

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

Appeal No. 5509 of 2022

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

ORDER

1. The appellant had filed an application (Reg. No. SEBIH/R/P/22/01774) dated September 19, 2022 (received by SEBI on September 20, 2022) under the Right to Information Act, 2005 (“**RTI Act**”). The respondent, by a letter dated October 17, 2022, responded to the application filed by the appellant. The appellant filed an appeal dated November 21, 2022 (received by the Office of Appellate Authority on November 25, 2022).
2. The appellant, in the appeal, has made a request for personal hearing. On the issue of providing an opportunity of hearing by the First Appellate Authority (FAA) under RTI Act, a full bench of Hon’ble CIC in *Bombay Stock Exchange Limited vs Securities and Exchange Board of India* (File No. CIC/SM/A/2011/001687) observed that “*It is not practical to lay down an inflexible rule that PIOs and AAs will always offer an opportunity of hearing to the parties, let alone to the 3rd party. They may do so as per their discretion, keeping in view the complexity of legal and factual issues involved, without forgetting that timelines are to be adhered to, being the essence of the Act.*” Therefore, it is noted that there is no specific requirement under the provisions of the RTI Act, of providing a personal hearing by the FAA and that the discretion to give hearing to the appellant shall be exercised considering the complexity of the issues involved and the timelines specified under the RTI Act. In this context, reliance is also placed on the decisions of the Hon’ble CIC in the matters of *Mr R.K Jain vs. UPSC* (Decision dated March 10, 2014). In view of the above observations, I have carefully considered the application, the response and the appeal. I note that the grounds of appeal are self-explanatory. Hence, the matter can be decided based on the material that is available on record.

3. **Ground of appeal-** On perusal of the appeal, it appears that the appellant is not satisfied with the response provided by the respondent. In view of the submissions made by the appellant in his appeal, I am dealing with the queries and the response provided thereto, in the following paragraphs.
4. **Query number 1-** The appellant, vide query number 1, *inter alia*, sought certified hard copies of the details of Investor Awareness Programs (IAPs) sessions conducted by SEBI Individual SMART (Mr. Amit Gupta) in a specific format. Vide columns 5 and 8, the appellant sought duration of the IAP sessions conducted and number wise participants for different categories in IAP sessions. Vide columns 6 and 7, the respondent sought status of 'compliance' with operations guidelines and the claim amount credited by SEBI. Vide column number 9 and 10, the appellant sought SEBI invigilator presence status and name of the administrator who started the cisco webex online webinar. Vide column 11, the appellant queried whether SMARTs control the participants to join the particular IAP session.
5. The respondent, in response to the aforesaid query, informed that the information sought in columns 5 and 8 is maintained in separate individual files, placed at multiple locations across SEBI and collating the same for providing response to the query would disproportionately divert the resources of the public authority in terms of section 7(9) of the RTI Act. With respect to the information sought at columns 6 and 7, the respondent informed that the same has already been shared vide respondent's letter dated March 03, 2022. With respect to information sought in columns 9 and 10, the respondent informed that the information sought is exempt from disclosure under section 8(1)(g) and 8(1)(j) of the RTI Act as the same relates to personal information, the disclosure of which has no relationship to any public activity or interest and may cause unwarranted invasion into the privacy of the individual and may also endanger the life or physical safety of the person(s). With reference to the information sought in column number 11, the respondent informed that the same is in the nature of seeking clarification/opinion and accordingly, the same cannot be construed as seeking "information" as defined under section 2(f) of the RTI Act. The appellant, in his appeal, *inter alia*, submitted that he had full right to access the requested information. He also mentioned that the requested information was important and that the decision of the respondent was mala fide and not supported by reasoning.
6. I have perused the query and the response provided thereto. With respect to the information sought in columns 5 and 8, I note that the requested information is not readily available with the respondent in the manner as sought by the appellant and that the respondent would be required to analyse and collate information which is maintained in separate individual files, placed at multiple locations across

SEBI. In my opinion, analysing and collating 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 find that the respondent is not obliged to provide the information sought by the appellant.

