

CENTRAL INFORMATION COMMISSION
Complaint Nos. CIC/WB/C/2008/00425 & 426 dated 12-5-2008
Right to Information Act 2005 – Section 18

Complainant: Commodore¹ Lokesh K. Batra (Retd.)
Respondent: National Commission for Women (NCW)

FACTS

These are two appeals from Commodore Lokesh K. Batra of NOIDA, U.P. against the National Commission for Women, New Delhi on his requests for providing him information.

File No. CIC/WB/C/2008/00425

In an application of 20-12-07 Cdre. Batra sought the following information from Shri Yogesh Mehta, Law Officer and CPIO, NCW:

1. "Total number of members sanctioned and appointed in NCW, including Chairperson. Please give Names, designations (if any), date of joining office of NCW and their responsibilities.
2. What is the policy regarding availability of members in the O/o NCW, New Delhi for taking decisions?
3. Please provide me 'Tour' and 'Leave' details in respect of 'Each Member' of the NCW including 'Chairperson' for the period 01 January 2005 to 31 December 2006 in following format;
 - (a) Leave Records of each member for the said period.
 - (b) Day, Date and Time (AM/PM) of leaving station (New Delhi) on Tour, Place of Visits and Purpose of visits.
 - (c) Day, Date and Time (AM/PM) of joining back duty at O/o of NCW, New Delhi and the total expenditure incurred during the visit, including TA & DA claimed.
 - (d) Total number of working days 'Member' available on duty in O/o of NCW, New Delhi. This information is required on monthly basis for the period 01 January 2005 to 31 December 2006.
 - (e) Total number of working days in year 2005 and year 2006 and the total number of working days when all members were present in O/o NCW, New Delhi in the year 2005 and the year 2006."
 - (f)

To this he received the following reply on 9-5-08:

S.	Points raised	Reply of NCW.
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¹ Designation corrected by rectification of typing error 24.8.'08

No.		
1.	Total number of member sanctioned and appointed in NCW including Chairperson. Please give Names, designations (if any), date of joining office of NCW and their responsibilities.	With respect of point NO. 1, you are hereby informed that the details sought can be accessed by you on the NCW website ncw.nic.in. The web page contains a link titled 'Right' to information Act under which the details have been provided.
2.	What is the policy regarding availability of Members in the O/o NCW, New Delhi for taking decision?	The National Commission for Women is a statutory body and its jurisdiction extends to all States and Union Territories in India except the State of J&K. Chairperson and the Members are generally available in office unless they are on tour.
3.	Please provide me 'Tour' and 'Leave' details in respect of 'Each Member' of the NCW including 'Chairperson' for the period 01 January 2005 to 31 December 2006.	The information sought is cumbersome which cannot be provided. The purpose of seeking such information is general is not clear, since it does not appear to serve any public purpose. It is informed that members and the Chairperson frequently under take tours in connection with the mandate of the Commission.

In the meantime complainant Cdre. Batra had already moved his complaint before us on 11-2-08 with the following prayer:

“Please order the CPIO to provide complete information within seven working days without charging any fee as the CPIO has not provided the information within stipulated period.

As the CPIO has not provided complete information so far, the commission is also requested to impose a penalty under section 20 (1) of the Right to Information Act 2005 and also order for the department al disciplinary

proceedings under section 20 (2) of the Right to Information Act 2005.

I request to the Hon'ble Commission to direct the CPIO/ public authority to compensate the complainant/ appellant for the time, money and the harassment suffered by me. Section 19 (8) (b) refers."

Thereafter, Cdre. Batra who had two complaints before us requested for out of turn hearing, being a senior citizen. through his letter of 1-7-08.

File No. CIC/WB/C/2008/00426

In an application of 29-3-07 Cdre. Batra sought the following information from Shri Yogesh Mehta, Law Officer and CPIO, NCW regarding the correspondence between the NCW and the DGP, UP regarding missing children in Nithari, NOIDA:

- “1. The date when the above mentioned complaint dated 17th May 2006 was received in the office of NCW? Please provide a copy of the said complaint letter from the office records of the NCW.
2. From the date of receiving the said complaint dated 17th May 2006, till the date of replying to this application under the RTI Act, 2005, please give brief of all follow up actions taken indicating dates.
3. Please provide copies of all the investigation report (s) and action taken reports on the said complaint.
4. Please give the names and designations of the officials who were supposed to take action on the said complaint.
5. Please provide copies of the correspondence if any, between the Chairperson, National Commission for Women (NCW)/ Office of NCW and the Honourable Prime Minister/ PMO in connection with the Nithari Case, during the period 29 Dec 2006 till the date of replying to this application.
6. I would also like to inspect all the files concerned with the said case and follow up actions taken. At that stage, I will take photocopies of documents and notings in the file as required. Please inform the date and time for the inspection of the files.”

