

**Memorandum of first Appeal u/s 19(3) of the RTI Act to the First Appellate Authority**

**1) To**

Mrs Anamika Ranavat- DGM (L)  
First Appellate Authority  
IFCI Limited. IFCI Tower  
61, Nehru Place, New Delhi- 110019

**2) Name and Address of the applicant**



**3) Name and address of CPIO to whom the application was addressed**

The CPIO, IFCI Limited  
IFCI Tower, 61 Nehru Place,  
New Delhi- 110 019

**4) Particulars of the RTI Application**

Copy of RTI application dated 01/04/2021 (**Enclosed as Annexure-I**)

**5) Particulars of the Information sought**

**Nature** : Copies of documents .

**Subject:** Prosecution sanctions given in the year 2020 against ex and present employees to CBI and CBI request letters and documents thereof for seeking such prosecution sanctions.

**6) Particulars of the information not provided**

**Nature** : Copies of documents.

**Subject:** Prosecution sanctions given in the year 2020 against ex and present employees to CBI and CBI request letters and documents thereof for seeking such prosecution sanctions.

**7) Particulars of the order against which the appeal is preferred**

Copy of CPIO order dated 03/05/2021 (**Enclosed as Annexure-II**)  
Copy of CPIO order dated 26/07/2021 (**Enclosed as Annexure-III**)

**8) Last date for filling the appeal: 26/08/2021.**

**9) Brief facts leading to Appeal**

- Tens of Lakhs of common public are stakeholders in IFCI Limited by virtue of their investment of their Public money by them selves in the shares and bonds of IFCI Limited.
- IFCI Limited is a Central Government Company. IFCI Limited, a Public Authority being in financial sector deals with public money and is entrusted with public functions and is required to act fairly, reasonably, uniformly and consistently for public good and public welfare in the interest of public. Employees of IFCI Limited are public servants discharging public duties.
- An application was filed under RTI to CPIO on 01/04/2021 requesting for copies of prosecution sanctions given in the year 2020 against ex and present employees to CBI and CBI request letters and documents for seeking such prosecution sanctions in the matter of ex and present employees of IFCI Limited.
- The said RTI application was refused by the CPIO by invoking section 8 (1) J of the RTI Act vide his order dated 03/05/2021.
- The applicant preferred this first appeal to the First Appellate Authority.
- FAA vide her order dated 08/07/2021 remanded back the matter to CPIO which is not provided for in the RTI Act. RTI Act only provides for FAA

either to uphold the CPIO order or to Set aside the CPIO order or to partially set aside and partially uphold CPIO order.

- CPIO vide his order dated 26/07/2021 denied the information on new grounds as under:-
  - i) Third party CBI treated the information as Confidential.
  - ii) Third party CBI raised objections under Section 8 1 (h) of RTI Act.
  - iii) CPIO opined that there appears no public interest involved in the matter to outweigh the objections raised by the third party CBI.

#### **10. Prayer Sought**

- First Appellate Authority is requested that, if deem fit, proper and necessary to direct the CPIO to provide the information that is copies of prosecution sanctions given in the year 2020 against ex and present employees to CBI and CBI request letters and underlying documents thereof for seeking such prosecution sanctions in the interest of justice.

#### **11. Grounds for Prayer**

##### **I. Information sought is a Public Information not a confidential information.**

- Because the prosecution sanctions are sought by CBI a Public Authority as per the relevant public laws of the land that is Indian Penal Code and/or Prevention of Corruption Act..etc from another Public Authority that is IFCI Limited, by providing underlying documents for seeking such prosecution sanctions, which would be utilised in a Court of Law an another a Public Authority hence relates to public activity or public interest or public good. Hence the information sought is Public Information.

- Because the copy of documents sought were information that are inherent to the official positions of ex and present employees held in IFCI Limited who are **Public Servants**. But for ex and present employees working in their official positions in IFCI Limited, CBI would not be seeking prosecution sanctions from the Authorities Competent to remove them from their official positions as required under the corresponding law by providing underlying documents for seeking such prosecution sanctions. The information sought was not the employee's personal information or private information. Further the information sought does not comprise the individual's personal details or private details which are unrelated to their official positions in the organisation. ***Hence the information sought was a public information***
  
- Section 11 of RTI Act provides as under:-

**11. (1)** Where a Central Public Information Officer or a State Public Information Officer, as the case may be, intends to disclose any information or record, or part thereof on a request made under this Act, which relates to or has been supplied by a third party and has been treated as confidential by that third party, the Central Public Information Officer or State Public Information Officer, as the case may be, shall, within five days from the receipt of the request, give a written notice to such third party of the request and of the fact that the Central Public Information Officer or State Public Information Officer, as the case may be, intends to disclose the information or record, or part thereof, and invite the third party to make a submission in writing or orally, regarding whether the information should be disclosed, and such submission of the third party shall be kept in view while taking a decision about disclosure of information:

**Provided that except in the case of trade or commercial secrets protected by law, disclosure may be allowed if the public interest in disclosure outweighs in importance any possible harm or injury to the interests of such third party.**

- Because the information sought is neither trade nor commercial secret.
- Because, CPIO not rejected the information on the ground that third party objected disclosing of information would result in any possible harm or injury to the interests of the third party.
- Because no information can be classified arbitrarily as secret and/or confidential except as provided for in the RTI Act particularly when the information is public information.
- **Because the CBI (Crime) Manual- 2005, which is the Standard Operating Procedures (SOP) of CBI, under Chapter 22 Prosecution (Relevant extract of chapter enclosed as Annexure- IV) clause 22.23 states as under:-**

*" The sanction order is a public document and the court may be requested to take judicial notice of the same"*

therefore as per the CBI itself the prosecution sanctions given to CBI are public documents resulting in establishment of CBI request letters and underlying documents thereof for seeking such prosecution sanctions are also public information/ public documents.

- **Because CPIO denial of public information/ public documents is serious violation of RTI Act and contrary to RTI Act hence warrants to be set aside in.**

**II. Failure of CPIO to establish that providing Information sought does impede the process of investigation.**

- Because Section 8(1)(h) of the Act reads as under:-

**“8. Exemption from disclosure of information.– (1)**

Notwithstanding anything contained in this Act, there shall be no obligation to give any citizen–

XXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXX

(h) Information which would impede the process of investigation or apprehension or prosecution of offenders.”

It is clear from the above that only such information which would (i) impede the process of investigation; (ii) impede the apprehension or prosecution of offenders, is exempted from disclosure by virtue of Section 8(1) (h) of the Act.

- Because as per the CBI (Crime) Manual- 2005, which is the Standard Operating Procedures (SOP) of CBI, under Chapter 10 **Regular Cases (Relevant extract of chapter enclosed as Annexure- V)** clause 10.28 provides as under:-

***“10.28: After completion of investigation, the FR-I shall be prepared by the I.O (Investigation Officer). The law officer will give his recommendation through FR-II. The Superintendent of Police would thereafter, either pass final orders in respect of the cases with in his competence or obtain orders from the Competent Authority by sending his recommendations to the DIG concerned. After receipt of orders of the Competent Authority, if it is decided to prosecute the accused, necessary sanction for prosecution U/s 19 of the P.C. (Prevention of Corruption) Act, 1988 and section 197 Cr. PC as the case may be, if any required, may be obtained by the Branch SP by sending SPs Report and relevant records to the Competent Authority.***

- Because as mandated in the CBI Crime Manual 2005 which is the SOP of CBI, after completion of investigation only, CBI sought prosecution

sanctions. Hence CBI invoking provisions of section 8 (1) h would be contrary to RTI Act, 2005 with regard to impediment of investigation on which CPIO denial of information sought is bad in the eyes of law hence needs to be set aside.

- Because, with regard to apprehension or prosecution of offenders being the other two limbs of section 8 (1) h, information sought is the copies of prosecution sanctions accorded by IFCI Limited. Therefore the aspect of apprehension in the matter of investigation is untenable as the investigation is complete and in the matter of prosecution is also untenable as the prosecution sanctions were accorded by IFCI Limited to CBI. Hence CBI invoking provisions of section 8 (1) h would be contrary to RTI Act, 2005 on which CPIO denial information sought is bad in the eyes of law hence needs to be set aside.
- Because the presumption of impediment to investigation, presumption of impediment the apprehension or prosecution of offenders cannot be made basis to refuse relevant information when the subject material on hand established that the investigation is complete as per the CBI Crime Manual 2005 and prosecution sanctions were accorded to CBI ruling out any apprehension or prosecution of offenders, CPIO denial information sought is bad in the eyes of law hence needs to be set aside.
- Because CPIO failed to explain how disclosure of information requested would actually be an impediment to the process of investigation, when the investigation is complete by the CBI as per their own SOP and Prosecution sanctions were accorded to CBI eliminating the apprehension or prosecution of offenders under section 8 (1) h of RTI Act.
- Because Honourable High Courts in various matters **even where investigation was under way/ pending made observations for withholding of the information under section 8 (1) h** as under:-