7. With respect to the information sought in columns 6 and 7, I do not find any reason to disbelieve that the same has already been provided by the respondent earlier. Accordingly, no further intervention is warranted at this stage.
8. With respect to the information sought in columns 9 and 10, I note that the respondent has denied the information under sections 8(1)(g) and 8(1)(j) of the RTI Act. Regarding non-disclosure of information relating to SEBI officials, I find that a similar issue was settled in *H. E. Rajashekarappa vs. State Public Information Officer and Ors.* (Order dated July 01, 2008), wherein the Hon'ble High Court of Karnataka had ruled that: "... it cannot be said that section 2(f) of the Act (the RTI Act encompasses the personal information of the officials of the public authority. The intention of the legislation is to provide right to information to a citizen pertaining to public affairs of the public authority". Further, I note that the Hon'ble CIC, in the matter of *Prerit Misra vs. CPIO, SEBI* (order dated November 21, 2022) held that- "It is pertinent to mention here that the appellant in a similar case which was dealt in File no. CIC/SEBIE/A/2019/660770 dated 10.08.2021 whereby he had sought information regarding the names of the officers who had blocked his email address, the Commission, while passing an order had held that such information is exempted u/s 8(1)(g) & 8(1)(j) of the RTI Act. The Commission after considering the submissions of the appellant finds no merit in his case, and also is in agreement with the order of the FAA and concludes that the information is exempt u/s 8(1)(g) & 8(1)(j) of the RTI Act, hence, no relief can be given." In view of these observations, I find that the requested information is exempt from disclosure under sections 8(1)(g) and 8(1)(j) of the RTI Act.

9. With respect to information sought in column 11, I find that the same is in the nature of seeking clarification / opinion from the respondent. 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. I find that the said query cannot be construed as seeking 'information' as defined under section 2 (f) of the RTI Act.
10. **Query number 2-** Vide query number 2, the respondent sought Video Recordings, Participants Registrations and Chat Box Messages pertaining to all the 234 online Investor Awareness Programs (IAPs) Webinar conducted by the SMART (Mr. Amit Gupta).
11. The respondent, in response to the aforesaid queries, informed that the information sought by the appellant is exempt from disclosure under sections 8(1)(g) and 8(1)(j) of the RTI Act as the same relates to personal information, the disclosure of which has no relationship to any public activity or interest and may cause unwarranted invasion into the privacy of the individual and may also endanger the life and physical safety of the person(s). The appellant, in his appeal, *inter alia*, submitted that the respondent failed to provide any proper explanation/justification in the response.
12. I have perused the query and the response provided thereto. I note that the respondent denied disclosure of the requested information in terms of Section 8(1)(g) and 8(1)(j) of the RTI Act as the same pertains to personal information of a SMART. In this context, reference is made to the judgment of the Hon'ble Supreme Court of India in the matter of *Central Public Information Officer, Supreme Court of India Vs. Subhash Chandra Agarwal* in Civil Appeal No. 10044 of 2010 with Civil Appeal No. 10045 of 2010 and Civil Appeal No. 2683 of 2010 (judgement dated November 13, 2019) wherein the import of "personal information" envisaged under Section 8(1)(j) of RTI Act has been exemplified in the context of earlier ratios laid down by the same Court in other matter(s). The Hon'ble Supreme Court held that: *"59. Reading of the aforesaid judicial precedents, in our opinion, would indicate that personal records, including name, address, physical, mental and psychological status, marks obtained, grades and answer sheets, are all treated as personal information. Similarly, professional records, including qualification, performance, evaluation reports, ACRs, disciplinary proceedings, etc. are all personal information. Medical records, treatment, choice of medicine, list of hospitals and doctors visited, findings recorded, including that of the family members, information relating to assets, liabilities, income tax returns, details of investments, lending and borrowing, etc. are personal information. Such personal information is entitled to protection from unwarranted invasion of privacy and conditional access is available when stipulation of larger public interest is satisfied. This list is indicative and not exhaustive..."* In view of these observations, I agree with the response of the respondent that the

requested information relates to personal information of third parties, the disclosure of which has no relationship to any public activity or interest and may cause unwarranted invasion into the privacy of the individual and may also endanger the life or physical safety of the person(s). Accordingly, no further intervention is warranted at this stage.

