

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

Appeal No. 6158 of 2024

Sunil Jayawant Kadam : Appellant
Vs
CPIO, SEBI, Mumbai : Respondent

ORDER

1. The appellant had filed an application dated August 13, 2024 (received by the respondent through RTI MIS Portal) under the Right to Information Act, 2005 (“**RTI Act**”). The respondent, by a letter dated September 11, 2024 responded to the application filed by the appellant. The appellant filed an appeal (Reg. No. SEBIH/A/E/24/00218) dated September 17, 2024. I have carefully considered the application, the response and the appeal and find that the matter can be decided based on the material available on record.
2. **Ground of appeal** - The appellant has filed the appeal on the ground that he was refused access to information requested.
3. **Request nos. 1(a) - (g) and 2 of the application** - The appellant, vide his request nos. 1(a) - (g) and 2 of the application dated August 13, 2024 sought the following information:

“1. Several internal promotion exercise for the post of Executive Director were conducted during the last two years. In this regard please provide the following documents for immediate past four interview exercise conducted for promotion of the internal candidate for the post of Executive Director.

- a) Copy of the office note, approving the selection of the candidates, by the competent authority.*
- b) Copy of the note of the recommendations signed by all the panel members”*
- c) Copy of the document showing the marks given to all the candidates who appeared for interview, with breakup for APAR marks and Interview marks.*
- d) Copies of the profiles of the following persons shared with the interview panel members for their assessment of the candidate: i. Mr Sunil Jayawant Kadam and ii. the candidate who was selected in these interviews*
- e) Copy of the minutes of meeting held between Chairperson and WTMs before conducting aforesaid interviews.*
- f) Names and contact details of the interview panel member who belongs to SC/ST category.*
- g) Please show any document which shows that Chief Liaison Officer of SEBI was consulted before appointing the interview panel member who belongs to SC/ST category.*

Note: The above information is required for all the four preceding interview conducts for the post of Executive Director.

2. Please share a document indicating the weightage given to past performance and the interview?"

4. **Reply of the Respondent** - The respondent, in response to request nos. 1(a) &(b) of the application, informed that the information sought pertains to the internal functioning of SEBI and relates to the systems and procedures followed at SEBI. Further, the respondent informed that the said information is strategic in nature, disclosure of which may hamper the decision making by SEBI in its supervisory and regulatory role. Hence, the information sought is exempt u/s 8(1)(a) of the RTI Act, 2005.

In response to request no. 1 (c), the respondent informed that as per the promotion policy, no marks are assigned. Therefore, no such information is available with SEBI. Further, the respondent informed that promotion policies are available in SEBI SHARE portal, which is accessible to all SEBI employees.

In response to request nos. 1(d), (e) (g) & 2, the respondent informed that the requisite information sought is not mandated under the promotion policy. Therefore, no such information is available with SEBI. Further, the respondent informed that promotion policies are available in SEBI SHARE portal, which is accessible to all SEBI employees

In response to request no. 1(f), the respondent informed that the information sought 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 officials and may also endanger the life or physical safety of the persons. The same is therefore exempt in terms of sections 8(1)(g) and 8(1)(j) of the RTI Act, 2005.

5. I have perused the application and the response provided thereto. With respect to request nos. 1(a) and (b) of the application, I note that the respondent has categorically informed the appellant that the information sought is strategic in nature and the information sought is exempt u/s 8(1)(a) of RTI Act, 2005. I agree with the response of the respondent that the requested information pertains to internal functioning of SEBI and relates to systems and procedure followed by SEBI, which is strategic in nature. In this context, I note that in *ICAI v. Shaunak H. Satya*, [(2011) 8 SCC 781], the Hon'ble Supreme Court held that: - "*The competent authorities under the RTI Act will have to maintain a proper balance so that while achieving transparency, the demand for information does not reach unmanageable proportions affecting other public interests, which include efficient operation of public authorities and the Government, preservation of confidentiality of sensitive information and optimum use of limited fiscal resources.*" Accordingly, I do not find any deficiency in the response of the respondent.

6. With respect to request nos. 1(c), 1(d), 1(e), 1(g) and 2 of the application, I note that the respondent has categorically stated that the requested information is not available with SEBI. I note that the respondent can only provide information that is available in the records. In this context, I note that the Hon'ble Supreme Court of India in *Central Board of Secondary Education & Anr. vs. Aditya Bandopadhyay & Ors* (Judgment dated August 9, 2011) held that *"The RTI Act provides access to all information that is available and existing. This is clear from a combined reading of section 3 and the definitions of 'information' and 'right to information' under clauses (f) and (j) of section 2 of the Act. If a public authority has any information in the form of data or analysed data, or abstracts, or statistics, an applicant may access such information, subject to the exemptions in section 8 of the Act. But where the information sought is not a part of the record of a public authority, and where such information is not required to be maintained under any law or the rules or regulations of the public authority, the Act does not cast an obligation upon the public authority, to collect or collate such non-available information and then furnish it to an applicant."* Accordingly, I do not find any deficiency in the response of the respondent.

7. With respect to request nos. 1(f) of the application, I find that the information about interview panel members 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 to the person. In this regard, I note that the Hon'ble Central Information Commission (hereinafter referred to as "**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/SEBI/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.

8. **Request nos. 3, 4 and 5 of the application** - The appellant, vide his request nos. 3, 4 and 5 of the application dated August 13, 2024 sought the following information:

"3. What are the qualities expected from the candidate during the interview for selecting him as an Executive Director. Is there any laid down assessment norms for the same. Please give me a copy of any such norms. What is a specific reason I was rejected in all these previous four interviews.

4. What is a policy/criteria and process for appointing a person as 'CGM In charge'? Whether this policy is circulated to all the employees.

5. *What is a policy/criteria and reason for appointing an Executive Director in 'Officiating Capacity'?*

9. **Reply of the Respondent** - The respondent, in response to the aforesaid requests informed that the queries are in the nature of seeking clarification/opinion Accordingly, the same cannot be construed as “information” as defined u/s 2(f) of the RTI Act, 2005.
10. I have perused the requests and the response provided thereto. On consideration, I concur with the response of the respondent that the said requests are in the nature of seeking clarification/opinion from the respondent. I find that the said requests cannot be construed as seeking ‘information’ as defined under section 2(f) of the RTI Act. In this context, reliance is placed on the matter of *Azad Singh vs. CPIO, Oriental Insurance Company Limited* (order dated March 23, 2021), wherein, Hon’ble CIC observed that “7. *The Commission, after hearing the submissions of both the parties and after perusal of records, observed that some queries of the appellant are in the nature of seeking explanation/opinion/advice/confirmation/clarification from the CPIO and he has expected that the CPIO firstly should analyze the documents and then provide information to the appellant. But the CPIO is not supposed to create information; or to interpret information; or to compile information as per the desire of the appellant under the ambit of the RTI Act. As per Section 2(f) of the RTI Act, the reasons/opinions/advices can only be provided to the applicants if it is available on record of the public authority. The CPIO cannot create information in the manner as sought by the appellant. The CPIO is only a communicator of information based on the records held in the office and hence, he cannot be expected to do research work to deduce anything from the material therein and then supply it to him*” Accordingly, I do not find any deficiency in the response. 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.
11. 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 15, 2024

RUCHI CHOJER

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