

बिहार सरकार
उद्योग निदेशालय, बिहार, पटना।

पत्रांक:-...../

04/उ०नि०-लो०सू०अ०-04/07

पटना, दिनांक.....

प्रेषक,

लोक सूचना पदाधिकारी,
-सह-
उप उद्योग निदेशक,
उद्योग निदेशालय, बिहार, पटना।

सेवा में,

लोक सूचना पदाधिकारी/प्रथम अपीलीय प्राधिकार,
सभी जिला उद्योग केन्द्र, बिहार।
लोक सूचना पदाधिकारी/प्रथम अपीलीय प्राधिकार,
उद्योग मित्र, इंदिरा भवन, पटना।
लोक सूचना पदाधिकारी/प्रथम अपीलीय प्राधिकार,
उपेन्द्र महारथी शिल्प अनुसंधान संस्थान, पटना।

विषय:-

बिहार सूचना आयोग, पटना में दायर वाद संख्या 116066/2014-15 श्री विजय कुमार गुप्ता, वैशाली बनाम प्रथम अपीलीय प्राधिकार-सह-जिला पदाधिकारी, वैशाली, हाजीपुर/लोक सूचना पदाधिकारी-सह-जिला प्रबंधक, बिहार खाद्य निगम, वैशाली हाजीपुर में पारित आदेश के अनुपालन के संबंध में।

महाशय,

उपर्युक्त विषयक सामान्य प्रशासन विभाग के पत्रांक 14016 दिनांक 23.10.18 की छायाप्रति (अनुलग्नक सहित) संलग्न करते हेतु अनुपालन सुनिश्चित करने हेतु प्रेषित की जा रही है।

अनु०-यथोक्त

विश्वासभाजन,

ह०/-

लोक सूचना पदाधिकारी,
-सह-

उप उद्योग निदेशक,
उद्योग निदेशालय,

बिहार, पटना।

/पटना, दिनांक 26/11/18

ज्ञापांक:- 4136

01/उ०नि०-लो०सू०अ०-04/07

प्रतिलिपि:- आईटी प्रबंधक, उद्योग विभाग, को सूचनार्थ एवं विभागीय वेबसाइट पर अपलोड करने हेतु प्रेषित।

लोक सूचना पदाधिकारी,

-सह-

उप उद्योग निदेशक,
उद्योग निदेशालय,

बिहार, पटना।

बिहार सरकार
उद्योग विभाग

SDI (PT)

ज्ञापांक 4687

पटना, दिनांक 29.10.18

सूको0उद्योग (विविध) 02/15

प्रतिलिपि:- निदेशक, उद्योग निदेशालय/ह0रे0 निदेशालय/तकनीकी विकास निदेशालय/खाद्य प्रसंस्करण निदेशालय, उद्योग विभाग, बिहार, पटना/मुख्य कार्यपालक पदाधिकारी, बिहार राज्य खादी ग्रामोद्योग बोर्ड/प्रबंध निदेशक, बिहार औद्योगिक क्षेत्र विकास प्राधिकार/ प्रबंध निदेशक, बिहार राज्य औषधि एवं रसायन विकास निगम लि0, मौर्या लोक कॉम्प्लेक्स, पांचवां तल्ला, पटना/ प्रबंध निदेशक, बिहार राज्य हस्तकरघा एवं हस्तशिल्प निगम लि0, उद्योग भवन, पूर्वी गांधी मैदान, पटना-4/ प्रबंध निदेशक, बिहार राज्य वस्त्र निगम लि0, उद्योग भवन पूर्वी गांधी मैदान, पटना-4/ प्रबंध निदेशक, बिहार राज्य औद्योगिक विकास निगम लि0, इंदिरा भवन, पटना/प्रबंध निदेशक, बिहार राज्य साख एवं विनियोग निगम लि0, इंदिरा भवन, पटना/ प्रबंध निदेशक, बिहार राज्य वित्तीय निगम लि0, फ्रेजर रोड, पटना/प्रबंध निदेशक, आधारभूत संरचना विकास प्राधिकार, उद्योग भवन, पूर्वी गांधी मैदान, पटना। प्रशाखा पदाधिकारी, प्रशाखा-1, 2, 3, 4, 5 एवं 6(स0), उद्योग विभाग, बिहार, पटना/निदेशक, उद्योग से अनुरोध है कि सभी महाप्रबंधकों से अपने स्तर से अनुपालन सुनिश्चित कराने की भी कृपा करेंगे।

