

Before the Central Information Commission

CIC Bhawan, Baba Gangnath Marg, Munirka, New Delhi – 110 067

Complaint submitted under Section 18(1) of *The Right to Information Act, 2005*

In the matter of

Venkatesh Nayak

vs

***1) The Central Public Information Officer
Department of Health & Family Welfare***

***2) The Central Public Information Officer
Directorate General of Health Services***

&

***3) The Central Public Information Officer
Indian Council of Medical Research***

Date of submission: 24/04/2020

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S.S. Venkatesh Nayak

Before the Central Information Commission

CIC Bhawan, Baba Gangnath Marg, Munirka, New Delhi – 110 067

Complaint submitted under Section 18(1) of *The Right to Information Act, 2005*

Date: 24/04/2020

**1) Name and address
of the Complainant**

: Venkatesh Nayak
#55A, 3rd Floor
Siddharth Chambers-1
Kalu Sarai
New Delhi-110016
Telephone: +91 9871050555
Email: venkateshnayak.ss@gmail.com

**2) Name and address of the Central
Public Information Officer (CPIO) to
whom the RTI application was sent**

: The Central Public Information Officer
Department of Health & Family Welfare
through RTI Online Facility

**3) Name and address of the CPIOs
of the Respondent Public Authorities**

: **1) Shri Rajender Kumar**
Nodal CPIO
Department of Health and Family Welfare
Government of India
Nirman Bhawan
Maulana Azad Road
New Delhi – 110 108
Tel No.: 011-23061774
Email: rajenderkr.1974@nic.in

2) Dr. U. B. Das
Directorate General of Health Services
Government of India
Nirman Bhawan
Maulana Azad Road
New Delhi – 110 108
Tel No.: 011-23063440
Email: ub.das71@gov.in



3) Ms. Poonam
Nodal Officer
Indian Council of Medical Research
V. Ramalingaswami Bhawan
Ansari Nagar
New Delhi – 110 029
Tel No.: 011-26588980
Email: poonam@icmr.gov.in

- 4) Particulars of the RTI application :**
- a) No. and date of submission of the RTI application :** Regn. No. MOHFW/R/E/20/01117 dated 17/04/2020
- b) Date of payment of additional fee (if any) :** Not applicable
- c) Date of the reply to the RTI application :** No reply till date
- d) No. and date of transfer of the RTI application :** 1) RTI application transferred to DGHS on 18/04/2020 and registered with new No. DTGHS/R/T/20/00366
2) RTI application transferred to ICMR on 18/04/2020 and registered with new No. INCMR/R/T/20/00133
- 5) Particulars of the reply/order including number, if any against which the appeal is preferred :** No reply received from any of the 3 Respondent Public Authorities till date

6) Brief facts leading to the appeal :

6.1) On 17/04/2020, this Complainant submitted a request for access to information, to the CPIO mentioned at **para #2 above**, along with the prescribed application fee, through the RTI Online Facility, stating as follows (**Annexe 1**):

"I would like to obtain the following information from your public authority under the proviso to Section 7(1) relating to urgent requests (48 hours) read with Section 6(1) of the RTI Act, 2005:

- 1) The district-wise number of hospitals and healthcare facilities called by any other name, designated as COVID-19 treatment centres as on date,

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- 2) The postal addresses and telephone numbers of the hospitals and healthcare facilities referred to above,
- 3) The criteria applied for determining whether or not a hospital or a health care facility should be designated as a COVID- 19 treatment centre,
- 4) The district-wise names of hospitals and health care facilities whose designation as COVID-19 treatment centres has been withdrawn as on date, and
- 5) The reasons for withdrawing the designation of every hospital and health care facility referred to at para no. 4 above.

As all the information specified above directly concerns the life and liberty of individuals across the country, kindly publicise the information within 48 hours of receipt of this request by uploading the same on your official website under Section 4(1) of the RTI Act with intimation of the relevant URL(s) to this Applicant by email.”

