclosure of all information requested in the instant RTI application are directed to be put in place by this Hon'ble First Appellate Authority. This Appellant will be satisfied if a combination of the forms (a) and (b) or (a) and (c) are directed. ***Hence the filing of this first appeal before the Hon'ble First Appellate Authority.***"



**8.4)** Subsequently, on 17/04/2015, the FAA mentioned at para #5 above sent this Appellant a decision at first listing out the information points specified in the original RTI application and then stating as follows (**Annexe 4**):

"2. The CPIO, Cabinet Secretariat in response dated 05.02.2015 invoked exemptions under Section 8(1)(i) of the RTI Act, 2005 in respect of point (1). Regarding point (2) to (5) the CPIO while drawing reference to Section 7(9) of the Act, requested that the name of the Ministry be specified.

3. In his appeal Shri Venkatesh Nayak has stated that in respect of para (1) of the RTI application, he has not sought a copy of any record or note and that topics of the meeting are listed in a register maintained for the purpose. Further, while conceding that Section 7(9) is applicable to information sought in para (2) to (5), the appellant has further states that he is not satisfied with the alternate mode of access to information provided by the CPIO in his reply. He has further stated that he will be satisfied if this public authority provides access to all information in the following form:

- (a) uploading henceforth information about the status of compliance with Rule 10 for every Ministry and Department on a monthly basis on the official website of this public authority
  - (b) uploading henceforth those portions of the said monthly reports that are not exempt under Section 8 of the RTI Act on the official website of this public authority
  - (c) directing all ministries and departments to publish the said monthly reports at a conspicuous part of their respective official websites and monitoring compliance with such directive from time to time.
4. Requests at 3(a) to (c) above have been made at first appeal stage, however these are being considered. It has been provided that the monthly summary shall be prepared for the information of the Members of the Council of Ministers. This is to be prepared by Ministries/Departments. However, no provision was made that such information is to be widely shared even between Ministries/Departments. It would therefore not be in order that Ministries/Departments upload any such material on the official website of this public authority or on their official websites."

**8.5)** This Appellant is aggrieved by the responses provided by the CPIO and the FAA of the Respondent Public Authority. Hence the submission of this second appeal.

**9) Prayers or relief sought :**

**This Appellant humbly prays that this Hon'ble Commission be pleased to:**

- 1) admit this second appeal against the Respondent Public Authority for reasons explained below at para # 10.1 and hold an inquiry into the matters raised herein;**

- 2) direct the CPIO of the Respondent Public Authority to disclose all the information sought in the instant RTI application, free of charge, as is this Appellant's right under Section 7(6) of the RTI Act;
- 3) in its decision, require the Respondent Public Authority to regularly disclose all information that is required to be proactively disclosed under Section 4(1) read with Section 26(1)(c) of the RTI Act in future and update the same from time to time, by invoking its power under Section 19(8)(iii) of the RTI Act and as described at para #11.1.7 below;
- 4) make a recommendation to the appropriate authorities, for initiating disciplinary action, under the applicable civil service conduct rules, against the FAA for resisting the practice of transparency required not only by the RTI Act but also the aforementioned civil service conduct rules;
- 5) that this Appellant be provided an opportunity to attend the hearing into any proceeding conducted by this Hon'ble Commission pursuant to the prayers made at para #10.5 above in accordance with the order of the Hon'ble Delhi High Court cited at para # 11.3 below; and
- 6) that this Appellant be provided sufficient advance notice of any and all hearings that this Hon'ble Commission may conduct into this Appeal so as to enable him to make represent his case adequately.

**11) Grounds for the prayer or relief :**

- 11.1)** According to Section 19(3) of the RTI Act a second appeal against a First Appellate Authority's decision lies with the Central Information Commission within ninety days from the date on which the decision should have been made or was actually received. This Appellant received the FAA's decision on 21/04/2015. This second appeal is being submitted on the 86<sup>th</sup> day of receiving the FAA's decision which is well within the ninety-day limit stipulated in the RTI Act. This Appellant is aggrieved by the Respondent Public Authority's refusal to part with any information in any form for the following reasons:
- 11.1.1)** Section 4(2) of the RTI Act requires every public authority to constantly endeavour "to take steps in accordance with the requirements of clause (b) of sub section (1) to provide as much information *suo motu* to the public at regular intervals through various means of communication, including internet, so that the public have minimum resort to the use of this Act to obtain information." The intent and language of the said provision is crystal clear:
- a) that every public authority including the Respondent Public Authority must put out information at regular intervals;
  - b) disseminate such information through various means including the internet; and
  - c) so do to reduce people's need to make formal information requests under Section 6 of the RTI Act.

