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Sh. Gurinder Singh

S/o Sh. Akvir Singh

R/o Beer Bhamarsi, Thana Sirhind,

Distt. Fatehgarh Sahib. Complainant

Versus

Public Information Officer,

O/o Senior Supdt. of Police,

Patiala. Respondent

 **COMPLAINT CASE No.767 /2017**

Date of RTI application : 04.06.2017

Date of First Appeal : Nil

Date of Order of FAA : Nil

Date of 2nd Appeal/complaint :28.07.2017

**Present:** Sh. Gurinder Singh, Complainant in person.

 ASI Ajit, O/o SSP, Patiala – for Respondent.

**ORDER**

 Heard.

 The appellant had sought an information relating to an enquiry made by the Deputy Superintendent of Police, Nabha in a case registered under FIR No.118, PS: Bhadson.

 The respondent had provided the information to the complainant. However, the same did not include the copies of the statements of Sh. Surat Singh, Gurinder Singh and joint statements of some witnesses.

 The respondent has come along with the original file. He assures to deliver the copies of statements as identified by the complainant here after the hearing. The complainant is satisfied. No further action seems called for.

 **Disposed.**

 **Sd/-**

**10.10.2017 (Yashvir Mahajan)**

 **State Information Commissioner**

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Ms. Roshni

W/o Sh. Vijay Parkash

D/o Sh. Parkash Chand,

R/o House No.584, Phase 2, S.A./S.Nagar

 Complainant

Versus

Public Information Officer,

O/o Senior Superintendent of Police,

District Administrative Complex, Sector-76,

S.A.S.Nagar. Respondent

 **COMPLAINT CASE No.770/2017**

Date of RTI application : 05.07.2017

Date of First Appeal : Nil

Date of Order of FAA : Nil

Date of 2nd Appeal/complaint :28.07.2017

**Present:** Ms. Roshni in person along with Adv. Pawan Kumar Sharma, Counsel.

1. ASI Ravinder Singh, RTI Incharge, O/o SSP, Mohali,

 2. ASI Amarjit Singh, PS: Phase 1, Mohali ,

3. HC Kashmir Singh, PS: Phase – 1, Mohali – for Respondent.

**ORDER**

 The complainant had sought a report about the action taken on a complaint made by her. The respondents have brought the information which has been handed over to the complainant on spot. She is satisfied with the outcome of the complaint. The information stands delivered to her. No action is called for.

 The complaint is **closed.**

 **Sd/-**

**10.10.2017 (Yashvir Mahajan)**

 **State Information Commissioner**

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Sh. Parminder Singh

R/o House No.422, Palm Enclave,

Distt. Roopnagr

 Complainant

Versus

Public Information Officer,

O/o Deputy Commissioner,

Roopnagar. Respondent

 **COMPLAINT CASE NO 782/2017**

Date of RTI application : 13.06.2017

Date of First Appeal : Nil

Date of Order of FAA : Nil

Date of 2nd Appeal/complaint : 01.08.2017

**Present:** Sh. Parminder Singh, Appellant along with Sh. Hari Singh Sodhi and Ms. Amartish Kaur, Counsel.

 Sh. Surinder Pal Singh, Clerk, RTI, DC Office, Ropar – for Respondent.

**ORDER**

The original application with the PIO was filed on 13.06.2017. Aggrieved on having not received the information, he filed the complaint with the Commission to initiate action against them under Section 18 of the RTI Act. The respondent says that the information has been provided to him. However, it transpires that the same has been communicated to him on receipt of the notice from the Commission. The complainant says that not only the information has been provided at a belated stage after the issue of notice, the same is deficient also as the copies of the papers on file along with the noting portion has not been supplied. The complainant submits that there is a tangible delay in providing the information which has rendered the respondent liable for penal action. The respondent is directed to file a written explanation as to why the aforesaid action be not taken against the PIO.

 To come up on **07.11.2017 at 11.30 AM.**

 **Sd/-**

**10.10.2017 (Yashvir Mahajan)**

 **State Information Commissioner**

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Sh.Karamjit Singh

S/o Sh. Jagir Singh

R/o Vill. Rurki Kham, P.O. Palheri,

Tehsil Kharar, Distt. S.A.S. Nagar.

 Appellant

Versus

Public Information Officer,

O/o Senior Supdt of Police,

S.A.S. Nagar.

First Appellate Authority,

O/o Senior Supdt. of Police (Diy.S.P.Hqrs),

S.A.S.Nagar Respondents

 **APPEAL CASE No.2170/2017**

Date of RTI application : 18.04.2017

Date of First Appeal : 06.06.2017

Date of Order of FAA : Reply 05.07.2017

Date of 2nd Appeal/complaint :27.07.2017

**Present:** Sh. Karamjit Singh, Appellant in person.

 ASI Ravinder Singh, RTI Incharge, SSP Office, Mohali – for Respondents.

***ORDER***

 The appellant had sought a copy of a DDR registered in the Police Chowki of Village Sahoran way back in the year 1996. The respondent says that as per the standing instructions the record pertaining to the DDRs is destroyed after a couple of years and is not available. The appellant insists that the record is available in the VRK Branch of the SSP Office, Ropar. The PIO, O/o SSP, Ropar may like to react on the same.

 To come up on **07.11.2017 at 11.30 AM.**

 **Sd/-**

**10.10.2017 (Yashvir Mahajan)**

 **State Information Commissioner**

**CC: PIO, O/o Sr. Superintendent of Police, Ropar with reference to SSP, Mohali’s Memo No.54143/G/RTI dated 15.10.2017 for immediate action**

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Sh. Ashok Kumar,

House No.214, Pine Homes,

Dhakoli, Zirakpur.

 Appellant

Versus

Public Information Officer,

O/o Executive Officer,

Nagar Council/M.C. Lalru,

Distt. S.A.S.Nagar.