उनसे अनुरोध है कि अवर सचिव, सामान्य प्रशासन विभाग के पत्रांक-14016 दिनांक-23.10.2018 (अनुलग्नक सहित) के आलोक में अनुपालन सुनिश्चित करने की कृपा की जाय।

अवर सचिव,
29/10/18

अवर सचिव,

उद्योग विभाग, बिहार, पटना।

29/10/18

श्री विकास
प्रशाखा-4

29/10/18

8 39/PT
15/11/18

विभा 343
16/11/18

सूचना पदा 10 सी दी 407 जी

Adell Seely

संचिका संख्या-21/सू.अ.-05/2016 सा.प्र.14016

बिहार सरकार
सामान्य प्रशासन विभाग

प्रेषक,

हिमांशु कुमार राय,

सेवा में,

सरकार के संयुक्त सचिव

सभी प्रधान सचिव/सचिव
सभी विभागाध्यक्ष/सभी प्रमुख/सभी आयुक्त
सभी जिला पदाधिकारी



6592/DC
26/10/18

विषय:-

बिहार सूचना आयोग, पटना में दायर वाद संख्या 116066/2014.15 श्री विजय कुमार गुप्ता, वैशाली बनाम प्रथम अपीलीय प्राधिकार-सह-जिला पदाधिकारी, वैशाली, हाजीपुर/लोक सूचना पदाधिकारी-सह-जिला प्रबंधक, बिहार खाद्य निगम, वैशाली, हाजीपुर में पारित आदेश के अनुपालन के संबंध में।

महाशय,

विषयांकित वाद में बिहार सूचना आयोग, पटना द्वारा दिनांक 13.02.2008 को पारित आदेश प्रति संलग्न करते हुए निदेशानुसार कहना है कि उक्त आदेश के अनुपालन में सूचना का अधिकार अधिनियम, 2005 की धारा-4(1)(a),(b) एवं (c) का अनुपालन पत्र प्राप्ति के एक माह के भीतर सुनिश्चित करते हुए इस विभाग को अवगत कराने की कृपा की जाय। साथ ही पारित आदेश की प्रति अपने अधीनस्थ सभी लोक सूचना पदाधिकारियों एवं प्रथम अपीलीय प्राधिकारों को भी उपलब्ध कराते हुए कृपया आवश्यक निदेश दिया जाय।

विश्वासभाजन

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(हिमांशु कुमार राय)
सरकार के संयुक्त सचिव।

25/10/18

3844/AS
26/10/18

Handwritten signature
26.10.18



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राज्य सूचना आयोग
सूचना भवन, चौथा तल्ला, बेली रोड, विहार, पटना।
दूरभाष- 2215713, 2235059, 2200412, 2200426 फॅक्स- 2235466

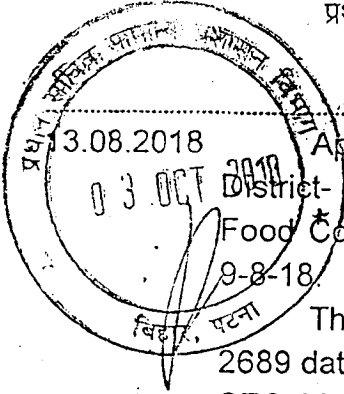
US-21

याद संख्या- 116068/14-15

श्री विजय कुमार गुप्ता, वैशाली।

बनाम्

प्रथम अपीलीय प्राधिकार-सह-जिला पदाधिकारी, वैशाली, हाजीपुरा/लोक सूचना पदाधिकारी-सह-जिला प्रबन्धक, राज्य खाद्य निगम, वैशाली, हाजीपुर।



Appellant absent. Ms. Nazli Hasnain, Assistant Manager, SFC, Hajipur, District- Vaishali is present and she produces report of District Manager, State Food Corporation (in short SFC) Vaishali-cum-PIO vide letter no. 3172 dated 9-8-18.