This Appellant's purpose of submitting the instant RTI application was to obtain information that the Respondent Public Authority was not placing in the public domain *suo motu* despite the express provisions of Section 4 of the RTI Act. Further, this Appellant agreed to alter the form in which information was sought at the stage of the first appeal simply because the CPIO referred to at para #3 above pleaded the coverage of Section 7(9). It is not this Appellant's intention to cause disproportionate diversion of the resources of the Respondent Public Authority. Therefore the alternative form of access was conceded to. Rather than recognize the fact that this Appellant was intent on helping this Respondent Public Authority by reducing the burden on the said CPIO by accepting access to the information sought in an alternate form, the FAA has proceeded to make an accusation that this Appellant raised a new request at the appeal stage. This characterisation of this Appellant's willingness to assist the Respondent Public Authority in dealing with the information request amicably as being an afterthought to the RTI application and appearing as if a concession is being made to this Appellant by considering them while making a decision on the said appeal is only demonstrative of the mindset of secrecy that has coloured the decision-making of the FAA. It is also to be noted that while the CPIO invoked Section 8(1)(i) to reject the information requested at para #1 of the instant RTI application the FAA has not recorded her finding about the correctness of the CPIO's order. This Appellant is aggrieved by the inadequate application of mind by the FAA to the appeal presented before her by this Appellant. Her decision deserves to be set aside. ***Hence the submission of this second appeal to this Hon'ble Commission.***

**11.1.2)** Further, the CPIO referred to at para #3 above has rejected the request for information at para #1 of the instant RTI application by invoking Section 8(1)(i) of the RTI Act without explaining how any of the interests protected in that provision are attracted. This Appellant pointed out in the first appeal that such information, namely, topics placed on the agenda of the Union Cabinet for discussion have been provided to this Appellant under the RTI Act in the past by way of inspection and in the form of photocopies. The first appeal letter gave reference to the specific communication with numbers and dates through which information of the kind described at point #1 of the instant RTI application was obtained for earlier periods in 2009, 2010 and 2012. However the FAA has simply not chosen to address the ground that the CPIO has misused Section 8(1)(i) to reject access to information. She has not recorded any finding on the issues raised by this Appellant in this context. It is also not clear that how an entire category of information that was originally available on request more than once is now sought to be shrouded by secrecy and that too without any reasonable cause. The FAA's order is completely silent on this issue even though this Appellant pointed out in the first appeal that such information was ordered to be disclosed by her in an earlier appeal proceeding relating to another RTI application. By failing to perform her statutory duty adequately, the FAA has passed a perfunctory order under Section 19(1) of the RTI Act favouring secrecy without reasonable cause. This Appellant is aggrieved by this lack of application of mind by the FAA. Her decision deserves to be set aside. ***Hence the submission of this second appeal to this Hon'ble Commission.***

**11.1.3)** Further, the FAA has acted in a manner that is not befitting the conduct of a civil servant as required under the Central Civil Services (Conduct) Rules, 1964 as amended vide G.S.R. 845(E) notified in the Official Gazette dated 27/11/2014 by the Department of



Personnel and Training, Government of India. The relevant portion of the Rules are reproduced below:

"every member of the central civil services shall:

"(ix) maintain transparency and accountability;

X X X

(xviii) refrain from doing anything which is or may be contrary to any law, rules, regulations and established practices."

The sum and substance of the aforementioned Rules is that every civil servant shall strive to promote transparency in the working of government, at least within one's own jurisdiction. The FAA has a duty not only under the RTI Act but also under the aforementioned conduct rules to promote transparency in the working of the Respondent Public Authority. If the FAA had found that making a decision of the kind requested in this Appellant's first appeal regarding the form of access of the information to be provided vis-à-vis the instant RTI application was not within her jurisdiction or authority, it was open to her to put up the matter to the higher authorities in the Respondent Public Authority to take a decision. This Appellant had demanded transparency at the systemic level and not simply access to information to oneself through the first appeal. Instead of appreciating the deeper issues involved the FAA has proceeded to make a decision on the first appeal without the necessary jurisdiction to so decide. Under Section 4(2), the responsibility of placing more and more information in the public domain *suo motu* devolves not on the FAA but on the public authority. The FAA ought to have brought the matters raised in the first appeal to the notice of the competent authority in the Respondent Public Authority. Instead she has proceeded to make a decision unilaterally without adequately appreciating the role that the RTI Act expects the Respondent Public Authority to perform. This arbitrary action is also a demonstration of the lack of adequate application of mind on the part of the FAA. Her order deserves to be set aside. ***Hence the submission of this second appeal to this Hon'ble Commission.***

**11.1.4)** Further, the FAA has sought to disregard the responsibility of the Respondent Public Authority towards making its transactions more transparent in another respect. The present Government rode to power during the General Elections held in April-May 2014 on the assurance of making governmental functioning more transparent and accountable than was the practice under the previous Government. The Hon'ble Prime Minister has even spelt out his Government's commitment to transparency on the web page entitled "Quest for Transparency" on his official website at the following URL: <http://pmindia.gov.in/en/quest-for-transparency/> portions of which are cited below:

*"Prime Minister Narendra Modi firmly believes that transparency and accountability are the two cornerstones of any pro-people government. Transparency and accountability not only connect the people closer to the government but also make them equal and integral part of the decision making process..."*

*His strong resolve to transparency backed by the manner in which he put his commitment to practice indicates an era of open, transparent and people-centric government for the people of India."*

By issuing the decision in the manner recorded in her communication of number and date cited above, the FAA has acted in complete contradiction with the official policy of the Government of India. As a representative of the Respondent Public Authority which coordinates the work of all other Ministries and Departments the FAA ought to have set high standards of transparency from within. Instead she has adopted an unnecessarily conservative approach without sufficiently appreciating that in the 10<sup>th</sup> year of its implementation the value of transparency espoused by the RTI Act requires to be promoted assiduously. This Appellant is aggrieved by this cavalier approach adopted by the FAA towards the RTI application and the first appeal that was presented to the Respondent Public Authority. Her decision deserves to be set aside. ***Hence the submission of this second appeal to this Hon'ble Commission.***

**11.1.5)** Further, the FAA has failed to appreciate an important provision of the RTI Act that also requires *suo motu* disclosure of information above and beyond the obligations specified in Section 4(1). Section 26(1)(c) of the RTI Act requires the Central Government to "promote timely and effective dissemination of accurate information by public authorities about their activities." The Respondent Public Authority is tasked with the responsibility of coordinating the activities of all Ministries and Departments under the Government of India. Therefore it is best placed to take action on the plea included at para # 8.4.c of this Appellant's first appeal, namely, to

"direct all ministries and departments to publish the said monthly reports at a conspicuous part of their respective official websites and monitoring compliance with such directive from time to time."

If the Respondent Public Authority is unable to disclose all information sought in the instant RTI application on its own website the least that it can do is to direct all Ministries and Department to make the monthly summaries available on their website subject to the exemptions provided for in the RTI Act. The FAA has ignored this form of access also suggested by this Appellant. In effect the FAA has adopted an intransigent attitude towards making any positive decision regarding the request for disclosure of information made in the instant RTI application. Therefore her decision deserves to be set aside. ***Hence the submission of this second appeal to this Hon'ble Commission.***

**11.1.6)** Further, the FAA's decision presents evidence of the lack of interest in the Respondent Public Authority to adhere to its own rules regarding the monthly reporting mechanisms. It has already been explained above how Rule 10 requires every department and ministry under the Government of India to provide a summary report of its activities undertaken during the previous month within the stipulated time period in the succeeding month. However by throwing up her hands stating that no mechanism for monitoring compliance of the said departments and ministries with regard to Rule 10, the FAA has undermined the rule of law that forms the bedrock of democratic and constitutional governance in India. In

a catena of judgements which are too numerous to be cited here, the Hon'ble Supreme Court has held that Article 14 of the Constitution requires every public servant and public authority to function in accordance with the requirements of the law laid down in various instruments which themselves must be fair and just and not merely on the whims and fancies of the incumbents of positions of power in Government. If a Rule requires an action to be undertaken by an agency, then there must be a mechanism for ensuring compliance. The Rules of Procedure in Regard to Proceedings of the Cabinet are applicable to all ministries and departments under the Government of India. The Cabinet Secretariat is the highest authority that coordinates the activities of all such entities. Without access to the monthly activities undertaken by each Ministry, how such a role can be played by the Respondent Public Authority becomes a moot point. The Respondent Public Authority cannot abdicate its responsibility of reminding the defaulting departments and ministries about delays in filing reports. To state that no mechanism has been provided to ensure compliance with Rule 10 amounts to a subversion of the very Rules of procedure laid down for the purpose of reporting to a central agency that coordinates their activities by that very agency.

Further, the FAA has contended that the monthly summaries are prepared only for the sake of the members of the Council of Ministers. This Appellant believes that there is sufficient authority to demand that such information be made accessible to the general public. In the matter of *State of Uttar Pradesh vs Raj Narain and Ors.*, AIR 1975 SC 865 Mathew, J, speaking for the Constitution Bench of the Hon'ble Supreme Court was pleased to make the following observations:

"74. In a government of responsibility like ours, where all the agents of the public must be responsible for their conduct, there can but few secrets. The people of this country have a right to know every public act, everything, that is done in a public way, by their public functionaries. They are entitled to know the particulars of every public transaction in all its bearing. The right to know, which is derived from the concept of freedom of speech, though not absolute, is a factor which should make one wary, when secrecy is claimed for transactions which can, at any rate, have no repercussion on public security."