First Appellate Authority

O/o Regional Deputy Director,

Local Govt. Bodies, Punjab,

Mini Secretariat, Patiala. Respondents

 **APPEAL CASE No.2209/2017**

Date of RTI application : 07.04.2017

Date of First Appeal : 27.05.2017

Date of Order of FAA : Nil

Date of 2nd Appeal/complaint :09.08.2017

**Present:** Sh. Ashok Kumar, Appellant in person.

 1. Sh. Harbaksh Singh, PIO – cum – EO, NC, Lalru – for Respondents,

 2. Sh. Tarsem Chand, Jr. Assistant on behalf of the FAA.

**ORDER**

 The respondents have brought along the information which has been handed over to the appellant on spot. The respondent regrets the delay. The Commission does not see any malafide in withholding the information.

 The appeal is **disposed** with the caution to the respondents to be watchful in future.

 **Sd/-**

**10.10.2017 (Yashvir Mahajan)**

 **State Information Commissioner**

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Sh. Harbir Singh,

House No.307, Charan Bagh,

Patiala. Complainant

Versus

Public Information Officer,

O/o Shiromani Gurdwara Parbhandak Committee,

Sri Amritsar Sahib. Respondent

**COMPLAINT CASE NO.558/2017**

 **Date of RTI Application : 18.11.2016**  **Date of First Appeal : Nil**

 **Date of order of FAA : Nil**

 **Date of Second Appeal : 30.05.2017**

**Present:** None on behalf of the Complainant.

 Sh. Simarjit Singh, PIO, SGPC – for Respondent.

**ORDER**

 The Commission had made following order on 20.07.2017:

 *“The appellant is absent. He has submitted that his presence may be excused on account of his ill health.*

 *What transpires from the perusal of his application is that he is seeking an information about the appointment of one Dr. Dharminder Singh Ubha, as Principal, Khalsa College, Patiala in the year 2008 and allied information connected therewith.*

 *The respondents say that he has already been duly informed. However, they have not be able to vindicate their contention by producing any document. They have assured the Commission that they shall furnish the proof before the next date of hearing.”*

The case has come up today. The Complainant is absent. He has expressed his inability to join the proceedings and requested to decide the matter on the basis of the record on file.

 Contd…page…2

 -2-

**COMPLAINT CASE NO.558/2017**

 The respondent has produced a copy of the letter stated to have been issued to the complainant. He reiterates that no record as requisitioned by the complainant is available with them. He further explains that no post as mentioned was advertised in the papers by the SGPC. Consequentially there is no question of the applications having been received. The Commission has no reason to differ with the submissions made by the respondent. As no record exists obviously it cannot be provided. The complaint fails and is **disposed** according.

 **Sd/-**

**10.10.2017 (Yashvir Mahajan)**

 **State Information Commissioner**

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Sh. Brish Bhan Bujarak,

S/o Sh. Saroop Chand,

Ward No.33, Kahangarh Road, Patran

Distt. Patiala Complainant

Versus

Public Information Officer,

O/o Shiromani Gurdwara Parbandhak Committee,

Sri Amritsar Sahib Respondent

 **COMPLAINT CASE NO.576/2017**

 **Date of RTI Application : 30.03.2017**  **Date of First Appeal : Nil**

 **Date of order of FAA : Nil. Reply – 08.05.2017**

 **Date of Second Appeal : 06.06.2017**

**Present:** Sh. Brish Bhan Bujarak, Complainant in person.

 Sh. Simarjit Singh, PIO, SGPC – for Respondent.

 **ORDER**

 The following order was made on 20.07.2017 by this forum:

 *“The complainant is absent. He has sent an e.mail seeking exemption from appearance with the request to adjourn the case. He has sought to know the details of the patients and the expenses incurred in execution of a scheme run by the SGPC to assist the cancer patients in the State.*

 *The respondents say that the complainant was desired to make the payment of Rs.1,000/- as a cost of providing the information. Having failed to do so, they say, that he is not*

*entitled to the information. The complainant says that since the cost was not asked for within the stipulated time frame they are not legally entitled to claim the fee.*

 *The Commission observes that we have to interpret the law in its spirit and not by a strict literal interpretation. The marginal delay in conveying the fee does not totally steer the information seeker clear of the liability to deposit the cost of information when he asks for a massive Contd…page…2*

 *-2-*

***COMPLAINT CASE NO.576/2017***

*one. In the circumstances the Commission directs the respondent to convey him the total amount spent by them during the period asked for and the number of patients assisted under intimation to the Commission. In case the complainant is still desirous of getting the information in detail as asked for by him he must deposit the cost of information.”*

The respondent says that the information comprising the total number of patients and the amount compensated to them from 2007 onwards has already been given to him. The complainant insists on seeking its detail. The respondent submits that it is a massive information and shall divert their resources disproportionately. Besides, they have never maintained the information constituency-wise of the members of the SGPC earlier as asked for by the complainant.

 Having considered the issue in its entirety the Commission directs the respondent to provide the information to the complainant relating to a period of the financial year 2016-17 only under intimation to the Commission.

 To come up on **07.11.2017 at 11.30 AM.**

 **Sd/-**

**10.10.2017 (Yashvir Mahajan)**

 **State Information Commissioner**

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Sh. Sonu Garg

S/o Sh. Surinder Kumar

R/o Kothi No.1595, Sector-21,

Panchkula (Haryana) Appellant

Versus

Public Information Officer,

O/o Tehsildar-cum- Sub Registrar,

Sub Tehsil, Majri, Distt. S.A.S.Nagar.

First Appellate Authority

O/o Sub Divisional Magistrate,

Kharar, Distt. S.A.S Nagar. Respondents

 **APPEAL CASE NO.1491/2017**

Date of RTI application : 09.07.2016

Date of First Appeal : 28.08.2016

Date of Order of FAA: Nil

Date of 2nd Appeal/complaint : 18.03.2017

**Present:** Adv. S.C.Jindal, Counsel for the Appellant.

 None on behalf of the Respondents.

**ORDER**

 The appellant submits that the orders of the Commission passed on 25.07.2017 and 29.08.2017 have not been complied as neither the specific information as asked for nor the legible and attested copies as were directed, have been provided so far.