6.2) Not having received a reply within 48 hours and due to the intervening weekend, this Complainant checked the status of the instant RTI application on the RTI Online Facility on 24 April, 2020. It is only then this Complainant discovered that the instant RTI application had been transferred to the 2nd and the 3rd Respondent Public Authorities under the RTI Act, 2005 (**Annexe 1**). The CPIO of the 1st Respondent Public Authority had not even sent an intimation of the said transfer to this Complainant.

6.3) This Complainant is aggrieved by the lack of reply from the Respondent Public Authorities, till date.

7) Prayers or relief sought :

This Complainant humbly prays that this Hon'ble Commission may be pleased to:

- 1) admit this complaint and inquire into the matters raised herein;**
- 2) schedule an urgent hearing into the instant complaint given the fact that it concerns the lives of all individuals residing within the territory of India. Sending the instant Complaint to the back end of the queue of appeals and complaints already pending before this Hon'ble Commission will defeat the very purpose of this intervention;**
- 3) direct the Respondent Public Authorities to display the information sought in the instant RTI application on their respective websites for reasons stated at para #8.2 below;**
- 4) direct the Respondent Public Authorities to update all the information sought in the instant RTI application from time to time as and when changes are made; and**

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5) **issue any further orders or directions or recommendations that this Hon'ble Commission may deem appropriate given the facts and circumstances of the instant case.**

8) Grounds for the prayer or relief :

8.1) According to Section 18(1)(c) of the RTI Act any person who has not been given a response within the time limit specified under the RTI Act, to a request for access to information may submit a complaint to this Hon'ble Commission. This Complainant is unable to submit an appeal under Section 19(1) of the RTI Act against the Respondent Public Authorities for lack of timely response for the following reasons (**uploaded separately**):

- a) The RTI Online Facility prevents an RTI applicant from submitting an appeal on the said facility until the completion of 30 days. Proof of automated response from the said facility has been uploaded along with this Complaint separately through this Hon'ble Commission's Online complaint submission facility. Any further delay in seeking a statutory remedy in the instant case will render the rights available under the proviso to Section 7(1) nugatory (Annexe 2); and
- b) Due to the restrictions on this Complainant's freedom of movement imposed by the lockdown in the aftermath of the spread of the COVID-19 epidemic, he is unable to transmit an appeal to the First Appellate Authorities of the respective Respondent Public Authorities via postal or courier services.

This Complainant is aggrieved by the lack of response of the Respondent Public Authorities for the following reasons:

8.2) According to the *proviso* underlying Section 7(1) of the RTI Act where information sought concerns the life and liberty of an individual, the CPIO whose public authority holds custody of such information is required to supply such information within 48 hours of receipt of the request. Conversely, it may be said that where the CPIO believes that the information sought does not fall within the ambit of the urgent request clause contained in the *proviso* underlying Section 7(1) of the RTI Act, he is dutybound to send, at least, a response to the RTI applicant to that effect. More than 48 hours have lapsed since the receipt of the instant RTI application by all the Respondent Public Authorities, but they have not sent any response till date. This Complainant is aggrieved by the inaction of the CPIOs of the Respondent Public Authorities. **Hence the submission of this Complaint to this Hon'ble Commission.**

8.3) Further, the information sought concerns the lives of not just one person but all persons residing within the territory of India due to the widespread effect of COVID-19. This Appellant searched the website of the 1st Respondent Public Authority for information sought in the instant RTI application before submitting it. After finding that none of the information is disclosed *suo motu* on the said website, he felt constrained to seek access to such information formally, not for himself alone. Instead this Complainant requested the-

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1st Respondent Public Authority to publish all the information on its website for the benefit of the citizenry at large and only intimation of the relevant URLs to him by email. Further, upon discovering that the instant RTI application had been transferred to the 2nd and the 3rd Respondent Public Authorities, this Complainant checked up their official websites also for the said information, in vain. None of the three Respondent Public Authorities have made *suo motu* disclosure of any of the information sought in the instant RTI application on their website. This Complainant is aggrieved by the inaction of the Respondent Public Authorities. ***Hence the submission of this Complaint to this Hon'ble Commission.***

