

To,
Appellate Authority
Right to Information,
Power Grid Corporation of India Limited.

SUBJECT: - FIRST APPEAL AGAINST ORDER OF CPIO DATED 20-04-2023

Sir,

Please refer to the RTI Application with Registration No. PGCIL/R/E/23/00106 dated 21.03.2023 seeking information under the provisions of RTI, Act 2005 and reply of CPIO dated 20-04-2023.

1. I had Submitted the above captioned RTI Application seeking information regarding connectivity approvals in favor of Soltown Infra Pvt. Ltd. at Bikaner- II and all other documents related to it.
2. I have Received reply from CPIO vide letter dated 20-04-2023 in which it is stated that “The information sought above has the nature of commercial confidence which cannot be disclosed to third party since the matter is sub-judice before CERC in a petition before Central Electricity Regulatory Commission vide Diary No.134 of 2023. Further, the information includes a wide variety of commercial information about the applicant’s business/ project and has the nature of commercial confidence and may affect the competitive position of the connectivity applicant. In this regard as per clause 8(1) (d) of the RTI Act, 2005. Such information cannot be disclosed to the RTI applicant.”

3. 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 a manner as to shadow the very right itself. In my case the CPIO has failed to perform the duty imposed on him by RTI and violated the principle of natural justice.

4. **The Hon'ble Supreme Court in Khanapuram Gandaiah vs Administrative Officer & Ors SPECIAL LEAVE PETITION (CIVIL) NO.34868 OF 2009** held that -

"6. Under the RTI Act "information" is defined under Section 2(f) which provides:

"information" means any material in any form, including records, documents, memos, e-mails, opinions, advices, press releases, circulars, orders, logbooks, contracts, reports, papers, samples, models, data material held in any electronic form and information relating to any private body which can be accessed by a public authority under any other law for the time being in force."

This definition shows that an applicant under Section 6 of the RTI Act can get any information which is already in existence and accessible to the public authority

under law. Of course, under the RTI Act an applicant is entitled to get copy of the opinions, advices, circulars, orders, etc”.

5. CPIO rejected my application without any probable cause and justification whereas in every case wherein a request for information under the RTI Act is refused, the CPIO is, inter alia, required to record the reasons for such rejection. Hence, if a request is denied on the ground that the information requested is exempted under RTI Act, Section 8 the CPIO must record a speaking order justifying how Section applies to the case in question. If the CPIO fails to do so, and merely states that Section 8 applies without justifying how, this is a major dereliction of duty. In any appeal proceedings, the onus is on him to provide such a justification. Hence, every case wherein the information requested is rejected with a mere statement that it is exempted under Section without recording reasons as to how Section 8 applies to the case in question, is unlawful. The Burden of Proof lies on public authority to establish that denial of information is justified in the circumstances of the case.
6. It is submitted that as per the provisions of section 8 (1) of the RTI Act, 2005, no specific exemption is codified which allows non-disclosure of information on the ground that the matter on which information is sought is sub-judice. In this context, the following extract of the decision of the **Hon’ble High Court of Delhi**

in **Municipal Corporation of Delhi v. R.K. Jain in W.P. (C) 14120/ 2009** can be cited:

“5..... The matter being sub judice before a court is not one of the categories of information which is exempt from disclosure under any of the clauses of Section 8(1) of the RTI Act.”

7. The CIC in its decision in **Mr. Ashu v. CPIO/ Sr. Supdt of Posts, Department of Posts in CIC/BS/A/2015/001578/11769** dated 28.11.2016 had held as under:

“At the outset it is clarified that the RTI Act provides no exemption from disclosure requirements of sub-judice matters. The only exemption for sub-judice matters is regarding what has been expressly forbidden disclosure by a court or a tribunal and what may constitute contempt of court.”

8. The Commission in **CIC/SM/A/2011/000343/SG/13645** held as under:

“The stay order(s) of the High Court of Delhi do not appear to have framed a specific issue for determination and have granted a stay specifically only on the operation of the order of the Commission dated 24/08/2009. No claim for the exemption has been made by the PIO as per the RTI Act. However, the Commission assumes that the PIO is claiming that disclosure of information is exempt since the matter is sub- judice. The only exemption which may relate to matters in court is Section 8(1)(b) of the RTI Act. Section 8(1) (b) of the RTI Act exempts from disclosure “information which has been expressly forbidden to be published by

any court of law or tribunal or the disclosure of which may constitute contempt of court". From a plain reading of Section 8(1)(b) of the RTI Act, it is clear that it does not include sub- judice matters. As mentioned above, information may be exempted from disclosure in accordance with Section 8 and 9 only and no other exemptions can be claimed while rejecting a demand for disclosure. Hence, disclosing information on matters which are sub- judice cannot constitute contempt of Court, unless there is a specific order forbidding its disclosure. The mere claim that a matter is sub- judice cannot be used as a reason for denying information under the RTI Act. In view of the same, the Commission rules that the denial of information by the PIO on queries 36 and 38 of the RTI application is legally untenable. Moreover, in view of the observations laid down above, the decisions cited by the PIO are not relevant to the present matter."