 The respondents are absent. Nothing has been heard also. The PIO – cum - Tehsildar, Sub Tehsil, Majri is issued a show cause notice to explain in a self- attested affidavit as to why a penalty @ Rs.250/- per day of delay subject to maximum of Rs.25,000/- till the complete information is furnished, be not imposed under Section 20(1) of RTI Act, 2005 on himfor causing willful delay / denial of the information to the RTI applicant and why the compensation be not awarded to the Appellant under Section 19 (8) (b) of the Act for the detriment suffered by him.

 In addition to the written reply, the PIO is also given an opportunity under Section 20(1) proviso thereto, for a personal hearing before the imposition of such penalty on the next date of Contd…page…2

 -2-

**APPEAL CASE NO.1491/2017**

hearing. He may take note that in case he does not file his written reply and does not avail himself of the opportunity of personal hearing on the date fixed, it will be presumed that he has nothing to say and the Commission shall proceed to take further proceedings against him ex parte.

 To come up on **07.11.2017 at 11.30 AM.**

 **Sd/-**

**10.10.2017 (Yashvir Mahajan)**

 **State Information Commissioner**

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Sh. Jasbir Singh, Editor Arjun Patrika,

Village Bholapur Jhabewal, P.O. Ramgarh,

Distt. Ludhiana -123455 Complainant

Versus

Public Information Officer,

O/o District Transport Officer,

Ferozepur. Respondent

 **COMPLAINT CASE NO.775/2016**

 **Date of RTI Application : 01.02.2016**

 **Date of Complaint : 31.03.2016**

 **Date of Order of FAA : NIL**

 **Date of Second Appeal : Nil**

**Present:** Sh. Jasbir Singh, Complainant in person.

 Sh. Harjit Singh Sandhu, PCS, SDM, Ferozepure & Zira – for Respondent.

**ORDER**

 The Commission had made the following order on 10.08.2017:

 *“The following order was passed on 10.05.2017 by the Commission :-*

 *“The respondent is neither present nor anything has been heard from him. The Commission takes it as a willful denial of information and observes that the respondent has rendered himself liable for imposition of penalty under Section 20(1) of the Act. The PIO is, thus, issued a show cause notice to explain in a self-attested affidavit as to why a penalty @ Rs.250/- per day of delay subject to maximum of Rs.25,000/- till the complete information is furnished, be not imposed under Section 20(1) of RTI Act, 2005 on him for causing willful delay / denial of the information to the RTI applicant and why the compensation be not awarded to the Complainant under Section 19 (8) (b) of the Act for the detriment suffered by him.*

 *Contd…page…2*

 *-2-*

**COMPLAINT CASE NO.775/2016**

 *In addition to the written reply, the PIO is also given an opportunity under Section 20(1) proviso thereto, for a personal hearing before the imposition of such penalty on the next date of hearing. He may take note that in case he does not file his written reply and does not avail himself of the opportunity of personal hearing on the date fixed, it will be presumed that he has nothing to say and the Commission shall proceed to take further proceedings against him ex parte.”*

 *”Another opportunity was also provided to Sh. Harjit Singh Sandhu, PCS, PIO – cum – District Transport Officer, to file an appropriate reply vide order dated 18.07.2017 which is also reproduced hereunder:-*

 *“A show cause notice stands already issued to the PIO, O/o the District Transport Officer, Ferozepur for having failed to file a reply.*

 *A final opportunity is afforded to Sh. Harjit Singh Sandhu, PCS, PIO – cum - District Transport Officer, Ferozepur to file an appropriate reply. Be it noted that this is a final opportunity failing which the penalty as envisaged in the RTI Act shall be imposed.”*

 *“Thereafter despite affording more than couple of occasions the respondents have refused either to attend the Court or provide the information. Obviously, he has nothing to say on the show cause notice already issued to him. The liability on the part of the respondents is inescapable. Exercising its authority under Section 20(1) of the RTI Act, the Commission imposes a penalty of Rs.10,000/- (Rupees Ten Thousand only) in lump sum on Sh. Harjit Singh Sandhu, District Transport Contd…page…3*

 *-3-*

***COMPLAINT CASE NO.775/2016***

 *Officer, Ferozepur as the delay is beyond 100 days. The Drawing & Disbursing Officer is directed to deposit the amount of penalty in the government Treasury in two equal installments from his salary from the month of September, 2017 under head given below :*

*- 0070-Other Administrative Services*

*- 60 Other Services*

*- 800 Other Receipts*

*- 86 Fee under RTI Act, 2005*

*A copy of the challan shall be sent to the Commission for record before the next date of hearing positively.*

 *The District Transport Officer has shown total indifference, in application and defiance to the valid orders passed by the Commission. The same is highly unbecoming of a public servant. In exercise of its authority under Section 20(2) of the Act his disciplinary authority is desired to take appropriate note of the same and take disciplinary action for dereliction of his duties and defiance of the orders duly passed by the Commission.”*

The matter has come up today for monitoring the compliance of above order.

 Sh. Harjit Singh Sandhu, PCS is present. He has filed an application to review the order on account of a factual error in the same. He submits that the original application was filed by the complainant on 01.02.2016 whereas he has only held the charge for a very short duration from 12.06.2017 to 18.08.2017 and that too in an additional capacity. According to him the post was manned by Sh. Charandeep Singh, PCS. The Commission finds merits in his submission. The order

 *Contd…page…4*

 *-4-*

***COMPLAINT CASE NO.775/2016***

as such is held in abeyance. The show cause notice issued earlier to Sh. Harjit Singh Sandhu is now directed towards Sh. Charandeep Singh, PCS, the then District Transport Officer, Ferozepur now Sub Divisional Magistrate, Guru Harsahai, District, Ferozepur who shall explain in writing as to why penalty thus ordered on Sh. Harjit Singh Sandhu should not be imposed on him and recovered.

