

Reply Sl No. 327

RTI Matter
By Speed Post

No. II.20034/35/2014-IS.II/M
Government of India
Ministry of Home Affairs
(IS.I Division/IS.II Desk)

North Block, New Delhi,
Dated: 7th May, 2014

To

Shri Mustafa Kachwala
Advocate & Solicitors,
Kachwala Misar & Co
309, 3rd Floor, Sardar Griha Building,
Opp office of Commissioner of Police,
L.T Marg, Mumbai-400002.

Sub: Application of Shri Mustafa Kachwala seeking information under Right to Information Act, 2005.

Sir,

Please refer to your RTI application dated 02.04.2014 and received in the office of undersigned on 09.04.2014 on the above subject.

- 2 Para wise reply of information sought is as under:
- Copies of file noting dealing with your letter dated 17.12.2103 is enclosed as annexure-I.
 - No letter was written by Ministry of Home affairs to SEBI in this regard.
 - & d) : Copy of OM no II/21021/30/2013-IS-II/M Dated 29.01.2014 written by Ministry of Home affairs to Ministry of Finance and Department of Telecom is enclosed as annexure -II.

3. It is informed that in case you are not satisfied with the reply, you can prefer an appeal within 30 days from the receipt of this communication to Shri Rakesh Singh, Joint Secretary (Internal Security-I), Room No 197-B, North Block, Ministry of Home Affairs, New Delhi, who is the Appellate Authority in this case.

Enclosed: As above

Yours faithfully,


(Rakesh Mittal)

Director (Internal Security-I) & CPIO

PA to DIR(UH)

INFORMATIONAL

NO. 327

Ministry of Home Affairs, Government of India, New Delhi - 110001

3609/1/2014-11/114
e-4-14

Date : April 02, 2014
No. : M/112/2014

By Speed Post

To,
Shri Rakesh Mittal
Director (IS-I) & CPIO
Ministry of Home Affairs,
North Block
New Delhi - 110001

Re: APPLICATION FOR OBTAINING INFORMATION UNDER SECTIONS 6 & 7 OF THE RIGHT TO INFORMATION ACT, 2005

1. Name of Applicant: Mustafa Kachwala
2. Address: 309, 3rd Floor, Sardar Griha Building, Opp. Office of Commissioner of Police, L.T. Marg, Mumbai - 400002
3. Particulars of Information required / sought
 - (i) Subject – My letter dated 17th December 2013 on the subject of “News articles in the Economic Times, Mumbai Edition dated 17th December 2013 – DoT Dials Home Ministry Over Sebi Right to Seek Call Records and my earlier letter dated 12th June 2013” (Copy enclosed).
 - (ii) Period to which information relates: 12th June 2013 to 1st April 2014.
 - (iii) Category / Description of Information required / sought for:
 - a. Copies of file notings dealing with my letter dated 17th December 2013 referred to above in the subject
 - b. Copies of any letters written by Home Ministry to Securities and Exchange Board of India in this regard
 - c. Copies of any letters written by Home Ministry to the Department of Telecommunication in this regard.
 - d. Copies of any letters written by Home Ministry to the Ministry of Finance in this regard.

note & send to
JCM (7)
PA
7/4/14

Kindly note: 1) If the CPIO intends to invoke any exemption under Section 8 of the RTI Act, 2005, while dealing with this RTI application, advance notice with reasons should be given to the applicant and the applicant's reply to such a notice should be sought before giving reply to this application under the Act.

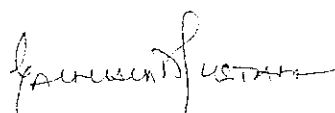
2) The information requested may be provided in the form in which it is maintained by the authority as is mandated u/s 7(9) of the Act.

(iv) Mode of Information: By post

(v) Whether Applicant is below poverty line: No

4. Whether fee has been paid: Indian Postal Order No. 10F 673311 of Rs. 10/- enclosed in favour of "Accounts Officer, Ministry of Home Affairs, New Delhi.
5. Specific details of information (if any): As mentioned in paras 3 (iii) above.
6. Particulars of identity of Applicant: Resident of Mumbai, Maharashtra, India
7. Whether the same information had been sought previously: No
8. Address at which the information shall be sent: 309, 3rd Floor, Sardar Griha Building, Opp. Office of Commissioner of Police, L.T. Marg, Mumbai - 400002
9. Name of the Office / Deptt. to which information relates: All Departments

Place: Mumbai



Mustafa Kachwala
Solicitor
309, 3rd Floor, Sardar Griha Building,
Opp. Office of Commissioner of Police,
L.T. Marg, Mumbai - 400002

A

Mustafa Kachwala
Advocate & Solicitor

36, Tamarind House,
1st Floor, Tamarind Lane,
Fort, Mumbai 400023
E-mail: kachwalamustafa@gmail.com

By Speed Post

17th December 2013

To,
The Secretary,
Ministry of Home Affairs
North Block
New Delhi - 110001

Dear Sir,

Sub: News article in the Economic Times, Mumbai Edition dated 17th December 2013 – DoT Dials Home Ministry Over Sebi Right to Seek Call Records and my earlier letter dated 12th June 2013 (copies enclosed).