The facts stated in the said report as well as in previous report (letter no. 2689 dated 2-7-18) of PIO, if true, show poor infrastructure and management in SFC, Vaishali. The district head of SFC, Vaishali, who replied after issuance of notice by this commission has also shown his complete ignorance about the provisions of RTI Act which is in force in this State since last about twelve years.

The informant demanded two informations vide his RTI application dated 17-2-2014. Firstly he demanded attested copy of catalogue and indexes of records prepared u/s 4 of RTI Act at SFC, Vaishali since year 1995 to year 2014. District Manager, SFC, Vaishali-cum-PIO, after about four years, replied vide letter no. 1306 dated 6-4-2018 that he is unable to understand the question. It appears that while recording such reply, he did not care to even peruse section 4 of RTI Act. Reply to the second demand of applicant is more interesting. The applicant demanded information about allotments received and distributions made (block wise) under Sampurna Gramin Rojgar Yojna, and "Kam ke badle Anaj Yojna" since year 1995 till year 2008. The PIO replied after about four years that he may provide such information only after posting of staff in his office, for which request has been sent to headquarter.

Those who are dealing with public money and property are duty bound to keep account of it. SFC, Vaishali is an important stake holder of implementation of several benevolent schemes of Govt. for benefit of socially and economically weaker section of society, students and other needy persons of society. He, who seldom provide informations under RTI Act in time and is responsible of filings of huge number of appeals before this commission; who takes initiative towards replying the RTI applications only after issuance of notice from commission in 2nd appeal, has stated in his report that one of his Assistant Manager is badly engaged in attending information commission at the cost of his official duties, whereas the appellant is not appearing before commission.

RTI an effective tool to eradicate corruption.

US-21

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ए. व. गुप्त

श्री वि. गुप्त
10.10.18

1389/15021
10/11/18

Right to Information Act, 2006 (hereby referred as the Act) is an ambitious and progressive legislation in order to promote transparency and accountability in the working of every public authority. The Act intends to provide an effective tool to eradicate deep rooted corruption in public sector. The duties under this Act is equally important than the other duties of public authorities. The provisions of the Act may be broadly divided in three categories. In the first category, there are provisions which provide for mode and manner of preparation to provide informations under the Act. The provisions relating to designation of public Information Officers, Assistant Public Information Officers, the provisions about assistance to such Public information Officers (Section 5), provisions relating to appeal and constitution of Information Commission (chapter 3, 4 and 5) and provisions related to training and awareness programmes (Section 26) are amongst the first category but the most important provision in this respect is section 4(1)(a) of the Act which is as follows:

"Every public authority shall maintain all its records duly catalogued and indexed in a manner and the form which facilitates the right to information under this Act and ensure that all records that are appropriate to be computerised are, within a reasonable time and subject to availability of resources, computerised and connected through a network all over the country on different systems so that access to such records is facilitated."

It may be mentioned that the applicant, in his RTI application had demanded copy of catalogue and index prepared in this section and the PIO has replied that he does not understand the question. This prima-facie show that State Food Corporation has not cared to prepare itself for providing informations demanded under the Act. At least, SFC, Vaishali has not made such preparation and its District Manager is not aware about his duty u/s 4(1)(a) to make such preparation. **Attention of Principal Secretary, Food and Civil Supplies Department, Govt. of Bihar is drawn towards such lapses.**

Proactive and voluntary disclosure of information.

The next broader category under the scheme of the Act is provisions relating to proactive and voluntary disclosure of informations relating to each organisation before any demand for information is made. The third broader category under the scheme of the Act relates to provisions about demanding information and providing it to information seeker .