 To come up on **21.11.2017 at 11.30 AM.**

 **Sd/-**

**10.10.2017 (Yashvir Mahajan)**

 **State Information Commissioner**

**CC: The Chief Secretary to Government, Punjab,**

 **Punjab Civil Secretariat – 1, Chandigarh, for n/a.**

**CC: Additional Chief Secretary to Government, Punjab,**

 **Department of Transport, Punjab Civil Sectt. 2,**

 **Sector – 9, Chandigarh.**

**CC: The State Transport Commissioner, Punjab,**

 **Sector – 17, Chandigarh.**

**CC: Sh. Charandeep Singh, PCS,**

 **Sub Divisional Magistrate, Guru Harsahai, Distt. Ferozepur along with a copy of the order dated 10.08.2017 for necessary action.**

**CC: Sh. Harjit Singh Sandhu, PCS,**

 **District Transport Officer, Ferozepur.**

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Sh. Prem Kumar Rattan

House No.78/8, Park Road,

New Mandi Dhuri,

Distt. Sangrur Appellant

Versus

Public Information Officer,

O/o Deputy Commissioner,

Patiala.

First Appellate Authority,

O/o Deputy Commissioner,

Patiala. Respondents

 **APPEAL CASE No.2225/2017**

Date of RTI application : 04.01.2017

Date of First Appeal : 16.04.2017

Date of Order of FAA : Nil

Date of 2nd Appeal/complaint :21.07.2017

**Present:** None on behalf of the Appellant.

 1. Sh. Sher Singh, Sr. Assistant, DC Office, Patiala, and

 2. Sh. Kuldip Kumar, Clerk, DC Office, Patiala – for Respondents.

**ORDER**

 The appellant is absent.

 Sarvshri Sher Singh, Sr. Assistant and Kuldip Kumar, Clerk are present on behalf of the Respondents. A communication has been received from the appellant wherein he seeks adjournment and requests for the appeal to be heard through video conference.

 The respondents submit that the appellant was requested to deposit the fee towards the cost of information amounting to Rs.242/- and Rs.302 vide their memo dated 25.01.2017 and 07.02.2017 respectively. From the documents submitted before the Commission it appears that he was timely asked to deposit the fee. Having failed to deposit the cost of information the appellant is not entitled to the information. So much so a detailed speaking order has also been passed by the First Appellate Authority in this regard.

 Contd…page…2

 -2-

**APPEAL CASE No.2225/2017**

 The Commission finds that having failed to comply with the provisions of Act in making the payment of fee, no right accrues to him to get the information. The impugned order passed by the First Appellate Authority is upheld and the appeal is **dismissed.**

 **Sd/-**

**10.10.2017 (Yashvir Mahajan)**

 **State Information Commissioner**

 **STATE INFORMATION COMMISSION, PUNJAB**

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Ms. Jyoti Aggarwal,

House No. 692- I,

Bhai Randhir Singh Nagar,

Ludhiana. Appellant

Versus

Public Information Officer,

O/o Civil Surgeon, Dandi Swami Marg,

Opp. Police Commissioner Residence,

Ludhiana

First Appellate Authority,

O/o Civil Surgeon, Dandi Swami Marg,

Opp. Police Commissioner Residence,

Ludhiana Respondents

 **APPEAL CASE NO.2268/2016**

 **Date of RTI Application : 16.04.2016**

 **Date of First Appeal : 16.05.2016**

 **Date of Order of FAA : NIL**

 **Date of Second Appeal : 08.07.2016**

**Present:** None on behalf of the Appellant.

 Dr. Mohinder Singh, PIO – cum – Assistant Civil Surgeon, Ludhiana – for Respondents.

**ORDER**

 The order was reserved on 06.09.2017 for pronouncement.

 The following order was passed by this forum on 04.05.2017:

  *“The respondent has refused to acknowledge notices and the orders of the Commission despite express directions. Even the show cause notice issued has failed to elicit any response. The following order was passed on 02.03.2017 by this forum :-*

-:1:-

  *“The Commission on 04.01.2017 had observed as under :-*

 *“The appellant is present. She has asked for the credentials of one Dr. Mrs. Pritabha Pandey Joshi allegedly running a scan centre in Ludhiana. The appellant allegedly was misled to undergo an operation for removal of stone in her kidney whereas in actuality she does not suffer from any malady.*

 *The PIO in the office of the Civil Surgeon, Ludhiana is directed to provide her the information available in office forthwith and explain the reasons to the Commission for having not been provided it earlier as well.*

 *Be it noted that the failure to comply with the order shall invoke penal provisions.”*

 *“The Commission regrets to find that the respondents have ignored the notices of the Commission all through. No written statement has been filed. None has appeared on behalf of the respondents. The Commission takes it as a case of willful suppression/denial of information and*

*issue a show cause notice to the PIO to explain in a self-attested affidavit as to why a penalty @ Rs.250/- per day of delay subject to maximum of Rs.25,000/- till the complete information is furnished,*

*be not imposed under Section 20(1) of RTI Act, 2005 on him for causing willful delay / denial of the information to the RTI applicant. He is also desired to explain as to why the compensation be not awarded to the appellant under Section 19 (8) (b) of the Act for the detriment suffered by him.*

 *In addition to the written reply, the PIO is also given an opportunity under Section 20(1) proviso thereto, for a personal hearing before the imposition of such penalty on the next date of hearing. He may take note that in case he does not file his written reply and does not avail himself of the opportunity of personal hearing on the date fixed, it will be presumed that he has nothing to say and the Commission shall proceed to take further proceedings against him ex parte.”*

-:2:-

 *“The Commission is convinced that the PIO has nothing to say on the matter and has thus rendered himself liable for penalty as set for in Section 20(1) of the RTI Act.*

 *The original application was filed on 16.04.2016. Even the First Appellate Authority did not take any notice of the appeal made to him/her on 26.05.2016.*

 *The delay is beyond 100 days. In the face of the fact that no response whatsoever to the application, first appeal, second appeal and various directions of the Commission has been given the Commission is convinced that Dr. Mohinder Singh, PIO – cum – Assistant Civil Surgeon, Ludhiana has without any reasonable cause refused to provide the information malafidely. Accordingly a penalty of Rs.10,000/- (Rupees Ten Thousand only) in lump sum is imposed on Dr. Mohinder Singh, PIO – cum – Assistant Civil Surgeon, Ludhiana for the significant delay in responding to the application. The PIO shall ensure that the amount of penalty is deposited in the government treasury in two equal installments under head given below :*

