

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

Appeal No. 5412 of 2022

Satwik Gupta	:	Appellant
	Vs	
CPIO, SEBI, Mumbai	:	Respondent

ORDER

1. The appellant had filed an application dated July 13, 2022 (received by SEBI on July 18, 2022) under the Right to Information Act, 2005 (“**RTI Act**”). The respondent, by a letter dated August 12, 2022, responded to the application filed by the appellant. The appellant filed an appeal dated August 30, 2022 (received by the Office of Appellate Authority on September 07, 2022). I have perused the application, the response of the respondent 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 2, 3 and 4. 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 the following paragraphs.
3. **Query number 2-** The appellant, vide query number 2, *inter alia*, queried whether it is necessary to get the advisory company registered with SEBI or not. The appellant also sought certified copies of orders/instructions etc. issued in this regard.

The respondent, in response to the aforesaid query, informed that the query with respect to registration of advisory company with SEBI, is in the nature of seeking clarification/ opinion. Accordingly, the same cannot be construed as seeking “information”, as defined under section 2(f) of the RTI Act. However, the respondent, advised the appellant to refer to the SEBI website for accessing the Guidelines/ Orders/ Rules/ Circulars etc. issued by SEBI during the year 2019 to August 2022 with respect to registration of advisory company. The respondent also advised the appellant to refer to Regulation 3(1) of the SEBI (Investment Advisers) Regulation, 2013. The

appellant, in his appeal, *inter alia*, submitted that the response of the respondent amounts to depriving the appellant from the information and suppressing information.

4. I have perused the query and the response provided thereto. On consideration, I find that the query is in the nature of seeking clarification/ opinion from the respondent. The query also appears to be a situational query. I note that the respondent is not supposed to create information; or to interpret information; or to furnish clarification to the appellant under the ambit of the RTI Act. In this context, I note that the Hon'ble CIC, in the matter of *Mr. Mahendra Kumar Mehta vs. CPIO, SEBI* (Judgment dated April 12, 2021), held that: “9. *This Commission observes that the appellant herein attempts to seek legal opinion/ clarification from the CPIO to his situational queries with regard to 'the circular, rules, regulations, notification etc. regarding trading member for taking stock in pledge, collateral, or security for providing margin to do trade in reference to derivatives segment, charging of interest and GST, precaution to be taken by trading member for protection of constituents individual/HUF etc.'*. Therefore, the CPIO is not supposed to interpret information; or to furnish replies to situational queries; or to furnish clarifications. Hence, such queries seeking legal opinion/ clarification from the CPIO are not covered within the definition of 'information' u/Section 2(f) of the RTI Act, 2005. Accordingly, this Commission upholds the contention put forth by the CPIO.” In view of these observations, I find that the respondent did not have any obligation to provide such clarification/opinion with respect to situational queries, under the RTI Act.
5. Notwithstanding the same, I find that the respondent has guided the appellant to access the Guidelines/ Orders/ Rules/ Circulars etc. issued by SEBI during the year 2019 to August 2022 with respect to registration of advisory company, which are available on the SEBI website. In my view, the query has been adequately addressed. Accordingly, I do not find any deficiency in the response.
6. **Query number 3-** The appellant, vide query number 3, *inter alia*, sought the certified copies of notices and final resolution orders given to advisory companies/operators operating in Indore, Bhopal, Madhya Pradesh during the period mentioned from 2019 to August 2022.
7. The respondent, in response to the aforesaid query, informed that the notices are specifically issued to entities and the same contains information which is fiduciary in nature and the disclosure of which may cause unwarranted invasion into the privacy of the individual. Hence, the information sought by the appellant is exempt from disclosure under section 8(1)(e) and 8(1)(j) of the RTI Act. With regard to the requested with respect to final orders issued by SEBI, the respondent informed that all Orders

passed by SEBI were available in public domain and could be accessed through SEBI website. The appellant, in his appeal, *inter alia*, submitted that the information has been sought in public interest.

8. I have perused the query and the response provided thereto. I do not find any reason to disbelieve the observation of the respondent that the requested information may contain information which is available to SEBI in fiduciary capacity. I note that in Writ Petition (Civil) Nos. 8396/2009, 16907/2006, 4788/2008, 9914/2009, 6085/2008, 7304/2007, 7930/2009 and 3607 of 2007, the Hon'ble High Court of Delhi, held that the 'person' referred to in section 8(1) (e) of the RTI Act will include a public authority. It also held that: *"In a fiduciary relationship, the principal emphasis is on trust, and reliance, the fiduciary's superior power and corresponding dependence of the beneficiary on the fiduciary. It requires a dominant position, integrity and responsibility of the fiduciary to act in good faith and for the benefit of and to protect the beneficiary and not oneself"*. Further, the Hon'ble CIC, in the matter of *Mr. Ashok Kumar Rajak vs. CPIO, SEBI*, (order dated December 21, 2021), held that *"Further the details such as investigation report, file noting, directions and various communication involves with the third party information which is received from other agencies is being held by them in fiduciary capacity hence the same is barred from disclosure under section 8(1)(e) & (j) of the RTI Act, 2005."* Further, I note that the information that is sought and gathered during investigation/examination is analyzed to crystallize the preliminary charges for which the entities/individuals are issued Show Cause Notices. I note that such kind of information received by SEBI is third party information and the same is received in its fiduciary capacity. The said information may also contain personal information of other entities. I note that similar contentions were accepted by the Hon'ble CIC in the matter of *Arun Kumar Agrawal vs. The CPIO, SEBI* (order dated August 04, 2020). Further, in this appeal, I find that the appellant has not established existence of larger public interest for disclosure of such information. In view of the same, I do not find any deficiency in the response.
9. Further, I note that the information about any enforcement or regulatory action taken/ penalty imposed by SEBI is available on the SEBI website under the head "Enforcement", which is in the public domain. I find that the respondent has informed the appellant accordingly. Hence, no further intervention is warranted at this stage.
10. **Query number 4-** The appellant, vide query number 4, *inter alia*, sought certified copies of the letters received from Madhya Pradesh Police, Administration or other offices (during the period from 2019 to August 2020) and the answers given thereon by the advisory companies/operators operating in Indore, Bhopal and Madhya Pradesh.

11. The respondent, in response to the aforesaid query, informed that the information sought by the appellant *viz* copy of letters received from and response provided to State government, Police Authorities and other enforcement authorities are kept by SEBI in fiduciary capacity, Hence, the information sought is exempt under suction 8(1)(e) of the RTI Act.
12. I have perused the query and the response provided thereto. I note that the information pertains to communications received from various agencies etc. and the response provided with respect to the said communications. On consideration, I agree with the response of the respondent that the requested information is held by SEBI in fiduciary capacity. In view of the judgements discussed at paragraph 8 supra, I do not find any deficiency in the response provided by the respondent.
13. 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: October 06, 2022

A SUNIL KUMAR

**APPELLATE AUTHORITY UNDER THE RTI ACT
SECURITIES AND EXCHANGE BOARD OF INDIA**