8.4) Further, some online media platforms have reported the names of some hospitals and other health care facilities designated for the treatment of COVID patients. However, this information is not comprehensive and country-wide. There are also reports of the designated status being withdrawn from some hospitals. However, reasons for such actions are not available in the public domain. This Complainant believes, all the information to which access has been sought in the instant RTI application is of immense public interest and does not attract any of the exemptions to disclosure provided in the RTI Act. Therefore this Complainant firmly believes, all such information is fit to be disclosed. ***Hence the submission of this Complaint to this Hon'ble Commission.***

8.5) Further, all the information sought in the instant RTI application is in the nature of information that ought to have been disclosed *suo motu* by any or all the Respondent Public Authorities under Sections 4(1)(c) and 4(1)(d) of the RTI Act. As the same was not done, this Complainant felt constrained to seek access to such information formally. Nevertheless the Respondent Public Authorities have not bothered to even respond to the instant RTI application within 48 hours. ***Hence the submission of this Complaint to this Hon'ble Commission.***

8.6) Further, this Complainant believes, the instant RTI application is in tune with the spirit of Section 4(2) of the RTI Act which requires every public authority to endeavour to disclose *suo motu* as much information as possible so that the public has minimum resort to the use of the RTI act for seeking information formally. This is the reason why this Complainant requested the 1st Respondent Public Authority to make the information accessible on its website. Nevertheless, it is this Complainant's firm belief that the CPIO has transferred the instant RTI application out of his public authority without adequately understanding the import of the instant RTI application. ***Hence the submission of this Complaint to this Hon'ble Commission.***

8.7) Further, this Hon'ble Commission has stated in its COVID Guidelines circular of F. No. CIC/Legal/CORON/2020/32 dated 16 March, 2020 that it will hear urgent matters through audio conferencing during the previous month. This Hon'ble Commission has commendably resumed its mandated task of hearing appeals and complaints 20th April, 2020 onwards. In this Complainant's humble opinion, there is no reason why the instant Complaint must not be fast-tracked for disposal given the nature of information sought in the instant RTI application. ***Hence the submission of this Complaint to this Hon'ble Commission.***



8.8) Further, this Complainant firmly believes, for multiple reasons, the instant Complaint does not fall foul of the ruling of the Hon'ble Supreme Court of India in the matter of **Chief Information Commissioner & Anr. Vs State of Manipur & Anr.** [AIR 2012 SC 864] with regard to the difference between the appeals procedures given under Section 19 and the complaint procedure provided under Section 18(1) of the RTI Act. **First**, given the language of Section 18(1)(c) of the RTI Act this Complainant firmly believes this procedure may be invoked in the context of seeking information for oneself and seeking access to information in a general manner along with other members of the citizenry. The phrases- "request for information or access to information" used together in Section 18(1)(c) of the RTI Act seem to indicate the clear distinction made between the two information access procedures. **Second**, in the same case, the Hon'ble Court stated that the complaint procedure was available for exercising supervisory jurisdiction of this Hon'ble Information Commission. As the mode of access to all the information sought in the instant RTI application is through website-based disclosure, this Complainant firmly believes, the instant Complaint does not fall within the restriction on the utility of the Complaint procedure provided for in Section 18 of the RTI Act, by the Apex Court. **Third**, for reasons stated at para no. 8.1 above, this Complainant is prevented from submitting an appeal under Section 19(1) of the RTI Act. So this Complainant has no effective remedy before any forum other than this Hon'ble Commission in the instant case. **Hence the submission of this Complaint to this Hon'ble Commission.**

9) I hereby verify that the aforementioned facts are true to the best of my knowledge. I also affirm that I have transmitted a copy of this Complaint along with Annexures to the CPIOs of all the Respondent Public Authorities, by email.

Signature of the Complainant:



(Venkatesh Nayak)