*- 0070-Other Administrative Services*

*- 60 Other Services*

*- 800 Other Receipts*

*- 86 Fee under RTI Act, 2005*

*A copy of the challan shall be sent to the Commission for record before the next date of hearing positively.*

 *As the information has been badly delayed/denied to the appellant, she is awarded a compensation of Rs.5,000/- (Rupees Five Thousand only) under Section 19(8) (b) of the RTI Act for the detriment suffered by her. The amount shall be sent to the appellant through Demand Draft under intimation to the Commission.*

 *The PIO has shown scant respect in discharging a sacrosanct duty cast upon him by law. It is a clear case of dereliction of duty. The Commission recommends that a disciplinary action under the service rules be initiated against him. A copy of the charge-sheet thus served upon him*

-:3:-

*should also be forwarded to the Commission by his Appointing Authority. The Commission observes*

*that in case the PIO still fails to provide the information, the Commission shall be constrained to take a cognizance of criminality involved in defying an order duly passed under the law and shall take appropriate action accordingly.”*

As the order was passed ex. Parte on persistent absence of the respondent on the application of the PIO claiming innocence, the aforesaid order was ordered to be held in abeyance. Simultaneously, the explanation of one Dr. Moninder Singh, the then District Family Welfare Officer, O/o Civil Surgeon, Ludhiana now posted as Senior Medical Officer, I/c C.H.C. Payal, was required to clarify his position as according to the PIO the original application was forwarded to him for appropriate action under Section 5(4) of the RTI Act.

 Dr. Moninder Singh, the then DFWO in the hearing held on 26.07.2017 submitted that he was posted out on 13.05.2016 on an assignment in Ferozepur district. At the time of demitting his charge sufficient time for furnishing the information was available with his successor. The infringement if any he submitted cannot be attributed to him under RTI Act. While accepting his plea, as the facts were not refuted by anyone a show cause notice was issued to his successor Dr. S.P.Singh, District Family Welfare Officer, O/o Civil Surgeon, Ludhiana who is still continues to be the incumbent.

 Dr. S.P.Singh in the hearing held on 06.09.2017 reiterated his submissions made in the reply sent vide his memo dated 26.08.2017. In the written reply he submits that the only communication received from the PIO in his office is of 16.05.2017 which was responded along with the information on 18.05.2017. He submits that no communication sent by the Commission to the PIO was forwarded to him. He further says that the notices sent by the Commission on 04.01.2017, 02.03.2017, 04.05.2017 and 20.06.2017 were never forwarded to him or his office.

-:4:-

 The PIO in the office of the Civil Surgeon in the hearing orally denied the receipt of the notices and the interim orders passed by the Commission. However, in a written communication he has admitted that these notices were received in his office but the same were not put up to him by the dealing Clerk. The PIO thus admits that the infringement, if any, has happened in his office though he refuses to accept the blame on him as the dealing Clerk failed to put up the papers to him.

 **Section 7 (1) and (2)** of the RTI Act reads as under:-

 **“Disposal of Request --**- *(1) Subject to the proviso to sub-section (2) of section 5 or the proviso to sub-section (3) of section 6, the Central Public Information Officer or State Public Information Officer, as the case may be on receipt of a request under section 6 shall, as expeditiously as possible, and in any case within thirty days of the receipt of the request, either provide the information on payment of such fee as may be prescribed or reject the request for any of the reasons specified in section 8 and 9:*

 *Provided that where the information sought for concerns the life or liberty of a person, the same shall be provided within forty-eight hours of the receipt of the request.*

 *(2) If the Central Public Information Officer or State Public Information Officer, as the case may be fails to give decision on the request for information within the period specified under sub-section (1), the Central Public Information Officer or State Public Information Officer, as the case may be shall be deemed to have refused the request.”*

It shall be relevant to reproduce **Section 20** of the Act as well which reads as under:-

 *“****20. Penalties*** *--- (1) Where the Central Information Commission or the State Information Commission, as the case may be, at the time of deciding any complaint or appeal is of the opinion that the Central Public Information Officer or the State Public Information Officer, as the case may be,*

 -:5:-

*has, without any reasonable cause, refused to receive an application for information or has not furnished information within the time specified under sub-section (1) of section 7 or malafidely denied the request for information or knowingly given incorrect, incomplete or misleading information or destroyed information which was the subject of the request or obstructed in any manner in furnishing the information, it shall impose a penalty of two hundred and fifty rupees each day till application is received or information is furnished, so however, the total amount of such penalty shall not exceed twenty-five thousand rupees:*

 *Provided that the Central Public Information Officer or the State Public Information Officer, as the case may be, shall be given a reasonable opportunity of being heard before any penalty is imposed on him:*

 *Provided further that the burden of proving that he acted reasonably and diligently shall be on the Central Public Information Officer or the State Public Information Officer, as the case may be.*

 *(2) Where the Central Information Commission or the State Information Commission, as the case may be, at the time of deciding any complaint or appeal is of the opinion that the Central Public Information Officer or the State Public Information Officer, as the case may be, has, without any reasonable cause and persistently, failed to receive an application for information or has not furnished information within the time specified under sub-section (1) of section 7 or malafidely denied the request for information or knowingly given incorrect, incomplete or misleading information or destroyed information which was the subject of the request or obstructed in any manner in furnishing the information, it shall recommend for disciplinary action against the Central Public Information Officer or the State Public Information Officer, as the case may be, under the service rules applicable to him.”*

Its plain reading suggests that the responsibility of providing the information squarely

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lies on the PIO and if he fails to abide by the provisions, the penalty has also to be imposed on him. It is the responsibility of the Public Authority as well as the PIO to well organize his office and ensure that the applications filed with the PIO are timely disposed. As far as the Commission is concerned if a subordinate official acts delinquently it is their responsibility and duty to discipline him and properly oversee the functioning of their office. Having said so the Commission is convinced that the order passed by it on 04.05.2017 which was held in abeyance on 20.06.2017 has to prevail if partially as there are some extenuating circumstances explained later. The original application was forwarded under Section 5(4) of the Act to the concerned official. The dealing official admittedly did not put up the files to the PIO. Thus the order to initiate disciplinary proceedings against the PIO is withdrawn. The Civil Surgeon, Ludhiana is directed to ensure that the penalty is recovered from the salary of Sh. Mohinder Singh, PIO – cum – Assistant Civil Surgeon, O/o Civil Surgeon, Ludhiana in two equal installments commencing from the month of October, 2017. The compensation ordered shall also be remitted in favour of the appellant forthwith.

