

Na.Vijayashankar

“Ujvala”, 37, 20th Main, B.S.K.Stage I, Bangalore 560050
Web: www.naavi.org : E-Mail: naavi9@gmail.com
Ph:26616961: M: 9343554943

Dated 1st April 2011

To

Sri V.S.Das,
Executive Director
Reserve Bank of India
Department of Banking Supervision,
World Trade Center, Cuffe Parade
Mumbai 400005

Sub: First Appeal-Application for Information under Sec 6 of Right to information Act 2005

Dear Sir,

I had submitted a request for information under RTI on 8th February 2011 as per copy of application enclosed in annexure I. As I am aggrieved by decision of Central Public Information Officer, I hereby file this appeal for your kind decision.

1.Details of appellant:

- 1.1. Name** Na.Vijayashankar
- 1.2. Address** “Ujvala”, No 37, 20th Main, B S K Stage I, Bangalore 560050,
- 1.3: Phone** 26603490, **Mobile:** 9343554943,
- 1.4: E Mail:** naavi9@gmail.com

2. Details of CPIO

- 2.1: Name/Designation:** G.Jaganmohan Rao
- 2.2: Address:** CPIO, Department of Banking supervision, Central office, Center 1, Cuffe Parade, Colaba, Mumbai-400001
- 2.3: Name of Public Authority:** Reserve Bank of India

3. Details of RTI application to CPIO

- 3.1: Date of Application:** 8th February 2011
- 3.2: Date of reply by CPIO:** March 22, 2011

4. Particulars of payment of filing fee:

Paid Rs 10/- by Bank draft on Corporation Bank dated 8th February 2011

5. Nature of information sought:

Copies of all the Minutes of Meeting with Chairman's notings of the G. Gopalakrishna Working Group on Information Security, Electronic Banking, Technology Risk Management and Cyber Frauds along with any documents submitted by any of the members in support of their individual recommendations.

6. Particulars of Decision of CPIO:

The CPIO has declined to release the information sought under Sec 8(1) a, (d), and (e) vide letter no 13025/01.12.001/2010-11 dated March 22, 2011; RIA 2975-2010-11 received by the appellant on 28th March 2011.

(Copy enclosed: Annexure II)

7. Brief Facts of the Case:

RBI has released a public document called G Gopalakrishna Working group report on Information Security, Electronic Banking Technology, Risk Management and Cyber Frauds on January 14, 2011.

The working group has submitted its report which includes a number of recommendations to the RBI and in due course, RBI is expected to release the operating part of the report in the form of guidelines to Banks. The report consists of suggestions on how Banks have to manage the technical and legal issues involved in electronic banking, steps to prevent Cyber Frauds etc.

There were several members of the group some of them employees of RBI and many who were from the private sector including MNCs and having commercial interests in the technical aspects of Banking in India. They were formed into sub groups and gave recommendations to the group which were finally consolidated into the final report which is a public document.

The suggestions made and incorporated in the final report as well as suggestions made and not incorporated in the final report, the notings of the Chairman on various issues raised are matters of public interest since they have been translated into suggested procedures to be followed by the Banks in India coming under the supervision of RBI.

The information sought is expected to contain information on whether the members gave suggestions which were reflective of their skills or if they reflect inefficiencies and errors, whether the recommendations were made in pursuance of the commercial interests of the group members, whether the recommendations made were within the provisions of Indian law or otherwise etc. The information would be useful for the public to know if such key working groups which may have large scale impact on the welfare of the society are guided properly.

8. Reasons/grounds for this appeal

The CPIO has rejected the application under provisions of section 8(1) (a), (d) and (e) of the RTI Act 2005. Copy of the final report is said to have been enclosed in a CD which has not been received. Since the report is anyway available on the RBI website

it is immaterial that the CD is not enclosed. A mere copy of the final report is not the information sought for and is not required.

9. Any other information in support of appeal:

Section 8(1) (a) of RTI Act exempts the following information from disclosure:

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

It is clear that this exemption is in relation to information which is of interest to national security.

It is impossible to assume that the CPIO is serious in quoting national security as the reason for not releasing the information sought for. The word “Security” used in the report is in respect of “Information Security” and not “National Security”.

We cannot consider that a senior officer of RBI who is a CPIO is naïve enough not to distinguish between national security and information security. It is therefore clear that the reason given is false and untenable. One can presume therefore that there is an undisclosed reason to suppress the information sought which can only be hide information whose disclosure would be required in larger public interest.

Hence the exclusion sought under Section 8(1) (a) should be rejected and CPIO should be ordered to release the information along with the reasons which compelled him to withhold the information in the first place.