- ✓ Honorable High Court of Delhi in the matter of *B.S. Mathur Vs. Public Information Officer in W.P. (C) 295 and 608/2011* has made the following observations:-

19. *Whether the disclosure of the information sought by the Petitioner to the extent not supplied to him yet would "impede the investigation" in terms of Section 8(1)(h) RTI Act" **The scheme of the RTI Act, its objects and reasons indicate that disclosure of information is the rule and non-disclosure the exception.** A public authority which seeks to withhold information available with it has to show that the information sought is of the nature specified in Section 8 RTI Act. As regards Section 8(1)(h) RTI Act, which is the only provision invoked by the Respondent to deny the Petitioner the information sought by him, it will have to be shown by the public authority that the information sought "would impede the process of investigation." The mere reproducing of the wording of the statute would not be sufficient when recourse is had to Section 8(1)(h) RTI Act. The burden is on the public authority to show in what manner the disclosure of such information would 'impede' the investigation.....*

22. *The mere pendency of an investigation or inquiry is by itself is not a sufficient justification for withholding information. It must be shown that the disclosure of the information sought would "impede" or even on a lesser threshold "hamper" or "interfere with" the investigation. Contextually in Section 8(1)(h) it will mean anything which would hamper and interfere with procedure followed in the investigation and have the effect to hold back the progress of investigation, apprehension of offenders or prosecution of offenders. However, the impediment, if alleged, must be actual and not make belief and a camouflage to deny information. To claim exemption under the said*



*Sub-section it has to be ascertained in each case whether the claim by the public authority has any reasonable basis.*

- ✓ Hon'ble High Court of Delhi in the case of *Bhagat Singh v. CIC & Ors.* WP(C) 3114/2007 has made the following observation:-

*13. Access to information, under Section 3 of the Act, is the rule and exemptions under Section 8, the exception. Section 8, being a restriction on this fundamental right, must therefore be strictly construed. It should not be interpreted in manner as to shadow the very right itself. Under Section 8, exemption from releasing information is granted if it would impede the process of investigation or the prosecution of the offenders. It is apparent that the mere existence of an investigation process cannot be a ground for refusal of the information; the authority withholding information must show satisfactory reasons as to why the release of such information would hamper the investigation process. Such reasons should be germane, and the opinion of the process being hampered should be reasonable and based on some material. Sans this consideration, Section 8(1)(h) and other such provisions would become a haven for dodging demands for information."*

- ✓ Hon'ble High Court of Delhi in the case of *Adesh Kumar v. UOI and Ors* W.P. (C) 3542/ 2014 has made the following observation :-

*10. A bare perusal of the order passed by the FAA also indicates that the aspect as to how the disclosure of information would impede prosecution has not been considered. Merely, citing that the information is exempted under Section 8(1)(h) of the Act would not absolve the public authority from discharging its onus as required to claim such exemption. Thus, neither the FAA nor the CIC has*

*questioned the Public Authority as to how the disclosure of information would impede the prosecution."*

- Because CPIO had allowed himself, to irrelevant and extraneous considerations which are explicit in his order that "as CBI had treated the information as Confidential and further invoked the provisions of section 8 (1) h of the RTI Act, 2005" resulting in, his lack of application of mind for assessing the nature of the information sought, thereby leading to his misunderstanding of the information sought thus evolving into his disability from reaching a fair conclusion of the information sought hence eventually arriving at his erroneous and perverse finding that the information sought was not to be disclosed hence deserves to be set aside.
- Because, non-application of mind by the CPIO further resulted in his feeble, casual and mechanical denial of the information sought under the colour of confidential information of third party and under the guise of invoking of section 8(1) (h) of the RTI Act by third party , by his order, which on the very face of itself is so wholly arbitrary and capricious that no reasonable person could ever have arrived such finding and conclusion hence merits to be set aside.
- Because the information sought is absolutely beyond the purview of Section 8 1 (h) of the RTI Act and the bar stipulated under Section 8(1) (h) of the RTI Act is not attracted to which the CPIO has taken shelter hence warrants to be set aside.
- Because the denial of information by the CPIO appears to be a mere blanket statement not supported by any cogent evidence or material on the basis of which it can be clearly demonstrated that such disclosure would in fact attract the exemption contained in Section 8(1)(h) of the RTI Act hence fits to be set aside.