 To come up for reporting the compliance of this order on **12.12.2017 at 11.30 AM.**

 **Sd/-**

**10.10.2017 (Yashvir Mahajan)**

 **State Information Commissioner**

**CC: The Principal Secretary to Govt., Punjab,**

 **Department of Health & Family Welfare, Pb.Civil Sectt.2, Sector -9,**

 **Chandigarh**

**CC: Dr. Moninder Singh, Sr. Medical Officer, I/c CHC, Payal, District Ludhiana.**

**CC: Dr. S.P.Singh, District Family Welfare Officer, O/o Civil Surgeon, Dandi Swami Marg, Ludhiana.**

**CC: The Civil Surgeon, Dandi Swami Marg, Opp. Police Commissioner Residence, Ludhiana.**

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**STATE INFORMATION COMMISSION, PUNJAB**

**Red Cross Building, Sector 16, Madhya Marg, Chandigarh**

**Tele No. 0172-4630071, FAX No. 0172-4630888, Visit us @** [**www.infocommpunjab.com**](http://www.infocommpunjab.com)

Sh. Sadhu Ram Kusla,

S/o Ram Chand Bansal,

House No.138, Indira Lodge,

Veer Colony, Maharaja Aggarsain Road,

Bathinda. Complainant

Versus

Public Information Officer,

O/o Max Super Specialty Hospital,

Nh 64, Near District Hospital,

Bathinda. Respondent

 **COMPLAINT CASE NO.1031/2016**

 **Date of RTI Application : 26.04.2016**  **Reply of PIO**  **: 28.04.2016**

 **Complaint filed on : 26.11.2016**

**Present :** Sh. Sadhu Ram Kusla, Complainant in person.

 None on behalf of the Respondent.

**ORDER**

 The order was reserved on 11.07.2017 for pronouncement.

 The factual matrix of this case is traced hereunder.

 The complainant having failed to procure the following information sought by him vide his application dated 24.04.2016 from the respondent, has filed a complaint with the Commission on 11.05.2016 to take the appropriate action under Section 18 of the RTI Act:-

 (a) Copy of MoU/Agreement signed by authorized person of MAX Hospital, Bathinda and Representative of Punjab Govt. for setting up and running MAX Hospital in the premises of Civil Hospital, Bathinda.

 (b) Copy of site plan of Building of MAX Hospital, Bathinda got approved from the Municipal Committee/Municipal Corporation, Bathinda. (c) Details of doctors showing their names and qualification, experience etc. presently working/remained worked with MAX Hospital Bathinda from 01.04.2014 to date.

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 (d) List of patients/persons to whom free treatment has been given by the MAX Hospital, Bathinda from 01.01.2011 to date.

 (e) Copy of orders on the basis of which room rents and other services such as cardiology services, consultations, radiology services etc.etc. are charged from the patient.

 (f) Copy of orders vide which doctors/staff employed in MAX Hospital have been allowed for further education during service in MAX Hospital, Bathinda.

 The respondent while responding to the aforesaid application pleaded that the respondent is not a Public Authority within the meaning of Section 2(h) of the said Act and refused to part with the information. In the written reply filed on 26.11.2016 before the Commission the respondent submitted that:

i. Respondent Hospital – Max Super Specialty Hospital, Bathinda is a unit of Hometrail Buildtech Private Limited, a company registered under the Companies Act, 1956.

 ii. Respondent Hospital is an out-come of a concession agreeemtn dated 05.08.2009 (“Agreement”) entered between the Government of Punjab (GoP), Hometrail Buildtech Private Limited (“HBPL”) and Max Healthcare Institute Limited (Bidder”) (GoP, HBPL and Bidder referred as “Parties” when referred all three together) on Public-Private Partnership (PPP) basis; broadly on the following terms :-

 (a) GoP to grant and authorize HBPL to develop, finance, design, construct, operate, maintain and manage a Greenfield super specialty Hospital on a land admeasuring 4.80 acres, situated at District Civil Hospital, Bathinda (“Project Facility”) and all activities incidental thereto such as engineering, testing, commissioning, insurance

 (b) provision of super specialty hospital healthcare services and all activities and services incidental thereto,

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 (c) demanding, charging and collecting, retaining and appropriating of tariff by the HBPL,

 (d) transfer of the Project Facility/Hospital to the GoP or its nominated agency by HBPL at the end of the concession period of 50 years by efflux of time or prior termination.

 iii. The aforesaid Agreement was entered between the Parties, after due transparent competitive bidding process from eligible bidders for implementing the Project Facility on an invitation by the Punjab Infrastructure Development Board (“PIDB”) under the provisions of the Punjab Infrastructure (Development & Regulation) Act, 2002 (“PIDR Act”). Thus, the provisions of PIDB govern the actions of the Parties under the said Agreement. The relevant provisions of which are discussed under point “B” of the Preliminary submission (supra).

 iv. That the GoP through PIDB awarded the Project Facility to HBPL, not as a case of providing any concession in the form of subsidy, subvention, grant or other similar financial incentives (either substantially or otherwise), as wrongly perceived and alleged by the complainant; but as a right or interest granted to HBPL in respect to the Project Facility in order to fulfill the overall responsibility of the DoH & FW, in providing healthcare services to the general public on PPP basis. This grant for right or interest to HBPL is purely on the basis of the PIDR Act, the relevant provisions of which are discussed under point “C” of the Preliminary Submission (supra).

 v. That, in lieu of the grant and authorization by GoP over the Project Facility, HBPL has paid the GoP, an Upfront Consideration of Rs.158.55 lakh along with non-refundable, irrevocable amount of Rs.100.00 lakh towards project development fees.

 vi. That, the GoP, in order to satisfy the terms and conditions of the Agreement, vested the Project Facility owned and possessed by DoH&FW to HBPL, by way of a Lease Deed dated 23.09.2009 (“Lease Deed”), under which the HBPL paid advance lease

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 rental in single-lump sum of Rs.50/- for 50 years (Re.1/year as Lease Rent). This, Re.1/year as Lease Rent is not an act of concession by way of any subsidy, subvention, grant or other similar financial incentive granted by the GoP to HBPL but to maintain its ownership over the Project Facility on which HBPL has been given the right or interest for a specific period of 50 years, in respect to the Project Facility, in order to fulfill the overall responsibility of the Department of Health and Family Welfare (“DoH&FW”), Government of Punjab.

 vii. That, HBPL shall at its cost, expense and risk make such financing arrangement as would be necessary to finance the Project and meet obligations under this Agreement in a timely manner.

 viii. That HBPL pays 5% of the Gross Revenue of each financial year as Consideration Fee to GoP (Ref. Section 1.1. and Section 12.2).