To this he received the following reply on 27-4-08:

1. "A complaint dated 17.5.2006 submitted by Ms. Usha Thakur and others was received in the Commission on 23.5.2006 the same was forwarded to the DGP, Uttar Pradesh on 27.6.2006 by the Project Coordinator, Shri A. I. Narula, the copies of the relevant correspondence and replies by the Police authorities is being sent to you in the final reply.
2. With regard to the other points made by you the replies shall be sent to you by 4th May 2007. At present, it is seen that there are four files already opened in a Nithari case by C&I Cell and the concerned cell has already been instructed to check and ascertain as to whether there are any other files and documents pertaining to the case.
3. As regards your point No. 4 it is to state that the Complaint Investigation Cell was under the supervision of the Deputy Secretary, Ms. Gurpreet Deo, National Commission for Women, assisted by the Coordinator and four counsellors. However, the present case was investigated by the Member, Ms. Nirmala Venkatesh."

He then received a further response on 22-5-07 as follows:

1. "A complaint dated 18.5.2006 submitted by Ms. Usha Thakur and others was received in the Commission on 23.5.2006 the same was forwarded to the DGP, Uttar Pradesh on 6.6.2006 by the Project Coordinator, Shri A. L. Narula. Copies of the relevant correspondence and replies by the authorities are enclosed.
2. With respect of Point No. 2 & 3 the sequent of events are as under:
3. 23.5.2006 Received Complaint dated 18.5.2006 of Ms. Usha Thakur and others.
Letter dt 6.6.06 Forwarded to DGP, UP requesting him to enquire into the matter and submit an action taken report within four weeks.
Letter dt. 28.8.06 Received from SSP, Gautam Budh Nagar, forwarding a report of the Police, NOIDA.
Letter dt. 28.9.06 Received from Police Headquarter, UP.

The reports submitted by the Police were neither examined nor placed before the officials or the Member of the Commission for further action.

4. The action on the file was supposed to be initiated by the counsellor Ms. Anjali Salve who left the Commission on 2.9.2006. Thereafter her work was looked after by Shri Sampooranad who has been contracted as a daily wage worker for clerical work. This was in addition to his other duties. There is a severe constraint of shortage of staff particularly in the complaints and Investigation Cell which resulted in the file's non submission to senior officials and the Member of the Commission. The availability of the complaint dated 18.5.2006 of Ms. Usha Thakur, and the report DG, UP's office thereon were not known to Chairperson and other Senior officials at the time of writing the letters to the Hon'ble Prime Minister and Smt. Sonia Gandhi, as learnt. The action on the file was to be supervised by Coordinator, Shri A. L. Narula who demitted office on 6.7.2006.
5. Copies of the DO letters to the Prime Ministers and Smt. Sonia Gandhi is not held on the file which has been received by the undersigned and hence therefore, the copies of the same cannot be provided."

In the meantime, complainant Cdre. Batra had moved his complaint before us on 9-5-08 with the following prayer:

"Please order the CPIO to provide complete information within seven working days without charging any fee as the CPIO has not provided the information within stipulated period.

As the CPIO has not provided complete information so far, the commission is also requested to impose a penalty under section 20 (1) of the Right to Information Act 2005 and also order for the department al disciplinary proceedings under section 20 (2) of the Right to Information Act 2005.

I request to the Hon'ble Commission to direct the CPIO/ public authority to compensate the complainant/ appellant for the time, money and the harassment suffered by me. Section 19 (8) (b) refers."

Appellant had in response to his request for the name of Appellate Authority received a reply on 25-1-08 from Shri Yogesh Mehta informing him that Ms. Vijaya Moorty, JS, NCW was the 1st Appellate Authority, to whom therefore, he had moved an appeal on 6-2-08 on the following grounds:

"CPIO has not provided complete information so far."

The complaints were heard on 18-8-2008. The following are present.

Complainant

Commodore (Retd.) Lokesh K. Batra

Respondent

Shri Yogesh Mehta, Law Officer, NCW/PIO

Complainant Cdre. Batra submitted a power point presentation on Nithari killings and response to RTI requests. Shri Yogesh Mehta submitted his written explanations after the hearing in which on the basis of a note submitted by Shri Mehta to the Member Secretary NCW on 28.4.2007, following note was submitted by the Member Secretary on 30.4.2007 to the Chairperson, NCW.

