

**BEFORE THE APPELLATE AUTHORITY
(Under the Right to Information Act, 2005)
SECURITIES AND EXCHANGE BOARD OF INDIA**

Appeal No. 5156 of 2022

Sidhesh Vijayakumar	:	Appellant
	Vs	
CPIO, SEBI, Mumbai	:	Respondent

ORDER

1. The appellant had filed an application dated April 21, 2022 (received by SEBI on April 25, 2022) under the Right to Information Act, 2005 (“**RTI Act**”). The respondent, by a letter dated May 19, 2022 responded to the application filed by the appellant. The appellant filed an appeal dated June 19, 2022 (received by the Office of Appellate Authority on June 25, 2022). I have perused the application and the appeal and find that the matter can be decided based on the material available on record.
2. **Ground of appeal-** On perusal of the appeal, it appears that the appellant is not satisfied with the response provided by the respondent with respect to query numbers 1, 2, 4 and 5. In view of the submissions made by the appellant in his appeal, I am only dealing with the said queries and the response provided thereto, in this order.
3. **Query numbers 1 and 5-** The appellant, vide query numbers 1 and 5 of his application dated April 21, sought the following information:

“(1) Read Annexure 1-Where on noting irregularities, the broker and NSE shall follow certain guidelines including filing a police complaint.

For the period Jan 2019 to December 2021, Please provide the list of all such complaints raised by SEBI, exchange, broker on the frauds committed by Sub brokers/ Authorities persons that have been reported to the police and the status of these cases. In case SEBI finds this ask as a breach of confidentiality (which is not true considering that police records are subject to RTI), the same can be provided in a masked format.

- (5) Refer Annexure (4) It is clear that all acts of the Authorized person including side notes and bilateral agreements between Authorized person and client remains the responsibility of the broker. However, in most arbitrations and GRC, Brokers hold out that the agreements between Authorized persons and Client remain bilateral and the broker will not be responsible for any such agreements. Such statements are contrary to the SEBI and NSE rules that “All deals, acts, commission of the Authorized person remains the acts of the Broker.

If there is a bilateral agreement between the Authorized person and client, the same shall be deemed to be a bilateral contract between the broker and client where it should be deemed that the Authorized person acted as an “Agent” of the “broker”.

There are GRC judgments passed stating that Bi lateral agreements between Sub broker (authorized person) and the client does not bond the Broker. Please provide the list of a GRC conducted in the period 2019-2021 where GRC judgment was pronounced that Bi lateral agreements between Sub broker/ Authorized person and client does not bind the broker.

4. The respondent, in response to the aforesaid queries, informed that the information sought by the appellant is not available with SEBI. The appellant, in his appeal, *inter alia*, submitted that non availability of such basic information shows lack of control or lack of will to protect investors.
5. I have perused the queries and the response provided by the respondent. I do not find any reason to disbelieve the response of the respondent that the requested information is not available with SEBI. In this context, I note that the Hon’ble CIC, in the matter of *Sh. Pattipati Rama Murthy vs. CPIO, SEBI* (Decision dated July 8, 2013), held: “... if it (SEBI) does not have any such information in its possession, the CPIO cannot obviously invent one for the benefit of the Appellant. There is simply no information to be given.” In view of these observations, I find that the information sought by the appellant was not available with SEBI and therefore, the respondent cannot be obliged to provide such non–available information.
6. **Query numbers 2 and 4-** The appellant, vide query numbers 2 and 4, sought the following information:

“(2) Read Annexure 2, It is clear that no-trade can be initiated without the pre-trade confirmation. Several brokers undertake post trade confirmation and produce such evidence during Arbitration / GRC. However, SEBI has no provision to allow post trade confirmation and has explicitly provided for retaining pre-trade confirmation for all trades for a period of 3 years.

Please provide the list of count of complaints raised during the period 2019-2021 of the complaints raised against authorized persons who have traded without the consent of the investor and the status of these cases.

(4) Refer Annexure (3) No person other than those registered as Investment advisor can provide stock tips including Authorized person. However, most of the Authorized persons have been encouraged by the respective broking houses to provide stock tips.

In the year 2019-21, Please provide the count of complaints against Authorized persons providing stock tips to investors without holding investment advisor license and the action against these complaints for the period 2019-2021.

7. The respondent, in response to the aforesaid queries, informed that complaints received by SEBI against the Stock brokers are multiple in nature which includes the complaints against the authorized persons.

However, the complaints against the authorized persons are not separately maintained and collating the same for providing response to the appellant's query would disproportionately divert the resources of the public authority in terms of section 7(9) of the RTI Act. The appellant, in his appeal, inter alia, stated that SEBI is expected to have a record of GRC complaint type and reason.

8. I have perused the queries and the response provided thereto. The respondent, in his response, has categorically stated that the complaints against authorized persons are included in the complaints filed against Stock brokers and that the complaints against the authorized persons are not separately maintained by SEBI. I note that the requested information is not available in the format sought by the appellant. On consideration, I note that for providing the requested information, the respondent would be required to analyse a substantial amount of data, which is voluminous in nature. Analysing and collating the information would disproportionately divert the resources of SEBI and would defeat 'the practical regime of right to information' as envisaged in the preamble of the RTI Act. In this regard, I note that the Hon'ble Delhi High Court in the case of *The Registrar Supreme Court of India v. Commodore Lokesh K. Batra & Ors.*, (Order dated January 07, 2016) held that "*15. On a combined reading of Section 4(1)(a) and Section 2(i), it appears to us that the requirement is only to maintain the records in a manner which facilitates the right to information under the Act. As already noticed above, 'right to information' under Section 2(j) means only the right to information which is held by any public authority. We do not find any other provision under the Act under which a direction can be issued to the public authority to collate the information in the manner in which is sought by the applicant.*" While relying on the said judgement, the Hon'ble CIC, in the matter of *Bimal Kishore vs. CPIO, State Bank of India* (Order dated March 28, 2018), held that "*..... the respondent cannot be asked to collate information in the manner in which it is sought by the appellant/complainant. Hence, no further intervention of the Commission is required in the abovementioned matters.*" In view of the above observations and applicability of section 7 (9) of the RTI Act, I do not find any deficiency in the response.
9. In view of the above observations, I find that there is no need to interfere with the decision of the respondent. The Appeal is accordingly dismissed.

Place: Mumbai

Date: July 21, 2022

A SUNIL KUMAR
APPELLATE AUTHORITY UNDER THE RTI ACT
SECURITIES AND EXCHANGE BOARD OF INDIA