If the appellate authority considers that the view of the CPIO is tenable, reasons may be provided to describe how the disclosure of information sought is likely to affect national interests. The appellate authority may clarify whether the information is likely to reveal that the security in banks is in such shambles that the public would be unnerved if that information is made public.

The exemption provided under Section 8(1) (d) of the RTI Act 2005 is meant for information which includes

“Commercial confidence, trade secrets or intellectual property, the disclosure of which would harm the competitive position of a third party unless the competent authority is satisfied that larger public interest warrants the disclosure of such information”.

In case the Appellate authority agrees with this view of the CPIO, it may be clarified whose trade secrets or intellectual property is being made available to the working group and which the CPIO is trying to protect. If the contention of the CPIO is to be believed, and proprietary information of any of the private parties or multi nationals are being used to structure the information security practices of Indian banks, it may indicate a serious compromise of the security of the Banks. It is not believable that a mere disclosure of what is the legal issues involved in ITA 2000 or what network security is all about etc., are considered as copyright material of any description.

Also, it is not considered feasible for any of the members to have submitted any detailed information about any proprietary information on which a copyright or trade secret may persist to the Group and the statement of the CPIO is false. If a member has stated that they are not following a particular security feature or they are following a specific method for security, such information cannot be considered as "Trade Secrets". For example, if a member has indicated that their institution does not follow certain security measures since they consider them commercially not feasible or that there is inefficiency in their employee force or there are fraudulent employees working in the organization, such information cannot be considered as "Trade Secrets". Suppression of such information would tantamount to CPIO refusing to disclose information disclosure of which in fact is in public interest.

If the CPIO considers that the revealing of any information could affect commercial confidence it would be considered as an official confirmation from RBI that the information security scenario in Banks is in fact so unnerving to be revealed to the public. If such an apprehension is even partly true, I am sure that RBI would be considered as guilty of dereliction of its duty to public in maintaining the security of the Indian Banking system.

Since I do not consider RBI to be so irresponsible, the response given by the CPIO must be considered as false and again backed by some ulterior motive.

Under Section 8(1) (e) of RTI Act, *information available to a person in his fiduciary relationship is exempt.*

However this is subject to a rider that *the competent authority is not satisfied that the larger public interest warrants the disclosure of such information.*

If the appellate authority agrees with the above view, it may be clarified who is the "person" who has received the information in a "fiduciary capacity"?. The working group was part of the public authority and information provided was to the public authority and not to any one member or the Chairman of the working group. The information provided was by members many of whom were not employees of RBI. They belonged to organizations which are in the private sector with ownership which belonged to Non Residents and Multi Nationals.

If there were issues of confidence that cannot be released to Indian public, the appellate authority may confirm if by revealing such information to the private sector members and multi-national companies would it not amount to compromising the national security to a foreign entity through RBI.

I believe that there was no information disclosure sought which could affect the public interest if disclosed more than when it is released to the private sector members and multi nationals who were members.

In fact since disclosure of information will enable the public to understand if the Working group conducted its activities in a manner not detrimental to the interests of the public, there is a larger public interest involved in the disclosure than holding back of the information.

It is therefore clear that the CPIO is holding out false and untenable reasons to refuse release of information sought. The act of CPIO therefore raises an alarm that the activities of the working group have matters which need to be suppressed in the interest of the credibility of the public authority.

Since I respect the institution of RBI and would not like to believe that RBI has any specific vested interest in withholding the information sought for, the refusal of the information is being challenged through this appeal

10. Prayer/relief sought for:

Kindly direct the CPIO to provide the information sought for without further delay. Information can be provided on a CD in electronic form.

I also pray that the CPIO is held liable for violation of RTI Act and for every day of delay in the release of information he be fined as per the terms of the Act on a per-diem basis.

I also request that the appellate authority may recommend steps to ensure that such false refusal of information which potentially is more damaging to RBI than the release of the information itself does not take place in future.

It may be made clear to the CPIO that when he holds out false reasons to refuse information, he is giving room for the public to presume that there is really something to hide which cannot but be detrimental to public interest. It will expose CPIO to penal provisions of the Act

11. Grounds for prayer/relief sought for:

The reasons provided by CPIO for rejecting the information is not sustainable on the grounds allowed under the Act. The refusal on incorrect and false premise indicates malicious intentions to suppress information which is detrimental to public interest and the image of RBI as the premier financial institution in the country. Since the end result of the working group activity is a public document, any discussions that lead to the creation of the report cannot be considered as unfit for public disclosure. Hence the relief is sought for through this appeal.

12. Personal presence at hearing: No

13: Enclosures: I: Copy of original RTI application, II: Copy of decision of CPIO

Thanking you and regretting the use of strong language necessitated by what I consider as an unfair rejection of the information.

Yours sincerely

Sd
Na.Vijayashankar