Please refer to the above

As brought to your knowledge earlier also, SEBI continues to seek Call Data Records (CDRs) although it is not included in the list of agencies authorized under section 5(2) of the Indian Telegraph Act, 1882. It may be appropriate to point out here that the Home Secretary by letter dated 2nd July 2010 to the Finance Secretary had very categorically stated that "The present legislative scheme does not permit even the call data records to be accessed by any Agency not specifically empowered under Section 5(2) of the Indian Telegraph Act, 1885."

It is also a known and admitted fact that SEBI has powers of a Civil Court (CPC) and not of Criminal Procedure Code (CrPC). It has been opined that CDR information can be obtained as per the procedure of Criminal Procedure Code (CrPC). However SEBI continues to seek CDRs under Section 11 while knowing very well that SEBI does not have the powers under CrPC.

The amendments to the SEBI Act under the Second Ordinance promulgated by the President of India (2013) only strengthen the power of SEBI as a Civil Court and has not given any powers under the CrPC. The following amendment has been made:

Section 11(2) *"(ia) – calling for information and records from any person including any bank or any other authority or board or corporation established or constituted by or under any*

Central or State Act which, in the opinion of the Board, shall be relevant to any investigation or inquiry by the Board in respect of any transaction in securities;"

It is very important and essential to note that as per the Indian Telegraph Act only authorized agencies can be given CDR information, the same has been stated by the Secretary, Ministry of Home Affairs in his letter (as mentioned above). Therefore amendment to SEBI Act does not have any bearing in the matter.

If the stand of SEBI that it has powers to requisition CDR under SEBI Act is accepted then several Central and / or State authorities who have investigation powers to summon & call for information as a civil court will automatically get the power to call for CDRs, and CDRs will be freely available with a vast majority of Government Authorities. This would also mean that for accessing CDRs there will be no approval required from the Ministry of Home Affairs (which is the nodal agency) and the Department of Telecommunication (under whose administration the Indian Telegraph Act is designated) as per the Business Rules of the Government of India.

In the recent past CDR scandal has come to light, which involved a slew of Delhi Police Officers getting arrested while they tried to illegally gather CDRs of 3 numbers.

SEBI has been calling for CDRs without being included in the list of authorized agencies under section 5(2) of the Indian Telegraph Act, 1885. By doing so, it has not only violated the provisions of the Indian Telegraph Act but also disrespected the Business Rules of the Government of India. It is also important to note that the Department to Telecommunication had sought certain details from SEBI but SEBI has audaciously not provided any reply to the DoT (although DoT is the designated administrator of the Indian Telegraph Act as per the Business Rules of Government of India)

The Ministry of Finance is deliberate moot spectator to this. It is also important to note that not only SEBI continues to violate the laws of the land, it is also not following any specific procedure to call for CDRs. The lowest cadres of employees of SEBI have been calling for CDRs by way of simple letters or emails. No reasons are recorded for seeking CDRs. CDRs are

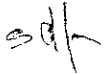
called on the flimsiest of reasons in any matter, and mostly on unfounded and remote apprehension.

This is a savage attack by a government appointed regulator on the Fundamental Rights (Right to Life) of the citizens of this country.

This has been going on with the knowledge of the Ministry of Home Affairs, Department of Telecommunication & the Ministry of Finance for the last 5 years.

It is requested to put an end to this audacious abuse of the position of a powerful regulator by SEBI; and disrespect of the law of the land and take appropriate action in this matter.

With warm regards



Mustafa Kachwala
Advocate & Solicitor
Encl: As above

CC:
The Secretary
Department of Telecommunication
Ministry of Communication & IT
Sanchar Bhawan
Rafi Marg
New Delhi - 110001

Shri Shashi Kant Sharma
The Comptroller and Auditor General of India
Pocket-9, Deen Dayal Upadhyay Marg,
New Delhi-110124.

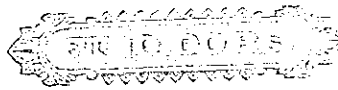
भारत सरकार, नया दिल्ली

भारतीय डाक विभाग

THE NATIONAL DIRECTOR GENERAL OF POSTS

PAID TO Secy. Office, Ministry
of Home Affairs, New Delhi

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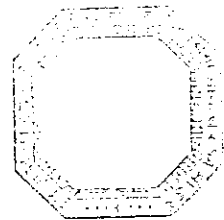


AT THE POST OFFICE AT

New Delhi

के उत्तर में बना करें।

ना कान में नीचे का लिखें DO NOT WRITE BELOW THIS LINE



भारत सरकार के डाक विभाग

SENDER MAY FILL IN HIS NAME AND ADDRESS HERE

Musafa Kachwala

Musafa Kachwala

Mumbai

IPO Commission Revised w.e.f. 26.05.1997

Vide DOP Order No. 1-1/99-RATES Dated 13.05.1999

For each IPO 10% (100/-) Do (1/-) commission

10F 673311

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