

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

**SUBJECT: - FIRST APPEAL AGAINST ORDER OF CPIO DATED
24.04.2023**

Sir,

Please refer to the RTI Application with Registration No. PGCIL/R/E/23/00113 dated 24.03.2023 seeking information under the provisions of RTI, Act 2005 and reply of CPIO dated 24.04.2023.

1. I had Submitted the above captioned RTI Application seeking information regarding Anonymous Compliant in relation to allotment of Connectivity to SOLTOWN dated 14.07.2022 and 25.07.2022 Infra Pvt. Ltd. and all other documents related to it.
2. I have Received reply from CPIO vide letter dated 24.04.2023 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 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, report, 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/23/00113 dated
24.03.2023.

Thanking You

Yours Faithfully

Bhawani Singh

Asstt Manager

Soltown Infra Pvt. Ltd. R-1, Office No. 1,

Shree S. Mohar Plaza, Yudhishtir Marg C Scheme,

Jaipur, Rajasthan -302001

Email: bhawanisinghsoltown@gmail.com

Annexure: -

1. Copy of RTI Application No. PGCIL/R/E/23/00113 dated 24.03.2023
2. Copy of Reply from CPIO, CTUIL vide letter dated 24.04.2023.



Online RTI Request Form Details

RTI Request Details :-

RTI Request Registration number	PGCIL/R/E/23/00113
Public Authority	Power Grid Corporation of India Ltd.

Personal Details of RTI Applicant:-

Name	Bhawani Singh
Gender	Male
Address	Bhawani Singh Assitt. Manager , Soltown Infra Pvt. Ltd.R-1, office no.1, Shree S. , Mohar plaza, yudhishtir marg c scheme Jaipur
Country	India
State	Rajasthan
Status	Urban
Educational Status	Literate
Phone Number	+91-8386819726
Mobile Number	+91-8386819726
Email-ID	bhawanisinghsoltown[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>Please provide copy of following information/documents:</p> <ol style="list-style-type: none"> 1. Anonymous Compliant regarding allotment of Connectivity to SOLTOWN dated 14.07.2022 and 25.07.2022 2. MoP Letter dated 05.08.2022 written to CTU regarding factual report about above complaint 3. Action taken on various representations given by SOLTOWN to CTU in August 2022 etc.. 4. CTU Letter dated 21.08.2022 written to MoP in above mater. 5. CTU Letter dated 02.09.2022 written to MoP in above matter 6. Legal Opinion dated 09.08.2022 given by Senior Advocate in the mater 7. MoP letter dated 10.01.2023 written to CTU in the mater 8. CTU letter dated 13.01.2023 written written to MoP in the mater 9. MoP letter dated 02.02.2023 written to CTU in the mater 10. MoP letter dated 21.02.2023 written to CTU in the mater 11. CTU Letter dated 22.02.2023 written to Advocate Narendra Singh Shekhawat 12. Action taken against CTU officers in compliance of MoP letter dated 02.02.2023 13. Legal opinion of Senior Advocate on MoPs above letters 14. Action taken on SOLTOWN Letter dated 15.02.2023 written to Secretary, Power, MoP 15. CTU Letter dated 24.02.2023 written to MoP in the mater 16. Action taken on SOLTOWN letter dated 03.03.2023 written to CTU.

17. CTU Letter dated 09.03.2023 written to MoP in the mater
18. MoP letter dated 21.03.2023 written to CTU in the mater
19. DoPT and CVC provisions to take action in the matter of anonymous complaints.
20. Copy of complete Note Sheets of CTU in above mater
21. Copy of complete correspondences happened between CTU, Mop and others in above mater
22. Provision regarding denial of open access even after grant of connectivity and execution of Transmission agreements.