 The Respondent further drew the attention of this forum to the definition and submitted that the Respondent Hospital is neither an authority or body or institution established or constituted as per sub-clause (a) to (d) (i) of Section 2(h) of the RTI Act, nor is substantially financed by the appropriate government or directly or indirectly by funds by the appropriate government. Extending the argument the respondent says that they are not receiving even a single penny of grant-in-aid from the government and neither any funding or any concession from any authority including Income Tax, Municipal Authorities, Improvement Trust, State Government etc. and as such the provisions of the Act cannot be made applicable in their case. They admit that the concession granted by the GoP to them on the Project Facility through PIDB is as per the provisions of PIDB Act. Sub-clause 5 of Section 2 of the Act defines the word “concession” and “includes any right or interest

granted to a Concessionaire in relation to any aspect of an infrastructure project, as well as any subsidy, subvention, grant or other similar financial incentive granted by the State Government to

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secure the viability and commercial efficacy of an infrastructure project”. The concession granted by the GoP under the aforesaid Agreement is only in the form of right or interest granted to a Concessionaire in relation to any aspect of an infrastructure project; as enunciated by the first part of the definition and not in any form of subsidy, subvention, grant or other similar financial incentive as enunciated in the second part of the definition.

 The respondent further mentions the details of the Agreement reached between them and the PIDB and rights accruing to them by virtue of the Agreement signed by them. The refrain is that the Respondent Hospital is the Greenfield Super Specialty Hospital, developed, financed, designed, constructed, operated, maintained and managed by HBPL and they have full freedom to determine, demand, charge, collect, retain, appropriate from those who avail its services. Since they have paid the Upfront Consideration money to the government no substantial grant or incentive has been received from it and as such they are not the Public Authority within the meaning of the RTI Act.

 In his counter reply the complainant submit that a prime land measuring 4.8 acres on National Highway 64 has been given by Punjab Government to them at an annual rent of Re.1/- for 50 years. He adds that the GoP, in order to satisfy the terms and conditions of the Agreement, vested the Project Facility owned by DoH&FW to HBPL, by way of a Lease Deed dated 23.09.2009 (“Lease Deed”) under which the HBPL paid advance lease rental in single-lump sum of Rs.50/- for 50 years (Re.1/- per year as Lease Rent). This, Re.1/- per year as Lease Rent is not only an act of concession by way of any subsidy, subvention, grant or other similar financial incentive granted by the GoP to HBPL also to ensure its ownership over the Project Facility on which HBPL has been given the right

or interest for a specific period of 50 years in order to fulfill the overall responsibility of the Department of Health and Family Welfare (“DoH&FW”), Government of Punjab.

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 He finally submits that the respondent having been substantially financed by the Government ought to be declared as a Public Authority under the RTI Act and be directed to part with the information asked by him.

 The respondent has led us into the technical details of its rights and obligations entailed in a detailed agreement signed between them and the PIDB. Its dissection does not seem called for. The basic issue before us is the determination as to whether the respondent Hospital is a Public Authority within the meaning of Section 2(h) of the Act. **Section 2(h) (d) of the RTI Act** says as under :-

 **2. Definitions : ---**

 **Xx xx xx xx**

(h) “public authority” means any authority or body or institution of self-government established or constituted. –

 (a) by or under the Constitution;

‘ (b) by any other law made by Parliament;

 (c) by any other law made by State Legislature;

 (d) by notification issued or order made by the appropriate Government, and includes any ---

 (i) body owned, controlled or substantially financed;

 (ii) non-Government Organization substantially financed,

 directly or indirectly by funds provided by the appropriate Government;

 **xx xx xx xx**

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Admittedly Clause a to c and d (i) of Section 2 (h) of the Act are not attracted. However, we shall have to examine if it steers itself clear of the ambit of Section (d) (ii) of the Act reproduced above. The appropriate Government in the instant case obviously is the Government of Punjab. We have to see if the respondent has been substantially financed by the State Government directly or indirectly. Hon’ble Supreme Court of India in its judgment passed in CIVIL APPEAL NO. 9017 OF 2013 (Arising out of SLP (C) No.24290 of 2012) titled Thalappalam Ser. Coop.Bank Ltd. & ... vs State Of Kerala & Ors on 7 October, 2013 has clinched the issue by giving a ruling on the subject. It shall be desirable to reproduce the relevant portion:

***“SUBSTANTIALLY FINANCED***

*36. The words “substantially financed” have been used in*[*Sections 2(h)(d)(i)*](https://indiankanoon.org/doc/1097458/)*& (ii), while defining the expression public authority as well as in*[*Section 2(a)*](https://indiankanoon.org/doc/425882/)*of the Act, while defining the expression “appropriate Government”. A body can be substantially financed, directly or indirectly by funds provided by the appropriate Government. The expression “substantially financed”, as such, has not been defined under the Act. “Substantial” means “in a substantial manner so as to be substantial”. In Palser v. Grimling (1948) 1 All ER 1, 11 (HL), while interpreting the provisions of*[*Section 10(1)*](https://indiankanoon.org/doc/1278300/)*of the Rent and Mortgage Interest Restrictions Act, 1923, the House of Lords held that “substantial” is not the same as “not unsubstantial” i.e. just enough to avoid the de minimis principle. The word “substantial” literally means solid, massive etc. Legislature has used the expression “substantially financed” in*[*Sections 2(h)(d)(i)*](https://indiankanoon.org/doc/1097458/)*and*