9. The Commission in the matter of **Shri Nanak Chand Arora v. State Bank of India** in **CIC/MA/A/2006/00018** dated 30.06.2006 had also held as under:

"10. The CPIO and the Chief Manager of the Bank has not responded to the information seeker in the spirit in which the Act seeks to promote transparency in functioning of the Bank. He has mis-interpreted the provision of the Act and informed that there was no provision for inspection of the record in the Act. This is contrary to the provision u/ s 2 (f). He has also not indicated as to why the report could not be disclosed, except that the matter was sub-judice. There is no provision

in the Act which restricts the disclosure of information merely on the ground of the fact that matter is pending with the Consumer Court. In the instant case, the Court has not forbidden the disclosure of investigation report or inspection of record.”

10. It is submitted that exemption of RTI Act, Section 8 to apply, there must be a cause-and-effect relationship between the disclosure of the information in question, and the harm to any of the protected interests contained therein. In other words, it must be shown that the very act of the disclosure of the information would harm any of the protected interests in question. A good nexus must be shown between the very act of the disclosure of the information, and consequent harm to any of the protected interests in question, for Section 8 to apply. This entire chain of causation needs to be established. In the present case the public authority in question failed to establish a good chain of causation. The public authority provided a justification which only establishes only a weak nexus, implicitly, but incorrectly, assuming that it is establishes a good nexus necessary for a valid refusal. In the cases like present one the denial under Section 8 is wrongful.

11. It is submitted that CPIO has denied the information as per clause 8(1)(d) of the RTI Act, 2005. It is pertinent to mention that clause 8(1)(d) has two essential components the first being commercial confidence and second being harming the competitive position of the third party. Commercial in confidence is any

information that could give a business an advantage over its competitors or refers to the sensitive information that an individual or business shares with another party in confidence. In my case the information I had sought is regarding the disposal or the status of the representations filed by me to the concerned authorities on the behalf of the SOLTOWN and I am already privy to the contents of those representations. The information I had sought is no where related to any commercial confidence and neither it has been shared with public authority in confidence. The Second component is harming the competitive position of the third party. It is pertinent to mention that there is no third party involved, I had sought information on behalf of SOLTOWN regarding the SOLTOWN and this information is not related to any third party. Thus, cannot affect the position of any third party. In the Present circumstances, The CPIO has also failed to establish the fact that the information sought by me is of nature of commercial confidence. Thus, the information is not exempted as per clause 8(1)(d) of the RTI Act, 2005 and does not affect the competitive position of the any party involved.

12. It is submitted that if there is information available with the public authority covered by the RTI Act, the information available must, on requisition, be made available to a citizen seeking the same. The RTI Act works on the noble principle that statutory authorities seek information and are seized and possessed of information as repositories of public faith. There is no question of hide-and-seek

in the functioning of statutory authorities, as what they are and what powers they enjoy -are for the larger interest of the Citizens of India.

13. In the Present Circumstances where the CPIO has denied me Information without any application of mind and any cognate reasoning and failed to establish that the disclosure of the information will affect the competitive position of the any party involved It is requested to direct the CPIO for providing the correct and factual information under RTI Act 2005 as mentioned in my RTI application No. PGCIL/R/E/23/00106 dated 21.03.2023.

Thanking You

Yours Faithfully

Gouri Shanakr

D-611-B, Ajmer Road, Jagdamba Nagar-D,
Behind Heerapura Power House, Dhawas, Jaipur.

Email: iamgourishankar@gmail.com

Annexure: -

1. Copy of RTI Application No. PGCIL/R/E/23/00106 dated 21.03.2023.
2. Copy of Reply from CPIO, CTUIL vide letter dated 20-04-2023.



Online RTI Request Form Details

RTI Request Details :-

RTI Request Registration number	PGCIL/R/E/23/00106
Public Authority	Power Grid Corporation of India Ltd.

