

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

Appeal No. 5508 of 2022

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

ORDER

1. The appellant had filed an application (Reg. No. SEBIH/R/P/22/01776) 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 22, 2022 (received by the Office of Appellate Authority on November 24, 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 numbers 1 and 2-** The appellant, vide query number 1, sought certified copies of letter number SEBI/ HO/OIAE...../09037/1 dated April 27, 2022 issued by SEBI. Vide query number 2, the appellant sought certified copies of the response or reply received by SEBI with respect to the said letter.
5. The respondent, in response to query number 1, informed that the appellant is asking for copies of the letters which are addressed to the appellant and the same are already in possession of the same. The respondent, in response to query number 2, informed that the appellant is asking for the copy of his own reply and accordingly, the same cannot be construed as seeking “information” under section 2(f) of the RTI Act.
6. I have perused the queries and the response provided by the respondent. With respect to query number 1, I note that the appellant, in his appeal, stated that he is not in possession of the hard copy of the letter dated April 27, 2022. In view of the same, I am of the opinion that the said query has not been adequately addressed and it warrants reconsideration by the respondent.
7. With respect to query number 2, I find that the appellant is seeking copy of the letter/reply sent by himself. Further, the appellant has not mentioned whether the copy of the reply sent by him is in his possession or not. In this context, reference is made to the matter of *Sbri S.P. Goyal vs. Sbri Pragati Kumar & Ors.* (order dated January 24, 2008), wherein the Hon’ble CIC held that “Further, the obligation of a respondent extends only to providing information which it “holds” or controls in terms of Section 2(f) of the RTI Act. If it can be established through evidence that a party/ applicant himself possesses an information which he has sought from a public authority, such information can be denied to him. This appellant has already been provided the judgement dated 30.3.2007 of the Income Tax Appellate Authority. The information, therefore, is already in appellant’s possession and cannot therefore be said to be “held”-much less “exclusively held”-by the public authority in terms of Section 2(j) of the RTI Act.” In view of these observations, I do not find any deficiency in the response.
8. **Query number 3 and 9-** The appellant, vide query number 3, *inter alia*, sought certified copies of information pertaining to the letter/notice issued to CIEL Learning Foundation, Mumbai during February – April, 2022 having subject- Clarification required on non-compliances and irregularities while conducting Investor Awareness Programs. Vide query number 9, the appellant sought certified copy of information pertaining to all documents submitted during the empanelment process (including selection remark/evaluation, notifications and communication by SEBI/NISK team) during the year 2020 by SEBI recognized SMARTs.

9. The respondent, in response to the aforesaid queries, informed that the requested information is exempt from disclosure under section 8(1)(j) of the RTI Act as the same relates to personal information of a SMART, the disclosure of which has no relationship to any public activity or interest and may cause unwarranted invasion into the privacy of the individual. The appellant, in his appeal, inter alia, submitted that he has right to access information/documents/ letters issued by SEBI to SMART.
10. I have perused the queries and the response provided thereto. I note that the respondent denied disclosure of the requested information in terms of Section 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 other entities, 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.
11. **Query number 4-** The appellant, vide query number 4, *inter alia*, sought certified copy of information pertaining to the reply received from CIEL Learning Foundation, Mumbai against the letter/notice issued by SEBI.
12. The respondent, in response to the aforesaid query, informed that the requested information is exempt from disclosure under section 8(1)(e) of the RTI Act as the same pertaining to CIEL Learning Foundation, Mumbai 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.

13. I have perused the aforesaid query 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. I also note that the said information may also contain personal information of other entities. Accordingly, I do not find any deficiency in the response.
14. **Query numbers 5 and 11 (A-D)-** The appellant, vide query number 5, sought certified copies of information pertaining to the SEBI Operational Guidelines on SMARTS issued in the year 2020. The appellant also requested to mention the applicability/ validity of the said guidelines. Vide query number 11 (A-D), sought the certified hard copy of the following information from the first Operational Guidelines on SMARTs, applicable from September 2020 to August 2021-

(A) SEBI Invigilator role and frequency to visit etc. during an online LAP webinar session conducted by a Securities Market Trainer (SMART).

(B) Settlement duration of claim reimbursement by SEBI for an online LAP webinar session conducted by a Securities Market Trainer (SMART).

(C) Time period/ days of resolution of a grievance raised by a Securities Market Trainer (SMART).

(D) Time period/ days for communicating by SEBI to Securities Market Trainer (SMART) about analysis, review, compliance or non-compliance of an online LAP webinar session conducted by a Securities Market Trainer (SMART).