*(ii) indicating that the degree of financing must be actual, existing, positive and real to a substantial extent, not moderate, ordinary, tolerable etc.*

*37. We often use the expressions “questions of law” and “substantial questions of law” and explain that any question of law affecting the right of parties would not by itself be a substantial question of*

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*law. In Black's Law Dictionary (6th Edn.), the word 'substantial' is defined as 'of real worth and importance; of considerable value; valuable. Belonging to substance; actually existing; real: not seeming or imaginary; not illusive; solid; true; veritable. Something worthwhile as distinguished from*

*something without value or merely nominal. Synonymous with material.' The word 'substantially' has been defined to mean 'essentially; without material qualification; in the main; in substance; materially.'*

*In the Shorter Oxford English Dictionary (5th Edn.), the word 'substantial' means 'of ample or considerable amount of size; sizeable, fairly large; having solid worth or value, of real significance; sold; weighty; important, worthwhile; of an act, measure etc. having force or effect, effective, thorough.' The word 'substantially' has been defined to mean 'in substance; as a substantial thing or being; essentially, intrinsically.' Therefore the word 'substantial' is not synonymous with 'dominant' or 'majority'. It is closer to 'material' or 'important' or 'of considerable value.' 'Substantially' is closer to 'essentially'. Both words can signify varying degrees depending on the context.*

*38. Merely providing subsidiaries, grants, exemptions, privileges etc., as such, cannot be said to be providing funding to a substantial extent, unless the record shows that the funding was so substantial to the body which practically runs by such funding and but for such funding, it would struggle to exist. The State may also float many schemes generally for the betterment and welfare of the cooperative sector like deposit guarantee scheme, scheme of assistance from NABARD etc., but those facilities or assistance cannot be termed as “substantially financed” by the State Government to bring the body within the fold of “public authority” under*[*Section 2(h)(d)(i)*](https://indiankanoon.org/doc/1097458/)*of the Act. But, there are instances, where private educational institutions getting ninety five per cent grant-in-aid from the appropriate government, may answer the definition of public authority under* [*Section 2(h)(d)(i)*](https://indiankanoon.org/doc/1097458/)*”.*

 Admittedly a land measuring 4.8 acres situated at the district Civil Hospital, Bathinda has been leased out on 23.09.2009 at the rate of Re.1/- per year for 50 years. The respondent pays 5% of the Gross Revenue of each financial year as Consideration Fee to the Government of Punjab. The main thrust of the argument of the respondent is that the Concession Agreement between the PIDB and them is governed by the PIDB Act which authorizes them to enjoy the rights, powers,

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privileges, authorizations and entitlements under the Concession Agreement, including but not limited to the right to charge, demand, collect, retain and appropriate Tariff (collectively the “Concession”) from the Project Facility/Hospital and not a concession in the form of subsidy grant or other financial incentives much less substantially as wrongly assumed by the complainant.

 This forum would not like to go into the technicalities of the aforesaid submissions. The important issue before the Commission is as to whether the respondent has been substantially financed by the Government directly or indirectly. In order to ascertain the substantiality of the financial assistance this forum called for a report from the Tehsildar, Bathinda to intimate the current value of the land which has been leased to it on a nominal fee of Re.1/- per annum. Vide his memo dated 11.09.2017 the Tehsildar Bathinda has intimated that the commercial value of the land as per the collector rate fixed is assessable at the rate of Rs.8,160/- per sq. yard. Computing at the above rate the value of the land leased to the respondent arrives at Rs.19 crores approximately.

 In the aforementioned findings the Hon’ble Supreme Court of India says that the funding has to be substantial to the extent that the body practically runs by such funds. But for the land the hospital’s existence cannot be conceived.

 Allotment of land is critical to the commissioning of the hospital. It has effectively been allotted gratis. Such an indirect financing is undoubtedly solid, weighty and massive.The allotment of the land effectively is free of charge.

 It thus satisfies and conforms to the parameters set forth in the aforesaid explanation of the expression “substantially financed” by the Hon’ble Supreme Court of India.

 While deciding a complaint the full bench of this Commission in its order on 12.05.2011 in CC No.3315 of 2010 titled Dr. S.G.Damle Vs PIO Fortis Hospital, Mohali observed:

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 *“12. There is another important aspect to the case, which should not be ignored. The respondent is a hospital. It is true that it is a private commercial venture, but given the nature of its business, the respondent is discharging an important service to the society. The Punjab and Haryana High Court in a full bench decision in the case of Ravneet Kaur Vs CMC, Ludhiana, (AIR 1998 Punjab and Haryana -1) rejected the argument that a body discharging public duty, merely because it is a private body, would place it beyond the pale of scrutiny. The court observed that what is relevant is the nature of the functions being discharged by an institution, rather than the consideration whether it is a public body or a private institution. “source of power is not important. It is the nature of power that is relevant”.”*

 Even the Government of India in its guidelines issued through the Department of Personnel and Training has maintained that all information relating to PPPs must be placed in public domain suo moto as per proviso of Section 4 of the RTI Act, including the details of SPVs. Project report, concession agreement, operation and maintenance manuals and other documents generated as part of implementation of PPP Project should also be proactively disclosed. The very nomenclature of a Public Private Project (PPP) suggests the preponderance of a public interest involved in the project.

 Transparency is the buzz word. Every institution which impinges public life in general or carries out the activities which impact the society as a whole has to be transparent in functioning. We must change our practice and mindset moving from a culture of secrecy to one of complete openness and accountability.

 For the reasons recorded above, the Commission has no hesitation in holding the MAX Super Specialty Hospital, NH 64, Near District Hospital, Bathinda as a Public Authority within the meaning of 2(h) of the RTI Act and hereby directs it to appoint a Public Information Officer under

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Section 5 of the RTI Act and ensure that the original request of the complainant is attended to and suitably responded within a month of the receipt of this order.

 **Disposed.**

 **Sd/-**

**10.10.2017 (Yashvir Mahajan)**

 **State Information Commissioner**