The officers representing public authorities as well as Public Information Officers mostly believe that their duty under the Act starts only when Information is demanded. They must know that they have also duty of voluntary and proactive disclosure of specified informations mentioned in section 4(1)(b) and (c) of the Act and they have also duty to update such information at regular intervals. They are also under obligation to keep the records of office duly catalogued and indexed, so that information, when demanded, may be provided in time. The public authorities and Public Information Officers, failing in their duty in this respect

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of informations u/s 4(1)(b) and (c)] mostly express grievances against information seekers and scheme of the Act. Such officers need proper training of section 4 and other sections of the Act

Kinds of information in RTI Act

It may be mentioned that 'informations in the Act may also be divided in three parts. They are (i) absolute information (ii) qualified information and (iii) exempted information. Absolute information are those information which are mandatory to be disseminated to the public. The Act has identified seventeen such informations and has mandated u/s 4(1)(b) that every public authority shall voluntarily publish these informations within 120 days from enactment of this Act. Section 4(1)(c) add one more kind of information in the list of absolute information to be voluntarily disclosed and published. Section 4(2)(3) and (4) provides the mode and manner of publishing such information.

Qualified informations are the information which may or may not be provided subject to certain conditions enumerated in section 8, 9, 10 and 11 of the Act. Exempted information relates to organisations mentioned in section 24 read with schedule 2 of the Act. The information relating to such organisations are exempted in national and public interest except the information pertaining to corruption and human right violation.

The rationale of division of informations and duty of pro active disclosure without there being specific demand for information may be understood from following observation of Hon'ble Supreme Court in its judgment delivered in "**The Institute of Chartered Accountants of India Vs. Shaunak H. Satya & others**" [2011(8) SCC 781]

"18. The information to which RTI Act applies falls into two categories, namely, (i) information which promotes transparency and accountability in the working of every public authority, disclosure of which helps in containing or discouraging corruption, enumerated in clauses (b) and (c) of Section 4(1) of RTI Act; and (ii) other information held by public authorities not falling under Section 4 (1)(b) and (c) of RTI Act.. In regard to information falling under the first category, the public authorities owe a duty to disseminate the information widely suo moto to the public so as to make it easily accessible to the public. In regard to information enumerated or required to be enumerated under Section 4(1)(b) and (c) of RTI Act, necessarily and naturally, the competent authorities under the RTI Act will have to act in a pro-active manner so as to ensure accountability and ensure that the fight against corruption goes on relentlessly. But in regard to other information which do not fall under Section 4(1)(b) and (c) of the Act, there is a need to proceed with circumspection—as it is necessary to find out whether they are exempted from disclosure. One of the objects of democracy is to bring about transparency of information to contain corruption and bring about accountability. But achieving this object does not mean that other equally important public interests including efficient functioning of the governments and public authorities, optimum use of limited fiscal resources, preservation of confidentiality of sensitive information, etc are to be ignored or sacrificed. The object of RTI Act is to harmonize the conflicting public interests

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corruption on the one hand, and at the same time ensure that the revelation of information, in actual practice, does not harm or adversely affect other public interests which include efficient functioning of the governments, optimum use of limited fiscal resources and preservation of confidentiality of sensitive information, on the other hand. While sections 3 and 4 seek to achieve the first second objective, sections 8, 9, 10 & 11 to achieve the second objective."

If the records and registers at SFC, Vaishali would have been catalogued and indexed u/s 4(1)(a) and the informations demanded in this case would have been voluntarily and pro actively published and kept in public domain u/s 4(1)(b) and (c) of the Act, in time and it would have been updated from time to time, then District Manager, SFC, Vaishali may not have any difficulty in providing information irrespective of posting of staff and the Assistant Manager may not have occasion to attend the commission. The PIO, failing in his duty cannot blame others.

