

CENTRAL INFORMATION COMMISSION

Appeal No. 10/1/2005-CIC

Right to Information ACT – Sections 18 /19

Name of Complainant: Er. Sarbajit Roy

Name of Public Authority: Delhi Development Authority

Facts

1. Mr.Sarbajit Roy an engineer and resident of Dwarka in New Delhi filed a complaint against the Delhi Development Authority (“DDA”), under Sec 18 read with Sec 19 of the Right to Information ACT 2005. The Complainant contended that he had numerous grievances concerning the implementation of the Act at DDA where access to information was being denied to him and others, thereby causing him to approach the Commission in the public interest, and had prayed *inter-alia* on various grounds that the information sought by him, including information concerning ongoing modification of the Master Plan of Delhi till the year 2021 (“MPD-2021”), be provided to him. He also sought directions to DDA to fulfill its mandatory obligations under the Act including proactive disclosures.
2. Relief sought by the appellant can be summarized as follows:
 - i. Providing information sought
 - ii. DDA to deposit records with the Commission
 - iii. Appoint a single PIO
 - iv. Redesign application form
 - v. A copy of 17 manuals be provided
 - vi. Payment of compensation
3. The DDA in its comments dated 21.11.2005 contested the allegations, stating that the DDA has been making concerted efforts to implement

the Act and had made necessary proactive disclosure. The complaint was described as baseless and malafide.

4. This Commission held its first hearing on 23.12.2005 with parties present. The complainant stated that the DDA by denying him the information he sought concerning the ongoing process for the MPD-2021 was obstructing him from properly speaking before the DDA constituted Board Of Enquiry and Hearing which was examining the representations received on the draft MPD-2021. He alleged that norms for MPD-2021 modification such as DDA's Act and Rules were not published by the DDA or available on the DDA website as was mandatory, and that Rule 9 of the DD Master Plan Rules permitted any person to speak before the said Board on representations of other persons also, which the DDA was not facilitating.
3. After hearing the submissions of the DDA made by the Vice Chairman, DDA Shri Dinesh Rai and Principal Commissioner cum Secretary, DDA Shri V. M. Bansal, the Commission desired that detailed comments on the complaint and also the documents concerning the procedural requirements of MPD-2021's modification be filed by DDA within 15 days. The DDA was of the view that sharing of any information demanded by the complainant at that stage would affect the Plan preparation and it was also apprehended that the information if provided could be misused and hence the complainant's request for information in the desired form was rejected on 21.11.2005 under section 7(9) of the ACT as it would disproportionately divert the resources of their office.
4. In the meantime the complainant filed a letter that he wished to submit a rejoinder to all pleadings of DDA in writing and that he may be permitted the assistance of RTI experts in future proceedings and hearings, if any. Another hearing was fixed for February 8, 2006 and copies of the documents and annexure filed by the DDA were provided to the Complainant.

5. On February 8, 2006 the parties appeared before the Commission. The complainant was present and assisted by Shri.Venkatesh Nayak of the Commonwealth Human Rights Initiative and Ms. Gita Dewan Verma from the Master Plan Implementation Support Group. The DDA was represented by their CPIOs Ms.Neemo Dhar (Director PR), Shri P.V.Mahashabdey (Director MPPR), Ms.Aparna Reghuraman (RTI in charge, DDA) and Shri Ashok Kumar (Addl. Commissioner Planning, DDA).
6. The complainant stated that since there were numerous grounds in his complaint he would rely upon his detailed written submissions, including his rejoinder to DDA's pleadings. He had stated that he did not serve a copy of his rejoinder on the DDA since at the previous hearing the DDA did not serve their documents on him and he had to obtain these on application through the Commission. **The Commission observed that once a matter was taken cognizance of by the Commission, copies of subsequent pleadings must be duly served on the opposite parties before or along with its being filed in the Registry to encourage a suitable and timely response.**
7. The complainant stated that the DDA had appointed about 40 CPIOs who were assigned subject wise "jurisdictions". Although the complainant commends the Authority for making these appointments in light of the number of public applications expected, assigning them jurisdictions was not in accordance with the Act. This also forced them to file multiple requests or pay excessive fees if the information sought spans the PIO's "jurisdictions". This is not denied by DDA.
8. Sub-section 5(1) of the Act requires every public authority to appoint as many Public Information Officers as may be necessary to provide information to persons requesting information under this Act. The public authority is also required by sub-section 5(2) of the Act to designate an officer at each sub-divisional level or other sub-district level as an Assistant Public Information Officer to receive the applications for

information or appeals under this Act for forwarding the same forthwith to the Public Information Officer. Sub-section 5(3) of the ACT empowers the Public Information Officers to deal with requests from persons seeking information and render reasonable assistance to the persons seeking such information. Sub-sections 2(c) and 2(m) of the Act define the Public Information Officers to be those designated as such under sub-section 5(1) and include also the Assistant Public Information Officers designated as such under sub-section 5(2). Thus it implies that the PIOs as well as the APIOs are empowered to receive requests from persons and to deal with such requests and also to render reasonable assistance.