Personal Details of RTI Applicant:-

Name	Gouri Shankar
Gender	Male
Address	D-611, Ajmer Road, Jagdamba Nagar-D, , Behind Heerapura Power House, , Dhawas, Jaipur.
Country	India
State	Rajasthan
Status	Urban
Educational Status	Literate
Phone Number	+91-8209097609
Mobile Number	+91-8209097609
Email-ID	iamgourishankar[at]gmail[dot]com

Request Details :-

Citizenship	Indian
Is the Requester Below Poverty Line ?	No

(Description of Information sought (upto 500 characters))

Description of Information Sought	
<p>A. Copy of stage-II connectivity approvals in favor of Soltown Infra Pvt. Ltd. at Bikaner-II.</p> <p>B. Copy of transmission agreements with Soltown Infra Pvt. Ltd. regarding above Connectivity.</p> <p>C. Copy of MoP letter dated 02-02-2023 written to CTU regarding Connectivity approvals to Soltown Infra Pvt. Ltd.</p> <p>D. Copy of show cause notice dated 22-02-2023 issued to Soltown Infra Pvt. Ltd.</p> <p>E. Copy of reply submitted by Soltown infra Pvt. Ltd. regarding above MoP letter above notice.</p> <p>F. Copy of reports submitted by CTU to MoP regarding above matter.</p> <p>G. Copy of all correspondences happened between MoP, CTU, Soltown Infra Pvt. Ltd. and any other agencies with regard to above show cause notice and its reply.</p> <p>H. Copy of note sheets and complete file of CTU regarding above matter.</p> <p>(ii) Period to which the information relates: Up to from 01-11-2021 to till date.</p> <p>(iii) Description of information required: As mentioned in para 3(i) above.</p> <p>(iv) Whether information is required by post or in person: By post/Email.</p> <p>(v) In case by post (Ordinary, Registered or Speed): Speed Post/Email.</p>	
Concerned CPIO	Sourov Chakraborty (CTUIL)

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Sl. No.	Particulars of RTI		CTUIL Reply
1.	Application details	Gouri Shankar with Registration no. PGCIL/R/E/23/00106 received on 21.03.2023	
	Particulars of information required	A. Copy of stage-II connectivity approvals in favor of Soltown Infra Pvt. Ltd. at Bikaner-II.	Note#1
		B. Copy of transmission agreements with Soltown Infra Pvt. Ltd. regarding above Connectivity.	Note#2
		C. Copy of MoP letter dated 02-02-2023 written to CTU regarding Connectivity approvals to Soltown Infra Pvt. Ltd.	Note#3
		D. Copy of show cause notice dated 22-02-2023 issued to Soltown Infra Pvt. Ltd.	
		E. Copy of reply submitted by Soltown infra Pvt. Ltd. regarding above MoP letter above notice.	
		F. Copy of reports submitted by CTU to MoP regarding above matter.	
		G. Copy of all correspondences happened between MoP, CTU, Soltown Infra Pvt. Ltd. and any other agencies with regard to above show cause notice and its reply	
		H. Copy of notesheets and complete file of CTU regarding above matter.	Not Applicable
		Period to which the information relates: Up to from 01-11-2021 to till date. Description of information required: As mentioned above. Whether information is required by post or in person: By post/Email. In case by post (Ordinary, Registered or Speed): Speed Post/Email.	
<p>Note#1 Stage-II connectivity approvals of an applicant contain wide variety of commercial information about the applicant's business/ project and which have nature of commercial confidence and may affect the competitive position of the connectivity applicant. However, standard detailed procedure w.r.t Stage-II Connectivity is available on the CTUIL Website which may be obtained at following link: https://www.ctuil.in/u/menuitem.aspx?d=d5qadetftv8=</p> <p>Note#2: Transmission Agreement contains wide variety of commercial information about the applicant's business/ project, and which have nature of commercial confidence and may affect the competitive position of the connectivity applicant. However, standard Transmission Agreement is available on the CTUIL Website which may be obtained at following link: https://www.ctuil.in/u/menuitem.aspx?d=3meLpFb+aK4=</p>			

Note#3: This is Regarding following details sought by the applicant:

- a. Details of internal notes, documents, information exchanged between CTU, MoP, SOLTOWN and various departments, in the present case.
- b. Advice received from legal counsel, other representatives which are matters related to third parties.
- c. The decisions/notices communicated to SOLTOWN.

The information sought above has the nature of commercial confidence which cannot be disclosed to third party since the matter is sub-judice before CERC in a petition before Central Electricity Regulatory Commission vide Diary No. 134 of 2023.

Further, the information includes a wide variety of commercial information about the applicant's business/ project and has the nature of commercial confidence and may affect the competitive position of the connectivity applicant.

In this regard as per clause 8(1)(d) of the RTI Act, 2005. Such information cannot be disclosed to the RTI applicant.