Disclosure under Section 4(1)(b) & (c) of RTI Act may reduce burden of PIO and misuse of RTI

Pro-active disclosure of information in accordance with section 4(1)(b) &(c) may reduce the burden of PIO. During hearing of appeals and complaints, it has been brought to notice of this commission by several PIOs that some persons, with vested personal interest, repeatedly demand same information in different names or they demand voluminous information with a view to harass the PIO. One of solution to avoid misuse of rights under provisions of RTI Act is to keep such repeatedly demanded information in public domain u/s 4(1)(b) of the Act. Once an information is placed in public domain u/s 4(1)(b) or (c) of RTI Act, the PIO is relieved from providing such information in detail u/s 7 of the Act. At best, he will inform the information seeker about the address of public domain where the information is available. This view finds support from following observation of central Information Commission in its judgment given in S.K. Lall Vs. Sh M.K. Bagri, Assistant Registrar of Companies and CPIO (F. No. CIC/AT/A/2007/00112)-

"It would mean that once certain information is placed in public domain accessible to the citizens either freely or on payment of a pre determined price, that information cannot be said to be "held" or "under the control" of the public authority and thus would cease to be an "information" accessible under the RTI Act.

Above view of Central Information Commission was usefully quoted and relied by Hon'ble Delhi High Court in its judgment dated 1-6-2012 delivered in WP (C) 11271/2009 Registrar of Companies & ors. V. Dharmendra Kumar Garg and Anr. wherein Hon'ble High Court, Delhi has observed-

"34.... it appears that the expression, held by or under the control of any public authority, in relation to information means that information which is held by the public authority under its control to the exclusion of others".

Admittedly, the information demanded in this case has not been provided to applicant since last about four years. However, the commission feels it difficult to fix responsibility of such failure. Prima facie, the officers posted as

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information till four years are responsible for it. It is not clear as to whether paucity of staff in SFC, Vaishali is since last more than four years or it is a temporary phenomenon. It is also not clear as to whether, after implementation of RTI Act in this State, the public authority and PIO took steps to catalogue and index its records within 120 days and whether such catalogue and index is available in records of SFC, Vaishali. If no such steps have been taken and paucity of staff is a time long phenomenon and the State authorities are negligent in responding to the request of District Manager for posting of staff, then responsibility of delay may shift to the shoulder of authorities at State level of. Principal Secretary, Food and Civil Supplies, Govt. of Bihar is accordingly recommended u/s 20(2) of RTI Act to identify such erring officers/ staff and take suitable disciplinary action.

This commission further directs as follow:

- (i) The Principal Secretary, Food and Civil Supplies Department, Govt. of Bihar, Patna is required u/s 19(8)(a) of RTI Act to depute sufficient staff at SFC, Vaishali to catalogue and index the records including registers, letters, vouchers, etc. lying there in accordance with Section 4 (1)(a) of the Act within three months. Such deputed staff may be directed to assist the District Manager-cum-PIO in publishing the required informations u/s 4(1)(b) and (c) within time frame.
- (ii) The Principal Secretary, Food and Civil Supplies Department, Govt. of Bihar, Patna is further required u/s 19(8)(a)(iv) of RTI Act to issue necessary directions in relation to maintenance (including updating catalogues and index), managing (including proactive disclosure) and destruction of records in SFC of all District of Bihar.
- (iii) The Principal Secretary, General Administration Department, Bihar, Patna is hereby required u/s 19(8)(a) of RTI Act to secure compliance of section 4(1)(a), (b) and (c) of RTI Act in all public authorities within time frame and to circulate copy of this judgement to all Public Information Officers and other officials including the Officers having responsibility to impart training and awareness of the provisions of RTI Act.

This appeal is however disposed off by treating the required information unavailable at present.

Sd/-

(Om Prakash)

State Information Commissioner

ज्ञापक= 4105 सा0सू0आ0

पटना, दिनांक= 25/9 2018

प्रतिलिपि:- प्रधान सचिव, सामान्य प्रशासन विभाग, बिहार, पटना।/प्रधान सचिव, खाद्य एवं उपभोक्ता संरक्षण विभाग, बिहार, पटना।/लोक सूचना पदाधिकारी-सह-जिला प्रबन्धक, राज्य खाद्य निगम, वैशाली, हाजीपुर।/सहायक प्रबन्धक, राज्य खाद्य निगम, हाजीपुर, वैशाली।/श्री विजय कुमार गुप्ता, द्वारा-श्री धनंजय कुमार, ग्राम+पो0-गोरौल, जिला-वैशाली-844118 को सूचना एवं आवश्यक कार्यवाई हेतु प्रेषित।

22/10