9. However, it is only a PIO who is required to provide information to the persons requesting for information under the Act. When a request is received by an APIO he is required only to forward the same forthwith to a PIO of the public authority. A division of responsibilities amongst PIOs is not proscribed for a public authority to ease faster access and dissemination of information. Thus the law is clear that a request for information may be received at every office or administrative unit or every sub level also. It is not required that only a PIO appointed u/s 5(1) may accept requests for information pertaining to his administrative unit or "jurisdiction" since this would impede access to information.
10. In the present case we find that although DDA has Counselors, available at a front counter, DDA has not designated any APIOs at all as required by section 5(2) of the ACT. DDA may like to appoint APIOs to receive all applications and have these examined and replied to by the concerned PIO, or direct all CPIOs to receive RTI application irrespective of administrative unit. It appears that the function of the DDA is such that all reporting / decisions of the Authority are made through the Vice Chairman, DDA, to whom all PIOs report in the decision making process. In such circumstances an applicant can justifiably complain that no office of DDA was able to provide him precise information

concerning his letter addressed to Vice Chairman, DDA concerning the reported threat to life being caused by polluting industrial units still operating in Dwarka a residential development area of DDA. Both parties appear to rely upon directions of the Judgment of the Supreme Court on May 7, 2004 in WP(C) 4677/1985 in M. C. Mehta's matter, (a copy of which was produced for our perusal). DDA submitted that the particular query actually concerned the Govt. of Delhi, which the Complainant contested saying that Dwarka was exclusively under the DDA with the Vice Chairman, DDA being a member of the Apex Court's appointed monitoring committee to enforce the said Judgment. Also, the DDA's CPIO had not forwarded his query to the Delhi Govt. as would have been required had the application concerned another public authority (Sec 6(3)). Although we cannot accept that this is a case where life and liberty were threatened, the matter decidedly concerned the health of persons in DDA's residential development area. **We would therefore enjoin upon Vice Chairman DDA to respond to such matters as expeditiously as possible if not within 48 hours as mandated if it involved a case of life and liberty.**

In this complaint the complainant was aggrieved that the PIO of DDA to whom he had addressed his information request had transferred his request to another PIO of DDA in accordance to "jurisdiction" assigned. The DDA in response had stated that this was done as per the section 6(3) of the Act, which read as follows: -

"Where an application is made to a public authority requesting for information—

- (i) which is held by another public authority; or*
- (ii) the subject matter of which is more closely connected with the functions of another public authority,*

the public authority, to which such application is made, shall transfer the application or such part of it as may be appropriate to that other public authority and inform the applicant immediately about such transfer:

Provided that the transfer of an application pursuant to this sub-section shall be made as soon as practicable but in no case later than five days from the date of receipt of the application.”.

12. The DDA argued that disclosing the information sought by Complainant would interfere with the Delhi Master Plan process and liable to be misused. However, the DDA's original written statement in reply of 21.11.2005 says repeatedly *“The complainant was never denied information. ... The complainant had requested for information concerning the Board of Inquiry constituted for evaluating the objections received towards draft Master Plan - 2021. He had desired that the basis of constitution of an inquiry and proceedings of the Board should be made available to him. He was informed that records of MPD-2021 are available with the Master Plan Department for which Shri Mahashabdey is the PIO and not Mrs. Neemo Dhar...”* There was no mention at all in this reply filed with the Commission from Ms. Meena Pahwa (Dy. Director PG/DDA) dated 21.11.2005 that information had been denied to Complainant. We note that there was a positive inference therein that the information had actually been provided or was liable to be provided. In DDA's subsequent written statement in further reply of 12.01.2006 from Mr. Mahashabdey at Para 1.7 he stated as follows *“It may be observed that the process of Plan preparation / modification is being followed as per the procedure laid down in the Act / Rules in this regard. Sharing of any information in the form of studies, reports, objections / suggestions received from various individuals, departments etc., details and summaries of these and minutes of the Board's meetings etc. demanded by the complainant at this stage, will hamper and affect the Plan preparation. It is also apprehended that the information may be misused. Therefore, the request for providing the information in the desired*

format by the complainant was rejected vide this office letter dated No.Dir MPD-2021/DDA/05/F585/4 dated 21.11.2005 under the provisions of sub-section-9 of Section 7 of the RTI ACT 2005 on the grounds of diverting the resources of this office disproportionately. ”. This stand was again reiterated by both Ms.Neemo Dhar and also Mr.Mahashabdey at the second hearing on 08.02.2006 where they had both stated that the Board of Inquiry’s ongoing proceedings would be affected, as would also the Master Plan, if the information sought as detailed above was disclosed, and also that the Board’s proceedings were confidential.