Further, the proviso under Section 8(1) of the RTI Act states as follows:

"Provided that the information which cannot be denied to Parliament or a State Legislature cannot be denied to any person."

When read together the opinion of the Hon'ble Supreme Court and the express provisions incorporated in the proviso underlying Section 8(1) of the RTI Act by Parliament make it crystal clear that citizens should have access to routine information that is generated by public authorities including ministries and departments as a matter of right. However where disclosure of information may harm any of the public interests protected under Sections 8(1) or 9 or 24, such information cannot be claimed as a matter of right unless it can be shown that the benefit in disclosure far outweighs the harm to the protected interests. Nothing in the FAA's decision indicates that this imperative and emphasis on transparency which has been made time and again has been adequately considered by her before arriving at her decision. Therefore her decision deserves to be set aside as being arbitrary and



unreasonable. ***Hence the submission of this second appeal to this Hon'ble Commission.***

**11.1.7)** Further it is this Appellant's firm belief that the Respondent Public Authority has a clear responsibility to lead by example by adhering to the requirements of *suo motu* disclosure of information under various provisions of the RTI Act cited above. A beginning can be made by requiring the Respondent Public Authority to display the topics placed on the agenda of the meeting of the Union Cabinet soon after each meeting is over. This Appellant firmly believes that such proactive disclosure of the topics discussed by the Union Cabinet will not fall foul of any provisions under the RTI Act that require the maintenance of confidentiality of information. Further, under Section 19(8)(iii) of the RTI Act this Hon'ble Commission has the power in an appeal proceeding to require a public authority to publish certain information or categories of information. This Hon'ble Commission may invoke this power for reasons and arguments presented above to direct the Respondent Public Authority to disclose information that is in the nature of the information described in the instant RTI application *suo motu* and update the same from time to time. This Hon'ble Commission may be pleased to direct the Respondent Public Authority to proactively disclose the agenda items that were placed before and discussed by the Union Cabinet at every meeting expeditiously, preferably within 24 hours of the meeting being over. The people of India including this Appellant have the right to know which topics were placed before the Union Cabinet for discussion and which topics were actually discussed by the Cabinet. To draw a comparison, the List of Business including revised and supplementary lists are published by the Secretariats of the Lok Sabha and the Rajya Sabha in real time when Parliament is in session. The cause lists of the Supreme Court and the High Courts as well as the daily orders issued by them in pending cases or the judgements given by them are uploaded on their respective websites in real time. When this is the transparency norm for the legislative and the judicial organs of the State, there is no reason why the Cabinet Secretariat must adopt a different standard namely, undue secrecy in relation to the agenda items of the meetings of the Union Cabinet. As this Appellant is asking for *post facto* disclosure of the agenda items of the Cabinet meetings, there is no danger of any person unduly influencing the Cabinet Ministers before any meeting takes place by acquiring prior knowledge of the agenda of such meetings. Therefore this Appellant believes that no harm will be caused by proactively disclosing the agenda items of the Union Cabinet – proposed and actually discussed, in real time after the meeting is over.

Further, this Hon'ble Commission may also be pleased to direct the Respondent Public Authority to require all ministries and departments to upload on their website their monthly summaries of activities undertaken as soon as they have sent a copy to the Respondent Public Authority under Rule 10 of the Rules of Procedure in regard to the Proceedings of Cabinet, if it is unable to do so on its own. This will be in accordance with the requirements of Section 26(1)(c) of the RTI Act. Where a Ministry or Department has not complied with the requirements of the said Rule 10 despite sending reminders, the names of such ministries and departments may be displayed on the website of the Respondent Public Authority *suo motu*. Left to its own resources the Respondent Public Authority may never undertake such steps to ensure greater transparency in the working of the ministries and departments. This resistance to transparency is clearly evident from the decision of the FAA. Therefore this Appellant seeks the intervention of this Hon'ble Commission to direct *suo motu* disclosure of all information that is in the nature of information described in the instant

RTI application and update the same from time to time. ***Hence the submission of this second appeal to this Hon'ble Commission.***

**11.1.8)** Further, this Appellant has already demonstrated at para #11.1.3 above as to how the FAA is in complete violation of the basic values that should inform the conduct of a civil servant. This Appellant believes that this is a fit case for recommending initiation of disciplinary proceedings against the FAA under the CCS (Conduct) Rules, 1964 as amended in November 2014. Taking such strict action will set an example for other FAAs to act diligently while disposing any matter under the RTI Act. ***Hence the submission of this second appeal to this Hon'ble Commission.***

However, such a recommendation cannot be made by this Hon'ble Commission unilaterally. In the matter of *Manohar s/o Manikrao Anchule vs State of Maharashtra & Anr.*, [AIR 2013 SC681] the Hon'ble Supreme Court was pleased to rule as follows:

"21. We may notice that proviso to Section 20(1) specifically contemplates that before imposing the penalty contemplated under Section 20(1), the Commission shall give a reasonable opportunity of being heard to the concerned officer. However, there is no such specific provision in relation to the matters covered under Section 20(2). Section 20(2) empowers the Central or the State Information Commission, as the case may be, at the time of deciding a complaint or appeal for the reasons stated in that section, to recommend for disciplinary action to be taken against the Central Public Information Officer or the State Public Information Officer, as the case may be, under the relevant service rules. Power to recommend disciplinary action is a power exercise of which may impose penal consequences. When such a recommendation is received, the disciplinary authority would conduct the disciplinary proceedings in accordance with law and subject to satisfaction of the requirements of law. It is a 'recommendation' and not a 'mandate' to conduct an enquiry. 'Recommendation' must be seen in contradistinction to 'direction' or 'mandate'. But recommendation itself vests the delinquent Public Information Officer or State Public Information Officer with consequences which are of serious nature and can ultimately produce prejudicial results including misconduct within the relevant service rules and invite minor and/or major penalty.

22. Thus, the principles of natural justice have to be read into the provisions of Section 20(2). It is a settled canon of civil jurisprudence including service jurisprudence that no person be condemned unheard. Directing disciplinary action is an order in the form of recommendation which has far reaching civil consequences. It will not be permissible to take the view that compliance with principles of natural justice is not a condition precedent to passing of a recommendation under Section 20(2)...

23. Thus, the principle is clear and settled that right of hearing, even if not provided under a specific statute, the principles of natural justice shall so demand, unless by specific law, it is excluded. It is more so when exercise of authority is likely to vest the person with consequences of civil nature." [emphasis supplied]

This Appellant believes that even when this Hon'ble Commission intends to make a decision whether a recommendation ought to be made in the manner prayed for above, it is duty-

bound to give the FAA referred to at para #5 above an opportunity of being heard. As this is a fit case for recommending disciplinary action against the FAA, this Appellant prays that this Hon'ble Commission be pleased to initiate an inquiry into the conduct of the FAA on the basis of the facts averred in this second appeal. ***Hence the submission of this second appeal to this Hon'ble Commission.***

**11.2)** Further, this Appellant **prays that he be provided sufficient advance notice of any and all hearings that this Hon'ble Commission may hold while inquiring into this second appeal so as to enable him to participate in such proceedings in a well-prepared manner.**

**11.3)** Further, this Appellant prays that he be permitted to participate in any hearing where the prayer for recommending disciplinary action under the CCS (Conduct) Rules, 1964 is decided upon. It is being brought to the notice of this Hon'ble Commission that while interpreting its powers under Section 20 of the RTI Act, the Hon'ble Delhi High Court has recognised its discretionary power to permit the Appellant or Complainant to be present during a hearing held under Section 20 of the Act. In the matter of *Mani Ram Sharma vs Central Information Commission & Anr.* [W.P. (C) 8041/2014, order dated 27/04/2015] the Hon'ble Court ordered *inter alia* as follows:

"11.2 A perusal of the observations made in paragraph 10 of the Division Bench judgement [*Ankur Mutreja vs University of Delhi*, LPA No./764/2011, judgement dated 9/1/2012] would show that while there is no bar in the CIC entertaining an appellant / complainant before it in penalty proceedings, the matter is left to the discretion of the CIC." [emphasis supplied]

Therefore this Appellant humbly prays for permission to participate in the penalty proceedings

**12) 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 second appeal. I also affirm that I have transmitted a copy of this appeal along with Annexes to the Respondent Public Authority.**

**Signature of the Appellant:**

**(Venkatesh Nayak)**



# Before the Central Information Commission

2<sup>nd</sup> Floor, 'B' Wing, August Kranti Bhawan, Bhikaiji Cama Place, New Delhi- 110 066

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In the matter of

***Venkatesh Nayak vs Cabinet Secretariat***

(File No. CIC/VS/A/2015/002033/RK)