“The applicant under RTI has already got a copy of the CP letter to PM. He is, however, insisting upon getting it from us. This letter and the letter to Smt. Sonia Gandhi are not on file. Copies of these letters (unsigned) are, however, available with Shri Chidambaram PA to CP. It is for consideration whether copies of these letters may be given to the applicant after authentication.

A factual letter may be sent to the applicant.”

This was followed by another note of Member Secretary forwarding the draft reply to the RTI application of complainant Cmdre Batra to the Chairperson as follows:-

“May kindly see particularly paras 4 and 5 since the letters to PM and Smt. Sonia Gandhi are not in the file.”

CPIO Shri Yogesh Mehta in his initial noting has noted as follows:-

- “1. There are following files pertaining to the Nithari incident received by the undersigned from the C&I Cell on 27.4.2007.
 - (a) F. No. 8/6482/05/SU/ST-Part file.
 - (b) F. No. 8/6482/05/SU/ST.
 - (c) F. No. 8/4(1)/2007NCW-C&I.
 - (d) F. No. 8/4548/AS/NV/2006.
 - (e) One file which has no number.

The number of files maintained at the C&I Cell have only added confusion to the case in hand.

2. One case has been handled by Ms. Anjali, Counsellor and Coordinator, Shri A. K. Narula.

3. Another file has been handled by another Counsellor and subsequently it was handled by another counsellor name Shri Chander Prakash.
4. In all the files there appears to have been no system of proper handing/ taking over of the concerned files.”

DECISION NOTICE

Having heard the arguments and examined the files we are constrained to observe with deep regret the lack of a functional system in the National Commission for Women in dealing with so important a case that was brought before the NCW by Commodore Lokesh K. Batra. It is strongly recommended under the authority vested in us by Sec 19 (8) sub-section (a) to the Ministry of Women & Child Development that the Ministry institute a regular administrative structure for the Commission, which will then bring its functioning into conformity with the RTI Act, 2005 by instituting a system of maintenance of records in keeping with Sec 4(1), particularly sub-section (a). **This exercise may be completed within thirty days of the issue of this decision notice** under intimation to Sh PKP Shreyaskar, Jt Registrar, Central Information Commission.

Our decision on the complaints in both the cases is as below;-

File CIC/WB/C/2008/00426

Cdre. Lokesh Batra be provided access to all files connected with Nithari killings through an inspection to be arranged on 26.8.2008 at 11.00 am in the office of CPIO Shri Yogesh Mehta, National Commission for Women, 4, Deen Dayal Upadhyay Marg, New Delhi. This will include those files on the concerned subjects which are in the custody of the Chairperson and any other officers including the C&I Cell which it is agreed has to be the custodian of the information sought.

File CIC/WB/C/2008/00425

In this file the answers which can be deemed inadequate by the complainant are the answers to question No. 1 & 3. Simply because the web page

contains a title "RTI Act", informing appellant as much does not amount to an adequate response to an RTI request where under information u/s 7 (9) is excepted to be provided in the form in which it is sought. Besides, leave and tour records on Government account are excepted to be kept by any respectable govt. office. The plea taken by the CPIO that the information sought is cumbersome "which cannot be provided" is, therefore, specious. If the NCW has been so lackadaisical hitherto as to neglect its duty to conform to the Sec 4 (1) sub-section (b) (iv) of the RTI Act, 2005 it will do so now, by publishing the norms set by it for the discharge of its functions, in consonance with our decision on **File CIC/WB/C/2008/00426. The information sought under both heads will be provided to the appellant, Cdre Lokesh Batra within 15 working days of the date of issue of the decision notice.**

Because the information sought was not provided in the time mandated under law, it will be provided free of cost as per Sec 7(6) of the RTI Act. Moreover, we find a failure to respond within the mandated time limit to the application of 20.12.2007. PIO Shri Yogesh Mehta will, therefore Show-cause as to why he should not be held liable for a penalty of Rs. 25,000/- for the delay between 20.1.2008 when the response became due up to 9.5.2008 when it was actually provided, a delay of 110 days @ Rs. 250/- per day not exceeding Rs. 25,000/-. He can do this either **in writing by 10th September, 2008 or by personal appearance before us on 29th September, 2008 at 12.30 p.m.** On the basis of this explanation we will also take a decision on compensation payable, if any, as prayed by appellant Cmdre. Batra

The complaints are therefore accepted. Reserved in the hearing this Decision is announced in open chamber on this 20th day of August 2008

Notice of this decision be given free of cost to the parties.

(Wajahat Habibullah)
Chief Information Commissioner
20-8-2008

Authenticated true copy. Additional copies of orders shall be supplied against application and payment of the charges prescribed under the Act to the CPIO of this Commission.

(Pankaj K.P. Shreyaskar)
Joint Registrar
20-8-2008