**III. CPIO failure to consider the warranting larger bona fide Public Interest involved in the matter that outweighs the CBI objections**

- Honourable Supreme Court in the Civil Appeal no 10044/2010 on 13/11/2019 held on Public Interest as under:-

*74. Therefore, it is important to understand the meaning of the expression 'public interest' in the context of the RTI Act. This Court held 'public interest' to mean the general welfare of the Public warranting the disclosure and the protection applicable, in which the public as a whole has a stake.*

*76. The public interest test in the context of the RTI Act would mean reflecting upon the object and purpose behind the right to information, the right to privacy and consequences of invasion, and breach of confidentiality and possible harm and injury that would be caused to the third party, with reference to a particular information and the person.*

***Factors identified as favouring disclosure include the public interest contributing to a debate on a matter of public importance; accountability of officials; openness in the expenditure of public funds, the performance by a public authority of its regulatory functions, the handling of complaints by public authorities; exposure of wrongdoing, inefficiency or unfairness; individuals being able to refute allegations made against them; enhancement of scrutiny of decision-making; and protecting against danger to public health or safety.***

- In a concurring judgement Justice D Y Chandrachud held as under:

Public Interest

*107. Clause (j) of clause (1) of Section 8 requires the Information Officer to weigh the —public interest in disclosure against the privacy harm. The disclosure of different documents in different circumstances will give rise to unique —public interest factors in favour of disclosure. However, a few broad*

principles may be laid out as to how the phrase —public interest is to be understood. Where factors fall within this interpretation —public interest so interpreted, they are factors that weigh in favour of disclosure. The principles are as follows:

- (v) The object and purpose of the RTI Act is the fulfilment of the positive obligation on the State to provide access to information under Article 19(1)(a) of the Constitution and the existence of the restrictions on the disclosure of information does not restrict the meaning of public interest under the Act.
- (vi) As an indicative list, information concerning the accountability of officials, public expenditure, the performance of public duties, the handling of complaints, the existence of any wrongdoing by a public official, inefficiency in public administration and unfairness in public administration all possess public interest value.
- (vii) Where the disclosure of information would promote the aims and objectives of the RTI Act, there exists a —public interest in disclosing such information;

➤ Section 11 of RTI Act provides as under:-

**11.** (1) Where a Central Public Information Officer or a State Public Information Officer, as the case may be, intends to disclose any information or record, or part thereof on a request made under this Act, which relates to or has been supplied by a third party and has been treated as confidential by that third party, the Central Public Information Officer or State Public Information Officer, as the case may be, shall, within five days from the receipt of the request, give a written notice to such third party of the request and of the fact that the Central Public Information Officer or State Public Information Officer, as the case may be, intends to disclose the information or record, or part thereof, and

invite the third party to make a submission in writing or orally, regarding whether the information should be disclosed, and such submission of the third party shall be kept in view while taking a decision about disclosure of information:

**Provided that except in the case of trade or commercial secrets protected by law, disclosure may be allowed if the public interest in disclosure outweighs in importance any possible harm or injury to the interests of such third party.**

- **CPIO failed to consider the large bona fide warranting public interest in the matter as under:-**
- ✓ Crores of Common Public have made their Public money/Public funds as investments in the shares and bonds of IFCI Limited which is a Public Government Company in financial sector.
- ✓ Apart from above, number of Public and private institutions have invested their Public funds in the shares and bonds of IFCI Limited.
- ✓ This large scale of public involvement as shareholders and bond holders in IFCI Limited, clearly indicates that the above large scale public as a whole has a stake in IFCI Limited and evidently demonstrates larger bona fide Public concern about IFCI Limited in the matters of its functioning, accountability and transparency..etc to preserve their confidence in IFCI Limited. The general welfare of this large scale Public warrants the disclosure of the information.
- ✓ The information sought was inherent to the public positions held by the ex and present employees as Public Servants who were discharging their Public Duties to the Public, for Public welfare and Public good, in the interest of Public who are shareholders and bond holders numbering in crores thereby revealing a larger bona fide Public Interest. This large scale

bona fide public interest in IFCI Limited functioning deserves disclosure of the information.

- ✓ Disclosure of the information would serve the larger bona fide public interest which certainly outweighs the protected interests of individuals whose integrity was under question and would promote the aims and objectives of the RTI Act.
- ✓ Any interpretation of any act is to be constructive and to achieve the objectives and true essence of that Act.
- ✓ CBI obtained prosecution sanctions indicates existence wrong doing of corruption by public servants.
- ✓ Hence, refusal of the information by the CPIO even in his view that the information sought was confidential , is gross violation of RTI Act and contrary to the RTI Act in both letter and spirit hence deserves to be corrected in the light of declaration of public interest in the context of RTI Act by Honourable Supreme Court Judgement on RTI Act in 2019.
- ✓ The copy of documents sought cannot be denied by the CPIO on the incorrect pretext that no larger public interest is served when crores of common public invested their hard earned money in the shares and bonds of IFCI Limited and the public interest certainly outweighs the protected interests of individuals against whom prosecution sanctions were sought by CBI. Therefore, denial of the information of by the CPIO is bad in the eyes of law hence deserves to be set aside.
- ✓ CPIO failed to consider the larger public interest due to the fact of the crores of common public who have invested their hard earned money in the shares and bonds of IFCI Limited and number of Public and private institutions that have invested their funds in the shares and bonds of IFCI Limited which would certainly outweigh the protected interests of the individuals against whom the prosecution sanctions were sought by CBI