12. On the other hand the complainant stated that the information was required so as to allow him to effectively participate in the Master Plan formulation process as is provided for in the DDA Act /Rules in this regard. According to him, DDA did not possess any authentic copy of its own DDA Act or the applicable Rules and had neither published the same nor put the same on their website as mandated under section 4(1)(b) of the ACT. He submitted that the information he had sought would help DDA in formulation of the Master Plan as he had submitted over 1,000 serious and specific objections to draft Master Plan which he felt were being overlooked as he was never served any notice as prescribed intimating the time, date and place for his personal hearing before the said Board thereby compelling him to request the same via RTI process. Mr. Roy has leveled various allegations against DDA but these are not of concern to this Commission whose mandate is confined to ensuring only that information sought is given if in accordance with the Act. In this connection he had requested that he may be provided authenticated copies of original documents and records which were available with the DDA and not documents from secondary sources which may have been cobbled together, even forged. In his written rejoinder of 06.02.2006 he alleged that the DDA had suppressed or destroyed numerous public representations on the draft Master Plan received by DDA. Mr.Venkatesh Nayak of CHRI clarified on behalf of the Complainant that sub-section 7(9) of the ACT could not be used as a ground to deny information to the applicants and if for any reason the information could not

be provided in the material form requested, then some other acceptable means of providing the material records must be ensured. Mr. Nayak felt that there was no correlation between the alleged misuse potential of the information sought and the sub-section 7(9) relied upon by DDA, and the excuse of “potential misuse” was not sufficient to deny the information sought by the Complainant.

13. After considering these submissions we find as follows: -

That the Commission has already accepted a complaint from Ms Madhu Bhaduri on a complaint of December 16, 2005, on the question of design of an application form by DDA ruling as follows:

"The DDA was in violation of Sec 6 (2) of the Act in asking for reasons for making the application."

DDA stands directed to modify the form

That in the instant matter there are clear indications in law that the specific information sought by Mr. Roy concerning MPD-2021 may be disclosed to citizens desirous of obtaining such information. Not sufficient reasons were advanced to satisfy the Commission that the information was exempted from disclosure under any of the provisions of Sec 8 of the Act, including provisions relating to invasion of privacy or third party interest that could invoke Sec 11. Therefore the information requested by the applicant connected with a public activity viz. the formulation of Master Plan by DDA and not exempted u/s 8 of the ACT cannot be denied. Hence we hold that in the instant matter the information must be provided to the applicant.

DECISION:

1. The DDA is a single public authority. Since this is a matter concerning adjustments within the same public authority Sec 6 (3) cannot apply. Accordingly the CPIO Ms. Neemo Dhar, who had received the request from the complainant, was, as per section 7(1) of the ACT, under obligation to seek information from her colleague and provide it to the complainant. Her

colleague who was to provide the information as per Section 5(5) of the RTI ACT, would become deemed CPIO and expected to provide Ms. Dhar the information sought by the Complainant.

2. The CPIO of DDA Ms. Neemo Dhar is directed to provide the information sought by the Applicant within 15 days. The information shall be provided to the applicant in the particular form requested to the extent it is available within DDA in such form. Where the information is not available in the particular form requested, the applicant may be allowed if he desires to inspect the original records at DDA and information specifically asked for provided in the form of printouts / copies of original documents or records etc. of DDA duly certified. However, any information requested having been supplied to DDA by a third party, which has been treated as confidential by that third party, shall be dealt with as per Sec 11 of the ACT. Sec 7(9) of the Act does not authorize a public authority to deny information. It simply allows the authority to provide the information in a form easy to access. We agree that providing the information on all responses to the public notice of the Board of Enquiry and Hearings, even if they number only 7000 as claimed by the DDA and more than 10,000 according to the complainant, in the form of certified copies will attract the provisions of Sec 7 (9) as averred by DDA. But this provision does not exempt disclosure of information, only adjustment of the form in which it is provided. And given our findings as per Para 12 above that there was a positive inference that the information had actually been provided or was liable to be provided, we cannot agree with the afterthought that this would impede the preparation of the Master Plan, which in any case does not fall within the exemptions of Sec 8 of the Act. Providing the complainant an opportunity to examine the responses giving him certified copies of those identified by him, will meet the provisions of the Act.
3. The Principal Commissioner cum Secretary, DDA is directed to ensure that acceptance of all applications irrespective of any administrative unit for which PIOs are responsible in routine, is brought into accordance with the

requirements of Sec 5 of the Act. The Counselor system is a good innovation, but cannot be used to as a substitute for the APIO. He is also directed to provide the Commission a compliance report for the Commission's record, with respect to Section 4 of the Act. The Acts and Rules relevant to the functioning of the public authority may be published on the website as expeditiously as possible and in any case within 30 days.

4. Since the DDA has failed to provide the information requested to the applicant within the time limit prescribed under Sec7, the information sought shall be provided free of charge to the applicant Mr. Roy as per Sec 7(6). However we are not convinced of malafide intent and provision of incorrect, incomplete or misleading information by the PIO. Hence no penalty is imposed, but it is expected that this will be taken as a warning to expedite provision of information to all future applicants for information to DDA

Let a copy of this order be sent free of cost to the parties.

Sd/-

(Padma Balasubramanian)

Information Commissioner

Sd/-

(Wajahat Habibullah)

Chief Information Commissioner

Authenticated true copy. Additional copies of orders shall be supplied against application and payment of the charges prescribed under the Act to the CPIO of this Commission:

:

Sd/-

(P. K. Gera)

Registrar

Dated: 25/2/06