

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

Appeal No. 6210 of 2024

Ashok Kumar Upadhyay	:	Appellant
	Vs	
CPIO, SEBI, Mumbai	:	Respondent

ORDER

1. The appellant had filed an application dated October 05, 2024 (received by the respondent through RTI MIS Portal) under the Right to Information Act, 2005 ("**RTI Act**"). The respondent, by a letter dated October 24, 2024, responded to the application filed by the appellant. The appellant filed an appeal (Reg. No. SEBIH/A/E/24/00260) dated October 24, 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 has been refused access to information requested.
3. **Query no. 1 in the application** - The appellant, vide query no.1 in his application dated October 05, 2024, sought the following information:

"1 Provide details of the institutional mechanisms within SEBI for disclosure of financial holdings, recusals, and potential conflicts of interest by the Chairperson and other key officials, as per SEBI's code of conduct."
4. **Reply of the Respondent** - The respondent, in response to query no. 1 in the application, informed that the code on conflict of interests for members of board, is available on the SEBI website and provided the path for accessing the same on the SEBI website.
5. I have perused the aforesaid query and the response provided thereto. On consideration, I find that the respondent has adequately addressed the query by providing the information available with him. Accordingly, no further intervention of this forum is warranted.

6. **Query no.2 & 4 in the application** – The appellant, vide query nos. 2 & 4 in his application dated October 05, 2024, sought the following information:

“ 2 Provide copies of all disclosures made by Mrs. Madhabi Puri Buch, particularly relating to her and her husbands investments, since she became a Whole Time Member of SEBI in 2017.

.....

4Provide SEBI's official position and internal records regarding the disclosures related to Mrs. Buch's offshore investments, including any internal inquiries or actions taken.”

7. **Reply of the Respondent** – The respondent, in response to the queries in the application, informed that the information sought does not pertain to the appellant 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 individuals. The same is, therefore, exempt in terms of Section 8(1)(j) of the RTI Act. The respondent also informed that details regarding investments pertain to personal information and is held by the public authority in fiduciary relationship. Therefore, the details of cases or matters or decisions where recusal is made is exempt in terms of Section 8(1)(e) of the RTI Act. With respect to query no.4, respondent also informed the appellant that he may refer to (a) SEBI Press Release No. 17/2024 dated Aug 11. 2024. and (b) the Code on Conflict of Interests for Members of Board, both of which are available on the SEBI website.
8. I have perused the aforesaid queries and the response provided thereto. I note that the respondent has informed the appellant that the information sought does not pertain to the appellant and 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 individuals. On consideration, I concur with the response of the respondent that investments pertain to personal information. 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 "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..." Further, on perusal of the appeal, I note that the appellant failed to provide any submissions as to how the disclosure of the information is justified by larger public interest. In this context, I note that the Hon'ble High Court of Delhi in the matter of *Municipal Corporation Delhi vs. Rajbir* W.P.(C) 13219/2009 and CM 14393/2009, decided on 24.8.2017 had held that:

"9..... Respondent has not provided any credible justification for seeking information regarding the personal assets of the MCD employee in question.

10. There can be no doubt that the information sought by respondent is personal information concerning an employee of MCD. Such information could be disclosed only if respondent could establish that disclosure of such information was justified by larger public interest."

Accordingly, I do not find any deficiency in the response of the respondent.

9. I also concur with the response of the respondent that the requested information is available to SEBI in fiduciary capacity. In the context of non-disclosure of information under Section 8(1)(e) of the RTI Act, the decision of the Hon'ble Supreme Court of India in *Institute of Chartered Accountants of India Vs. Shaunak H. Satya and Ors.*, in Civil Appeal No.7571 of 2011 dated 02/09/2011 is referred to, wherein it was held that: *"The use of the words 'person' shows that the holder of the information in a fiduciary relationship need not only be a 'public authority' as the word 'person' is of much wider import than the word 'public authority'. Therefore the exemption under Section 8(1)(e) is available not only in regard to information that is held by a public authority (in this case the examining body) in a fiduciary capacity, but also to any information that is given or made available by a public authority to anyone else for being held in a fiduciary relationship. In other words, anything given and taken in confidence expecting confidentiality to be maintained will be information available to a person in fiduciary relationship"*. I, therefore, find that the requested information is exempt from disclosure under section 8(1)(e) of the RTI Act. Accordingly, I do not find any deficiency in the response of the respondent.

10. **Query Nos. 3,5&6 in the application** - The appellant, vide query nos.3, 5 & 6 in his application dated October 05, 2024, sought the following information:

“ 3 Provide records confirming whether Mrs. Buchs 2015 offshore investments were disclosed upon her joining SEBI. If yes, furnish relevant documentation.

.....

“ 5 Provide information on any internal reviews or investigations conducted by SEBI into the allegations made by Hindenburg Research concerning Mrs. Buchs potential conflicts of interest.

6 Provide details of steps taken by SEBI to ensure impartiality in its investigation of the Adani Group, considering the allegations of conflict of interest.”

11. **Reply of the Respondent** – The respondent, in response to the aforesaid queries, informed that the information sought is 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. With respect to query no.3, respondent also informed the appellant that he may refer to Clauses 6(1), 6(2) and Clause 1(v) of the Code on Conflict of Interests for Members of Board, which is available on the SEBI website.
12. I have perused the aforesaid queries and the response provided thereto. On consideration, I concur with the response of the respondent that the said queries are in the nature of seeking clarification/opinion from the respondent. I find that the said query 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 Central Information Commission (hereinafter referred to as “**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. Notwithstanding the above, with respect to query no.3 in the application,

I note that the respondent has informed the appellant to refer to Clauses 6(1), 6(2) and Clause 1(v) of the Code on Conflict of Interests for Members of Board, which is available on the SEBI website. The appellant may be guided by the same. Accordingly, no further intervention of this forum is warranted.

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: November 21, 2024

RUCHI CHOJER

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