Concerned CPIO

Sourov Chakraborty (CTUIL)

Supporting document *(only pdf upto 1 MB)*

Supporting document not provided

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Sl. No.	Particulars of RTI		CTUIL Reply
1.	Application details	Bhawani Singh with Registration no. PGCIL/R/E/23/00113 received on 24.03.2023	
	Particulars of information required	<p data-bbox="528 371 1206 454">Please provide copy of following information/documents:</p> <ol data-bbox="528 454 1206 1995" style="list-style-type: none"> <li data-bbox="528 454 1206 622">1. Anonymous Compliant regarding allotment of Connectivity to SOLTOWN dated 14.07.2022 and 25.07.2022 <li data-bbox="528 622 1206 705">2. MoP Letter dated 05.08.2022 written to CTU regarding factual report about above complaint <li data-bbox="528 705 1206 788">3. Action taken on various representations given by SOLTOWN to CTU in August 2022 etc.. <li data-bbox="528 788 1206 871">4. CTU Letter dated 21.08.2022 written to MoP in above mater. <li data-bbox="528 871 1206 954">5. CTU Letter dated 02.09.2022 written to MoP in above matter <li data-bbox="528 954 1206 1037">6. Legal Opinion dated 09.08.2022 given by Senior Advocate in the mater <li data-bbox="528 1037 1206 1120">7. MoP letter dated 10.01.2023 written to CTU in the mater <li data-bbox="528 1120 1206 1202">8. CTU letter dated 13.01.2023 written to MoP in the mater <li data-bbox="528 1202 1206 1285">9. MoP letter dated 02.02.2023 written to CTU in the mater <li data-bbox="528 1285 1206 1368">10. MoP letter dated 21.02.2023 written to CTU in the mater <li data-bbox="528 1368 1206 1451">11. CTU Letter dated 22.02.2023 written to Advocate Narendra Singh Shekhawat <li data-bbox="528 1451 1206 1534">12. Action taken against CTU officers in compliance of MoP letter dated 02.02.2023 <li data-bbox="528 1534 1206 1617">13. Legal opinion of Senior Advocate on MoPs above letters <li data-bbox="528 1617 1206 1700">14. Action taken on SOLTOWN Letter dated 15.02.2023 written to Secretary, Power, MoP <li data-bbox="528 1700 1206 1783">15. CTU Letter dated 24.02.2023 written to MoP in the mater <li data-bbox="528 1783 1206 1865">16. Action taken on SOLTOWN letter dated 03.03.2023 written to CTU. <li data-bbox="528 1865 1206 1995">17. CTU Letter dated 09.03.2023 written to MoP in the mater 	Note#1

	18. MoP letter dated 21.03.2023 written to CTU in the mater	
	19. DoPT and CVC provisions to take action in the matter of anonymous complaints.	Information may be obtained from concerned organizations.
	20. Copy of complete NoteSheets of CTU in above mater	Note#1
	21. Copy of complete correspondences happened between CTU, Mop and others in above mater	
	22. Provision regarding denial of open access even after grant of connectivity and execution of Transmission agreements.	Note#2
<p>Note#1: This is Regarding following details sought by the applicant:</p> <ol style="list-style-type: none"> Details of internal notes, documents, information exchanged between CTU, MoP, SOLTOWN and various departments, in the present case. Advice received from legal counsel, other representatives which are matters related to third parties. The decisions/notices communicated to SOLTOWN. <p>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.</p> <p>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.</p> <p>In this regard as per clause 8(1)(d) of the RTI Act, 2005. Such information cannot be disclosed to the RTI applicant.</p> <p>Note#2: Processing of Connectivity/ LTA/MTOA applications and their further treatment were being carried out in line with CERC Connectivity Regulations, 2009, Detailed procedure and amendments thereof. The Connectivity Regulations, 2009, Detailed Procedure and amendments thereof are available on CERC website and are also provided on CTU website at the following link :</p> <p style="text-align: center;">https://www.ctuil.in/u/menuitem.aspx?d=d5qadetftv8=</p>		