## **Addendum to the 2<sup>nd</sup> Appeal**

**submitted under Section 19(3) of *The Right to Information Act, 2005***

**Date of submission of the 2<sup>nd</sup> appeal: 16/07/2015**

**Date of submission of this Addendum: 09/05/2016**

- 1) Without prejudice to the grounds of appeal and supportive arguments already submitted to this Hon'ble Commission, this Appellant humbly makes the following additional submissions in order to assist this Hon'ble Commission in arriving at a reasoned decision in the instant 2<sup>nd</sup> appeal matter:
  - 1.1) that the CPIO mentioned at para #3 of the 2<sup>nd</sup> appeal has contended at Point #1 of his reply, that the sponsoring Ministries/Departments are best placed to decide whether they can provide the desired information related to Cabinet papers after ensuring the matter is completed or over, while invoking the exemption relating to Cabinet papers under Section 8(1)(i) of *The Right to Information Act, 2005* (RTI Act). This reply is not only false but also misleading in nature. This Appellant has already clarified in the RTI application and then again in his first appeal submitted to the Respondent Public Authority that he has not sought any Cabinet Notes relating to individual cases put up for the Union Cabinet's consideration and decision. **The information that this Appellant is seeking at para #1 of the instant RTI application is actually prepared by the Respondent Public Authority.** According to Rule 6(3) of the *Rules of Procedure in Regard to Proceedings of the Cabinet, 1987* cited in the 2<sup>nd</sup> appeal, the agenda for each meeting of the Union Cabinet is prepared by the Respondent Public Authority. The said Rule 6(3) reads as follows:

"The agenda showing the case to be discussed at the weekly meeting shall be issued by the Cabinet Secretary to the Ministers normally 72 hours before the time of the meeting."

The said Rule makes it crystal clear that the information sought at para #1 of the instant RTI application is created and circulated by the Respondent Public Authority to all Ministries prior to every meeting of the Union Cabinet.

- 1.2) that further, the purpose of the agenda whose method of preparation and circulation is described at Rule 6(3) is to presumably provide some order in which the Union Cabinet is required to discuss the topics which require its consideration and decision. The purpose of the said agenda is served upon the completion of the meeting of the Union Cabinet. Whether all matters specified in the agenda are discussed and decided upon or not, is not material for the consideration of the instant RTI application. A subsequent meeting of the Union Cabinet will require the drawing up of the agenda afresh even though some topics on it may be carried over or continued from previous meetings. Once a meeting of the Union Cabinet is concluded, the agenda prepared for that meeting becomes material which must be disclosed to the public under the terms of the proviso to Section 8(1)(i).

While Section 8(1) starts with a non-obstante clause, namely: "Notwithstanding anything contained in this Act, there shall be no obligation to give any citizen..." this Appellant humbly believes it is controlled in its application to Section 8(1)(i) by the two provisos underlying that clause. The first proviso makes it crystal clear that once a decision is taken by the Council of Ministers and the matter is complete or over, the decision, the reasons thereof and the materials that formed the basis of such decisions "shall be made public". In this Appellant's humble opinion this is not a directory provision of disclosure but a mandatory provision requiring disclosure.

- 1.3) In other words, the purpose of the agenda for a specific meeting is completed upon the conclusion of the meeting of the Cabinet and the RTI Act casts an obligation on the Respondent Public Authority to disclose such information. The Respondent Public Authority being the creator/generator/originator of the agenda of the meetings of the Union Cabinet is best placed to make a disclosure of the agenda. To pass on the responsibility of making a disclosure of the agenda to other Ministries/Departments that sponsored their cases to the Union Cabinet amounts to a misinterpretation of the Section 8(1)(i) of the RTI Act read along with the first proviso underlying that provision. Therefore this Appellant is aggrieved by the decision of the CPIO which the FAA has not chosen to set aside during the first appeal proceedings. ***Hence the submission of this additional argument to this Hon'ble Commission to take into consideration while arriving its decision on this 2<sup>nd</sup> appeal matter.***

- 1.4) that, further, in his second appeal submitted already, this Appellant has contended that this Hon'ble Commission is vested with all the powers under Section 19(8)(iii) read with Section 26(1)(c) of the RTI Act, that are necessary to order direct the disclosure of the information sought in the instant RTI application in the manner described at para #9 of the instant appeal. The nature of the powers vested in this Hon'ble Commission has been described by the Hon'ble Delhi High Court in a case, a few years ago, so as to remove all doubt about their inclusive and extensive nature. In the matter of *Union of*

*India vs Vishwas Bhamburkar*, [2013 ELT 500 (Del.)], the Hon'ble Delhi High Court was pleased to explain the amplitude of the powers vested in this Hon'ble Commission under Section 19(8) of the RTI Act, the intention of the RTI Act and the manner in which its provisions should be implemented, in the following terms:

- “5. The learned counsel for the petitioner assailed the order of the Commission primarily on the ground that the Right to Information Act does not authorize the Commission to direct an inquiry of this nature by the department concern, though the Commission itself can make such an inquiry as it deems appropriate. Reference in this regard is made to the provisions contained in Section 19(8) of the Act. A careful perusal of sub section (8) of Section 19 would show that the Commission has the power to require the public authority to take any such steps as may be necessary to secure compliance with the provisions of the Act. Such steps could include the steps specified in clause (i) to (iv) but the sub-section does not exclude any other step which the Commission may deem necessary to secure compliance with the provisions of the Act. In other words, the steps enumerated in clause (i) to (iv) are inclusive and not exhaustive of the powers of the Commission in this regard.
6. 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 hyper-technical approach which would obstruct the flow of information to the citizens.” [emphasis supplied]