13. **Query numbers 3, 4 and 5-** The appellant, vide query number 3 sought two certified hard copies of information pertaining to total numbers (in counts) of online investor awareness programs (IAPs) WEBINARs conducted/delivered under the aegis of SEBI-IPEF) by both Individual Category and Organization Category SEBI empanelled/recognized Securities Market Trainers (SMARTs) during the period 24th November, 2020 to 31st March, 2022. Vide query number 4, the appellant sought three certified hard copies of information pertaining to total numbers (in counts) of offline investor awareness programs (IAPs) conducted/delivered under the aegis of SEBI-IPEF) by both Individual Category and Organization Category SEBI empanelled Securities Market Trainers (SMARTs) during the period 24th November, 2020 to 31st March, 2022. The appellant, vide query number 5, sought certified hard copies of information pertaining to total numbers (in counts) of offline investor awareness programs (IAPs) conducted/delivered under the aegis of SEBI-IPEF) by both Individual Category and Organization Category SEBI empanelled Securities Market Trainers (SMARTs) during the period 01st April 2022 to 19th September 2022.
14. The respondent, in response to aforesaid queries, provided the approximate Investor Awareness Programs (online and offline) conducted by SMARTs (individual and organization), during the period November 24, 2020 to March 31, 2022. The respondent also provided the number of IAPs (offline and online) conducted by SMARTs during the period 1st April, 2022 to September 19, 2022.
15. I have perused the queries and the response provided by the respondent. On consideration, I find that the respondent has adequately addressed the queries by providing the information in the form available with the respondent. Accordingly, I did not find any deficiency in the response.
16. **Query numbers 6 and 8-** The appellant, vide query number 6, sought certified hard copies of information pertaining to all the communications (including emails, letters, notices sent by the appellant, reply of notices received by the appellant pertaining to IAP scheduling, IAP approval, Web meeting link sharing and claim/bill submitted & paid/unpaid for the Online IAPs Webinar scheduled and conducted by the SEBI Recognized Organization SMART (Ambition Learning Solution). The appellant, vide query number 8, sought various information (including Webinar Time, date, duration,

number of participants, category of participants etc.) pertaining to IAPs webinar conducted by Ambition Learning Solution.

17. The respondent, in response to the aforesaid queries, informed that the requested information is exempt from disclosure under section 8(1)(e) of the RTI Act as the same is available to SEBI in fiduciary capacity and there is no larger public interest involved in disclosure of the said information. The respondent also informed that the information is exempt from disclosure under section 8(1)(j) of the RTI Act and the same relates to personal information, the disclosure of which has no relationship to any public activity or interest and may cause unwarranted invasion into the privacy of the individual.
18. I have perused the aforesaid queries and the response provided thereto. I note that the requested information is available to SEBI in fiduciary capacity. In this context, I note that the Hon'ble High Court of Delhi, in Writ Petition (Civil) Nos. 8396/2009, 16907/2006, 4788/2008, 9914/2009, 6085/2008, 7304/2007, 7930/2009 and 3607 of 2007, (order dated November 30, 2009) 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"*. I find that SEBI, being the regulatory authority for the securities market, gets various references/documents from market participants/ intermediaries etc. and the information contained therein are received in fiduciary capacity. I, therefore, find that the requested information is exempt from disclosure under section 8(1)(e) of the RTI Act. Further, I note that the requested information may also contain personal information of other entities. Accordingly, I do not find any deficiency in the response.
19. **Query numbers 7, 9-D, E and G-** The appellant, vide query number 7, sought information pertaining to name/s of SEBI officials present as invigilators and other information of the online IAPs webinar scheduled by SMART (Ambition Learning Solutions). Vide query numbers 9D, E and G, the appellant sought the list of employees (name, mobile number, address) who coordinate on behalf of Ambition Learning Solutions. The appellant also sought certified copies of signed empanelment letter issued to the said SMART. The appellant also sought certified copies of all the participant's data captured by Cisco Webex Online Training Platform during the IAPs of the said SMART.