15. The respondent, in response to the aforesaid queries, informed that the earlier Operational Guidelines made effective from September 09, 2020 till August 31, 2021 will be available on payment of fees under the RTI Act. The appellant, in his appeal, *inter alia*, submitted that the requested fee of Rs. 131/- has been paid online by the appellant but no information was provided.
16. With respect to query number 5, the respondent is directed to verify if the payment has been made with respect to the requested query and provide the requested documents.
17. With respect to query numbers 11(A-D), I find that the queries are more in the nature of seeking clarification/opinion from the respondent. I note that the CPIO is not supposed to create information, or interpret information or analyse and compile information as per the desire of the appellant under the ambit of the RTI Act. I note that similar observations were made by the Hon'ble CIC in the matter of *Azad Singh vs. CPIO, Oriental Insurance Company Limited* (order dated March 23, 2021). Accordingly, the aforementioned queries cannot be construed as seeking "information" under the RTI Act. In view of the same, no further intervention is warranted at this stage.
18. **Query number 6-** Vide query number 6, the appellant sought two certified hard copies of information from records, pertaining to the SEBI Operational Guidelines on Securities Market Trainers (SMARTs) amended as on August 18, 2021.
19. The respondent, in response to the aforesaid query, informed that the information sought by the appellant is available on SEBI Investor Website. The respondent also provided the link for accessing the same. The appellant, in his appeal, *inter alia*, submitted that the respondent has to provide two certified copies of the said guidelines since the same has not been provided.
20. I have perused the query and the response provided thereto. On consideration, I find that the respondent has adequately addressed the query by providing the link for accessing the relevant guidelines pertaining to SMARTs. With respect to the submission of the appellant regarding certified copies, I note that certified copies can be obtained as per the procedure specified in SEBI Circular dated April 04, 2019. The said circular can be accessed at <https://www.sebi.gov.in/legal/circulars/apr-2019/issue-of-certified-copies-of-orders-and-circulars-42633.html> . In view of these observations, no further intervention is warranted at this stage.
21. **Query numbers 7 and 8-** The appellant, vide query number 7, sought two certified hard copies of information pertaining to the employee's name with designation, address, contact number and email id in the hierarchy wise for escalating complaints pertaining to Investor Awareness Programs (IAPs) conduct

by SMART's. Vide query number 8, the appellant sought two certified hard copies of information pertaining to the details (name of employee/s, address, contact numbers, email ids etc.) of complaint handling higher authority against dissatisfaction with SEBI actions (pertaining to IAPs SMART matters of SEBI).

22. The respondent in response to the aforesaid queries, informed that the details of the employees in the Investor Awareness Division of SEBI are available on the SEBI website. The respondent also provided the link for accessing the same. The appellant, in his appeal, *inter alia*, submitted that the link has information that is vast and scattered data.
23. I have perused the queries and the response provided thereto. On consideration, I find that the answer to such queries can be found out by the appellant by accessing the information available on the SEBI website which is in the public domain. Further, if the relevant information is already available in the public domain, the same cannot be said to be information held by the public authority and consequently there is no obligation to provide such information to an applicant under the RTI Act. In view of these observations, I find that the respondent cannot be obliged to research information which is already available in the public domain and then provide the same to the appellant. Notwithstanding the same, I note that the respondent has adequately guided the appellant to refer to the SEBI website where the relevant details regarding SEBI employees posted in the Investor Awareness Division of SEBI, is disclosed by SEBI. Accordingly, I do not find any deficiency in the response.
24. **Query number 10-** Vide query number 10, the appellant sought certified hard copies of information pertaining to all the emails/letters issued/communicated by SEBI officials of the Investor Awareness Division, Office of Investor Assistance and Education (IAD-OIAE) to SMART's pertaining to amendments/ changes in the Operational Guidelines on SMART's during November 01, 2020 till September 19, 2022.
25. The respondent, in response to the aforesaid query, advised the appellant to refer to the earlier Operational Guidelines made effective from September 09, 2020 till August 31, 2021.
26. With respect to query number 10, I note that the appellant sought information pertaining to all the emails/letters issued/communicated by SEBI officials of the (IAD-OIAE) to SMART's pertaining to amendments/ changes in the Operational Guidelines on SMART's. In this regard, I note that the Hon'ble CIC, in the matter of *Ms. Sarika Jain vs. National Hydroelectric Power Corporation Limited* (order dated April 25, 2014) observed that "As regards the first part i.e. copies of all documents

in relation to the contracts mentioned in the RTI application, the Commission finds that the term "all" used by the Appellant here is very vague and does not pin point the particular document she wants to obtain from the Respondents. The Appellant is, therefore, advised to be more specific and identify the documents she wants to obtain from the Respondents." In view of these observations, I find that the term "all" is vague and does not pin point the particular document that the appellant wants to obtain from the respondent. Accordingly, the respondent did not have an obligation to respond to such non-specific query.

27. **Query number 12-** Vide query number 12, the appellant sought two certified hard copies of the audited reports (covering the period from November 01, 2020 till September 19, 2022) of certain emails of SEBI Officers mentioned in the said application.
28. The respondent, in response to the aforesaid query, informed that SEBI does not conduct any audit with reference to user specific mail boxes. Hence, no such information is available. The appellant, in his appeal, requested to provide two certified copies of the response/ information.
29. I have perused the query and the response provided thereto. On consideration, I find that the respondent has adequately addressed the query by informing the appellant regarding non-availability of the requested information. Accordingly, I do not find any deficiency in the response.
30. In view of above observations, I remit the application to the respondent for reconsidering query number 1 and to provide a revised response within 15 working days from the date of receipt of this order. Further, the respondent shall provide the requested documents sought in query number 5 of the application after verifying the payment made by the appellant, within 15 working days from the date of receipt of this order.
31. The Appeal is accordingly disposed of.

Place: Mumbai
Date: December 26, 2022

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