on the allegations of social evil of corruption. Therefore the decision of CPIO to withhold information is against to the spirit of the RTI Act for the simple reason any interpretation of the act is to be constructive to achieve the objectives and true essence of that Act hence deserves to be set aside.

- ✓ Section 11 provides that for a third party information which is not a trade or commercial secret, where third party has not claimed any possible harm or injury to them for disclosing of the information CPIO denial of information is violation of RTI Act hence warrants to be set aside. Further as per section 11, when there is a large bona fide warranting public interest is involved for disclosure of the information, CPIO denial of information is violation of RTI Act hence deserves to be set aside.

#### **IV. Failure by the CPIO to record his reasons in his order**

- In a concurring judgement in the Civil Appeal no 10044/2010 on 13/11/2019 Justice D Y Chandrachud held as under:

*108. We have adverted to the substantive content of —personal information and —public interest as distinct factors to be considered by the Information Officer when arriving at a determination under clause (j) of clause (1) of Section 8. In the present case, the information sought by the respondent raises both considerations of —public interest and —personal information. The text of clause (j) requires the Information Officer to make a determination whether the —larger public interest justifies the disclosure of personal information sought. The Information Officer must conduct balancing or weighing of interests in making a determination in favour of disclosure or non-disclosure. The Information Officer must be cognisant that any determination under clause (j) of clause (1) of Section 8 implicates the right to information and the right to privacy as constitutional rights. Reason forms the heart of the law and the decision of the Information Officer must provide cogent and articulate reasons for the factors considered and conclusions arrived at in balancing the two interests. In answering the third referral question in its entirety, this Court*

*would be remiss in not setting out the analytical approach to be applied by the Information Officer in balancing the interests in disclosure with the countervailing privacy interests. Justice S C Agrawal speaking for a Constitution Bench of this Court in **S N Mukherjee v Union of India** observed:*

—9. The object underlying the rules of natural justice —is to prevent miscarriage of justice|| and secure —fair play in action. As pointed out earlier the requirement about recording of reasons for its decision by an administrative authority exercising quasi-judicial functions achieves this object by excluding chances of arbitrariness and ensuring a degree of fairness in the process of decision-making. Keeping in view the expanding horizon of the principles of natural justice, we are of the opinion, that the requirement to record reason can be regarded as one of the principles of natural justice which govern exercise of power by administrative authorities. The rules of natural justice are not embodied rules.

(Emphasis supplied)

*The requirement to record reasons is a principle of natural justice and a check against the arbitrary exercise of power by judicial and quasi-judicial bodies. In making a determination under clause (j) of clause (1) of Section 8 in a given case, it would not be satisfactory if an Information Officer were merely to record that the privacy interest outweighed the public interest. Something more is required. By providing an analytical framework to address the two interests to be weighed and requiring the Information Officer record detailed reasons within this framework, the arbitrary exercise or discretion of the Information Officer is guarded against.*

- Because without giving any reasons as under:-
  - i) how and why a public information is confidential in nature
  - ii) how and why providing information sought would impede the process of investigation, apprehension or prosecution when the investigation is complete as per SOP of CBI and prosecution sanctions were given to CBI.




iii) How and why the large bona fide public interest involved in the matter did not outweigh the objections of CBI when the investigation is complete as per SOP of CBI and the prosecution sanctions given to CBI.

CPIO denial of information for the reason that CBI had treated it as confidential and CBI invoked the section 8 (1) h of the RTI Act are groundless hence need to be over turned.

- Because of CPIO failed to consider the fact that, the information requested is out of preview of section 8 (1) h of RTI Act and further failed to record his reasons for refusing information while invoking section 8 (1) h. Therefore the decision of withholding of information by CPIO is serious violation of RTI Act and contrary to RTI Act hence deserves to be set aside.

## **12. Verification**

 hereby declare that I am citizen of India and the particulars furnished in the appeal and annexures attached hereto are to the best of my knowledge and belief are true and correct.

Place : Chebrolu

Date: 16/08/2021.

**Enclosures: Annexures- I to V.**