

F.No. I/11034/37/2014-LWE/LWEO-I

Government of India
Ministry of Home Affairs
Left Wing Extremism Division

Room No. 193-A/1, North Block,
New Delhi, the 28th August, 2014

To

Shri Venkatesh Naik,
B-117, 2nd Floor,
Sarvodaya Enclave,
New Delhi – 110 017

Sub.: First appeal dated 3.8.2014 under section 19(1) of the RTI Act, 2005 before the JS(LWE) of this Ministry.

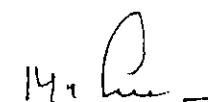
Whereas, this has reference to your first appeal dated 03.08.2014 under section 19(1) of the RTI Act, 2005 against the reply provided vide this Ministry's letter of even number dated 1st July, 2014 in response to your application under the RTI Act, 2005 bearing No. RTI/GOI/MHA/2014/2 dated 05/06/2014 seeking information regarding a purported Note placed before the Cabinet Committee on Security mentioned in an article titled "Anti-Naxal Battle: Will Air Force Gunships Enter Fight Now?" published in Delhi Edition of the Economic Times dated June 4, 2014.

2. Whereas, upon consideration of the appeal, it is seen that it pertains to a purported undated Cabinet Note, mentioned in a newspaper article without any acknowledgment of the source of such information.

3. Whereas, it is informed that it is not incumbent upon the Ministry of Home Affairs to confirm or deny the existence of the purported Cabinet Note since in terms of section 8(1)(i) of Right to Information Act, 2005, such material if any, is exempt from disclosure.

4. Whereas, it is further informed that disclosure of any information on Strategy against the Maoist insurgency prejudicially affects the sovereignty and integrity of India and hence such information is also exempt from disclosure under section 8(1) (a) of the RTI Act, 2005.

5. Whereas, in view of the above facts and circumstances, the first appeal by the appellants is liable to be dismissed accordingly.


(M.A. Ganapathy) 29/8
Joint Secretary (LWE)
Telephone: 23092456

....contd. 2/-

Copy to:-

1. US(RTI), MHA, North Block for information w.r.t the OM No. A-43020/01/2014-RTI dated 11/06/2014.
2. ✓ SO (IT Cell), MHA, North Block, New Delhi along with a copy of the aroresaid RTI Appeal for uploading the same in the MHA website as per the guidelines of this Ministry issued vide OM No. A-43020/61/2013-RTI(Pt.I) dated 23.4.2014.

Rem - 324840
5/8/14

Before the Designated First Appellate Authority

and Joint Secretary, Naxal management Division, Ministry of Home Affairs

Room No. 193-A/1, North Block, New Delhi - 110 001

Appeal filed under Section 19(1) of the Right to Information Act, 2005

In the matter of

Venkatesh Nayak v The CPIO, Ministry of Home Affairs, LWEO-I

Date of submission: 03/08/2014

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Handwritten notes and signatures on the left margin, including "Dir LWEO-I" and "6/8/2014".

Before the Designated First Appellate Authority

and Joint Secretary, Naxal management Division, Ministry of Home Affairs

Room No. 193-A/1, North Block, New Delhi - 110 001

Appeal filed under Section 19(1) of the Right to Information Act, 2005

Date: 03/08/2014

- 1) Name and address of the appellant : Venkatesh Nayak
B-117, Second Floor
Sarvodaya Enclave
New Delhi- 110 017
- 2) Name and address of the Public Information Officer to whom the Application was addressed : The Central Public Information Officer
Ministry of Home Affairs
Government of India
New Delhi- 110 001
- 3) Name and address of the Public Information Officer who gave reply to the Application : Shri Rambhir Singh
CPIO and Director (NM-I)
Left Wing Extremism Division
Ministry of Home Affairs
North Block
New Delhi- 110 001
- 4) Name and address of the Public Information Officer against whose Decision this appeal is being filed : Shri Anand Jain
CPIO and Director (LWEO-I Wing)
Left Wing Extremism Division
Room No. 13-A, North Block
New Delhi- 110 001
- 5) Particulars of the RTI application :
- a) Date of submission of the RTI application : 05/06/2014
- b) Date of payment of additional fee (if any) : NIL

6) Particulars of the order(s) including number, if any against which the appeal is preferred : Communication No. I-11034/37/2014-NM/ANO-I dated 1st July, 2014 and received on 4th July, 2014

7) Brief facts leading to the appeal :

7.1) On 05/06/2014 I dispatched by Speed Post an RTI application to the CPIO mentioned at para #1 above along with an Annexure stating as follows (**Annexure/1 colly**):

"Apropos of the news report attached to this RTI application, as published on page #4 of the Economic Times, Delhi edn. on 03/06/2014, under the title: "Anti Naxal Battle: Will Air Force Gunships Enter Fight Now?", I would like to obtain the following information from your public authority:

- 1) The exact date on which the Note mentioned in the news report was placed before the Cabinet Committee on Security for its consideration;
- 2) The decision taken by the Cabinet Committee on Security on the proposal contained in the said Note, if any;
- 3) The security classification accorded to the said Note as on the date of submission to the Cabinet Committee on Security;
- 4) The number of times the security classification accorded to the said Note has been evaluated for downgrading till date, as per Rule 7 of the *Public Records Rules, 1997*, along with the exact date of each evaluation;
- 5) The security classification accorded to the said Note as on the date of this RTI application;
- 6) The name and designation of the officer in whose custody the said Note was retained immediately prior to the disclosure of its contents to the mass media;
- 7) The name and designation of the officer who authorised disclosure of the contents of the said Note to the mass media;
- 8) The details of action that are required to be taken under the applicable laws in instances, if any of unauthorised disclosure of classified documents such as the said Note; and
- 9) A clear photocopy of the said Note along with Annexures, if any."