In the light of the words of the Hon'ble Delhi High Court cited above, this Appellant believes that this Hon'ble Commission is clothed with the necessary powers to ensure compliance of the Respondent Public Authority with the mandatory provisions of the RTI Act. This Appellant has already prayed for the manner of disclosure of the categories of information sought in the instant RTI application in future at para #9 of this 2<sup>nd</sup> appeal. ***This Appellant believes that for the reasons explained in the 2<sup>nd</sup> appeal and this addendum, this is a fit case to issue directions to the Respondent Public Authority to disclose all the information sought in the instant RTI application in a proactive manner henceforth. This Appellant also believes that this Hon'ble Commission will be well within its powers to launch an inquiry into the attitude of the First Appellate Authority in order to make a determination as to whether a case is made out for recommendation of disciplinary action against her under the applicable civil service conduct rules.***

- 1.5) that after the submission of this 2<sup>nd</sup> appeal, the Hon'ble Prime Minister of India made a very important exhortation on the importance of the right of citizens to demand accountability of public authorities. This Appellant firmly believes in pursuing the line of action exhorted by the Hon'ble Prime Minister while delivering the inaugural address at the Annual Convention of the Central Information Commission on 16<sup>th</sup> October, 2015, marking

the completion of 10 years of the implementation of the RTI Act. In his speech, the Hon'ble PM declared that people should not only have the right seek copies of official records but also have the right to demand answers to questions and seek accountability from the Government. The full text of his speech is accessible on the website of the Press Information Bureau and was also telecast by many TV channels. This Appellant has only acted upon the exhortation of the Hon'ble Prime Minister and demand concrete information about the manner in which the Respondent Public Authority is securing compliance of all Ministries and Departments with regard to the submission of monthly reports under Rule 10 of the *Rules of Procedure in Regard to Proceedings of the Cabinet, 1987*. The information sought at paras #2-4 of the instant RTI application is geared towards pursuing the exhortation of the Hon'ble Prime Minister of India regarding seeking accountability as explained above. ***Hence the submission of this additional argument to this Hon'ble Commission to take into consideration while arriving its decision on this 2<sup>nd</sup> appeal matter.***

2) I hereby verify that the aforementioned facts are true to the best of my knowledge.

Signature of the Appellant:

(Venkatesh Nayak)



SPEED POST

OUT TODAY  
RTI MATTER



No.F-12015/56/2015-RTI  
Government of India  
Cabinet Secretariat  
Rashtrapati Bhawan  
\*\*\*\*

New Delhi, the 4<sup>th</sup> May, 2016

To

Shri S.C. Sharma,  
Dy Registrar,  
Central Information Commission,  
Room No. S-340, 2<sup>nd</sup> Floor,  
August Kranti Bhavan,  
Bhikaji Cama Place,  
New Delhi-110 066.

**Subject:** Notice No. CIC/VS/A/2015/002033/RK dated 18.04.2016 for hearing on 09.05.2016 at 11.15 A.M.

**Reference:** Second appeal filed by Shri Venkatesh Nayak.

Sir,

With reference to CIC Notice mentioned above, the following is submitted for kind consideration of the Commission:

1 The Appellant in his application dated 19.01.2015 sought information on:

*"(1) A clear photocopy of all the topics discussed in the meeting of the Union Cabinet from 10th August, 2014 till date. This information is contained in the Minutes Register of the Cabinet, being the register of topics discussed by the Union Cabinet.*

*2) A list of Ministries and Departments that have not submitted their monthly summaries for the months of October, November and December in the year 2014, as required under Rules 10 of the Rules of Procedure in Regard to Proceedings of the Cabinet;*

*3) A copy of all communication sent to the Ministries and Departments referred to in para #2 above reminding them about the requirement of submission of the monthly summaries for the months mentioned above;*

*4/5/16*

4) A list of Ministries and Departments that have submitted their monthly summaries for the months of October, November and December in the year 2014; and

5) A clear photocopy of the monthly summaries referred to in para #4 above."

2. The CPIO, Cabinet Secretariat, in response dated 05.02.2015 invoked exemptions under Section 8(1)(i) of the RTI Act, 2005 in respect of point (1). It was also intimated that the sponsoring Ministries/Departments are best placed to decide whether they can provide the desired information related to Cabinet papers after ensuring that the matter is complete or over. Regarding point (2) to (5), the CPIO, while drawing reference to Section 7(9) of the Act, requested that the name of the Ministry be specified.