20. The respondent, in response to the aforesaid queries, informed that the information sought is exempt from disclosure under sections 8(1)(g) and 8(1)(j) of the RTI Act as the same relates to personal information, the disclosure of which has no relationship to any public activity or interest and may cause unwarranted invasion into the privacy of the individual and may also endanger the life and physical safety of the person(s).
21. I have perused the queries and the response provided thereto. On consideration, I agree with the response provided by the respondent that the requested information relates to personal information of other entities. In view of the judgements discussed at paragraph 12 supra, I do not find any deficiency in the response. Accordingly, no further intervention is warranted at this stage.
22. With respect to query Number 9A, I note that the appellant has not made any specific submission in his appeal. Hence, I am not dealing with the same in this order.
23. **Query number 9B and 9C-** The appellant, vide query number 9B, sought information regarding which Operational Guidelines on SMARTS will be applicable on SEBI recognized Organization SMART- Ambition Learning Solutions. Vide query number 9C, the appellant sought information regarding the role, rights and responsibilities, authority, obligations of Ambition Learning Solutions during conducting the IAPs mentioned in his application.
24. The respondent, in response to the aforesaid queries, guided the appellant to refer to the Operational Guidelines on SMARTs, available on the SEBI Investor website. The respondent also provided the link for accessing the same.
25. I have perused the queries and the response provided thereto. On consideration, I find that the same are in the nature of seeking clarification / opinion from the respondent. 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. I find that the said queries cannot be construed as seeking 'information' as defined under section 2 (f) of the RTI Act. Notwithstanding the same, I note that the respondent has adequately guided the appellant by informing about the availability of the relevant Operational Guidelines on the SEBI Investor website. Accordingly, no further intervention is warranted at this stage.
26. **Query number 9F-** The appellant, vide query number 9F, sought the video recording of all the six webinars conducted by the SMART (Ambition Learning Solutions).

27. The respondent, in response to the aforesaid query, informed that the information sought by the appellant is of another SMART which is available to SEBI in fiduciary capacity and there is no larger public interest involved in disclosure of the said information. Hence, the information is exempt from disclosure under section 8(1)(e) of the RTI Act.
28. I have perused the query and the response provided thereto. On consideration, I do not find any reason to disbelieve the response of the respondent that the requested information is available to SEBI in fiduciary capacity. In view of the judgement discussed at paragraph 18 supra, I do not find any deficiency in the response. Accordingly, no further intervention is warranted at this stage.
29. **Query number 10-** The appellant, vide query number 10, sought two certified copies of information pertaining to the timeline/ deadline applicable to SEBI pertaining to settle the claim of IAP webinar post submission of the claims by SEBI recognized SMARTs.
30. The respondent, in response to the aforesaid query, informed that the bills/claims of SMARTs are processed based on submission of complete documents and further information sought, if any, from the SMARTs. The appellant, in his appeal, *inter alia*, submitted that the response is malafide and not supported by reasoning. The appellant also submitted that the respondent should clearly mention the number of days/hours taken for clearing the bills.
31. On consideration, I find that the respondent has adequately addressed the query by providing the information available with him regarding the processing of bills/claims submitted by SMARTs. Accordingly, I do not find any deficiency in the response.
32. **Query number 11-** The appellant, vide query number 11, sought two certified copies of information pertaining to the guidelines for a SEBI invigilator to present/visit during the delivery of IAP session by the SEBI recognized SMARTs.
33. The respondent, in response to the aforesaid query, informed that the query is vague and not specific and accordingly, the same cannot be construed as seeking “information”, as defined under section 2(f) of the RTI Act.
34. I have perused the query raised by the appellant. I find that the same is vague and not specific. Further, it is difficult to ascertain what exact information has been sought by the appellant. In view of the same, I do not find any deficiency in the response.

35. **Query numbers 12-** The appellant, vide query number 12, sought two certified copies of information pertaining to the guidelines applicable to SEBI to intimate a SMART about the non-compliance of Operational Guidelines on Securities Market Trainers (SMARTs) for an IAP webinar session conducted by the SEBI Recognized SMARTs. Vide query number 13, the appellant, requested to provide the official email id for submission of claim amount and invoice of an IAP session conducted by the SEBI recognized SMARTs.
36. The respondent, in response to the aforesaid queries, guided the appellant to refer to the Operational Guidelines on SMARTs available on the Investor website of SEBI. The respondent also provided the link for accessing the same. The appellant, in his appeal, submitted that the response of the respondent is not supported by reasoning.
37. On consideration, I find that the respondent has adequately addressed the queries by guiding the appellant to refer to the relevant Operational Guidelines dealing with the appellant's queries. In view of the same, no further intervention is warranted at this stage.
38. 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

ANAND BAIWAR

Date: December 26, 2022

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