3. The Appellant, thereafter, preferred First Appeal dated 16.03.2015 received on 03.02.2015.

4. It was held by the First Appellate Authority, vide order dated 17.04.2015, that

*"3. In his appeal, Shri Venkatesh Nayak has stated that in respect of para (1) of the RTI application, he has not sought copy of any record or note and that topics of the meeting are listed in a register maintained for the purpose. Further, while conceding that Section 7(9) is applicable to information sought in para (2) to (5), the appellant has further stated that he is not satisfied with the alternate mode of access to information provided by the CPIO in his reply. He has further stated that he will be satisfied if this public authority provides access to all information in the following form:*

*(a) uploading henceforth information about the status of compliance with Rule 10 for every Ministry and Department on a monthly basis on the official website of this public authority . (b) uploading henceforth those portions of the said monthly reports that are not exempted under Section 8 of the RTI Act on the official website of this public authority . (c) directing all Ministries and Departments to publish the said monthly reports at a conspicuous part of their respective official websites and monitoring compliance with such directive from time to time.*

*4. Requests at 3 (a) to (c) above have been made at first appeal stage, however, these are being considered. It has been provided that the monthly summary shall be prepared for the information of the Members of the Council of Ministers. This is to be prepared by Ministries/Departments. However, no provision was made that such information is to be widely shared even between Ministries/Departments. It would therefore not be in order that Ministries/Departments upload any such material on the official website of this public authority or on their official websites."*

*[Signature]*  
2/5/16



5. The Appellant vide his second appeal dated 16.07.2015 before the Commission prayed as follows:

*"1) admit this second appeal against the Respondent Public Authority for reasons explained below at para # 10.1 and hold an inquiry into the matters raised herein; 2) direct the CPIO of the Respondent Public Authority to disclose all the information sought in the instant RTI application, free of charge, as is this Appellant's right under Section 7(6) of the RTI Act; 3) in its decision, require the Respondent Public Authority to regularly disclose all information that is required to be proactively disclosed under Section 4(1) read with Section 26(1)(c) of the RTI Act in future and update the same from time to time, by invoking its power under Section 19(8)(iii) of the RTI Act and as described at para #11.1.7 below; 4) make a recommendation to the appropriate authorities, for initiating disciplinary action, under the applicable civil service conduct rules, against the FAA for resisting the practice of transparency required not only by the RTI Act but also the aforementioned civil service conduct rules; 5) that this Appellant be provided an opportunity to attend the hearing into any proceeding conducted by this Hon'ble Commission pursuant to the prayers made at para #10.5 above in accordance with the order of the Hon'ble Delhi High Court cited at para # 11.3 below; and 6) that this Appellant be provided sufficient advance notice of any and all hearings that this Hon'ble Commission may conduct into this Appeal so as to enable him to make represent his case adequately."*

6. It is submitted herein that there is no para # 10.1 in the second appeal dated 16.07.2015.

7. As per Rule 10 of the Rules of Procedure in regard to proceedings of the Cabinet  
*"10 (1) There shall be prepared in a compact and succinct form for the information of the Members of the Council of Ministers, a monthly summary normally not exceeding four pages, in regard to the principal activities of and the important decisions taken in each Department in charge of a Minister during the month under review, and shall specifically include a report on progress of action on any matters which have been placed before the Cabinet for direction or decision. The Monthly Summary from Ministries/Departments should reach the Cabinet Secretariat latest by 10<sup>th</sup> of the following month.*

*10(2) Information of classified and unclassified nature to be included in these summaries shall be given separately in two parts; the first part containing material of unclassified nature and the second part containing material to be treated as top secret, secret or confidential (in each case security grading to be indicated). If the entire material is unclassified, the summary will not bear any*

*[Signature]*  
21/5/16

security grading. If the monthly summaries contain any reference to Cabinet/Cabinet Committees' paper or decisions or report progress of action thereon, the relevant portions shall be included in the classified part and marked 'Confidential', 'Secret' or 'Top Secret' as the case may be. "

8. It may, thus be seen that the monthly summaries are prepared by various Ministries for the information of the Council of Ministers and a copy should reach the Cabinet Secretariat latest by 10<sup>th</sup> of the following month. No other guidelines in relation to handing of such papers are indicated in the above Rules of Procedure. It is the sponsoring Ministries/Departments who are best placed to decide whether they can provide the desired information related to Cabinet papers after ensuring that the matter is complete or over keeping in view the provisions regarding disclosure.

9. It is therefore in order that the Ministries concerned in each case should decide to what extent information on Monthly Summaries over a period of time can be taken up for disclosure or exemption under the Act. Response has been provided by Cabinet Secretariat as per the provisions of the RTI Act. It is submitted that the Second Appeal is not maintainable.

  
(Kishor Bandyopadhyay)  
CPIO & Under Secretary (Cabinet)  
Tel. 23017634

Copy to:

Shri Venkatesh Nayak,  
55A, 3<sup>rd</sup> Floor, Siddharth Chambers-1,  
Kalu Sarai, New Delhi-110 016.