7.2) On 20/06/2014 I received a communication dated 18/06/2014 from the CPIO mentioned at para #2 above stating as follows (**Annexure 2**):

"This has reference to your RTI application dated 05.06.2014 received from Shri Venkatesh Nayak, B-117, 2nd Floor, Sarvodaya Enclave, New Delhi- 110 017 under Right to Information Act, 2005. The said application was received by the

undersigned vide OM No.A-43020/01/2014-RTI dated 11.06.2014 of this Ministry.

2. As the information sought by the applicant relates to the LWEO Wing, therefore the said application is being transferred to you for providing information to the applicant directly."

7.3) Later, on 04/07/2014, I received by Speed Post a communication of number and date cited above at para #6 from the CPIO mentioned at para #3 above stating as follows (Annexure 3):

" Please refer to this Ministry's communication No. II-18015/06/2014-NM-II dated 18.06.2014 under reference to your RTI application dated 05.06.2014 received in this office/section on 19/06/2014 through Shri Rambir Singh, Director (LWE-I) & CPIO, Ministry of Home Affairs, North Block, New Delhi.

2. The information in your application is not available in the LWEO-I Wing of this Ministry. Therefore, information in this Wing may be treated as 'NIL'.

7.4) In effect I have neither received the information that I sought in my RTI application nor any communication rejecting my request for the information specified in my RTI application despite the passage of more than 30 days since the receipt of my RTI application in the Ministry of Home Affairs.

8) Prayers or relief sought :

The Appellant respectfully prays that this Hon'ble First Appellate Authority be pleased to:-

- 1) admit this first appeal and inquire into it; and
- 2) direct the CPIO mentioned at para #3 above to immediately transfer or forward my RTI application to the section/office which has the information I have sought in its custody.

9) Grounds for the prayer or relief :

9.1) According to Section 19(1) of the RTI Act, any person who is aggrieved by a decision of the CPIO may prefer an appeal within thirty days of receipt of such decision to an officer senior in rank to the CPIO. I am submitting this first appeal to this Hon'ble First Appellate Authority on the 30th day of receipt of the decision of the CPIO mentioned at para #3 above for the following reasons:

9.1.a) According to Section 7(1) of the RTI Act, when in receipt of an RTI application a CPIO has two courses of action. He may provide the information sought upon payment of additional

fees towards the cost of supplying the information or he may reject the RTI application for reasons stated under Sections 8 and 9 of the RTI Act. However, under Section 6(3) of the RTI Act, a third course of action is also available for the CPIO. Section 6(3) of the RTI Act states as follows:

“(3) Where an application is made to a public authority requesting for an information,—

(i) which is held by another public authority; or

(ii) the subject matter of which is more closely connected with the functions of another public authority,

the public authority, to which such application is made, shall transfer the application or such part of it as may be appropriate to that other public authority and inform the applicant immediately about such transfer:

Provided that the transfer of an application pursuant to this sub-section shall be made as soon as practicable but in no case later than five days from the date of receipt of the application.”

Given the express requirement of transfer of an RTI application by a CPIO who does not possess the information sought in it, to the public authority or office that is most likely to have such information, it is not open for the CPIO to simply send a response to the applicant stating that the information sought is not available in his office/section/wing. The CPIO is under a statutory obligation to transfer the RTI application to such office/section/wing which is most likely to have the information sought. I have not sought information from multiple public authorities in my RTI application either. The information is reported to be available with the Ministry of Home Affairs only. **So the CPIO ought to have transferred my RTI application to the office/section/wing that holds the information sought.** Instead the CPIO mentioned at para #3 above, has simply washed his hands off stating that his Wing does not hold the information I have sought. This response shows a lack of application of mind to the contents of my RTI application on the part of the said CPIO and a complete negligence to comply with the statutory requirements and duties under Section 6(3) of the RTI Act. **Hence the filing of this first appeal before this Hon'ble First Appellate Authority.**

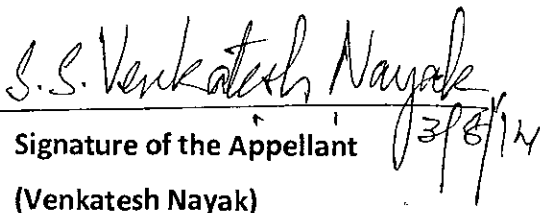
9.1.b) Further, the news clipping annexed to my RTI application clearly states that the Cabinet Note was prepared by the Ministry of Home Affairs. So some Division or Wing of the Home Ministry is likely to have all the information sought in my RTI application as it pertains to a Cabinet Note generated by this Ministry. The CPIO ought to have made the effort to ascertain the availability of the information sought in my RTI application by invoking his powers under Sections 5(4) and 5(5) of the RTI Act and seeking the assistance the assistance of any other officer in the public authority in order to deal with my RTI application. Instead the CPIO mentioned at para #3 above has summarily washed his hands off my RTI application without performing the due diligence of ascertaining the availability of the information sought in my RTI application in other offices/sections/wings of the Ministry of

Home Affairs. This omission on the part of the said CPIO indicates lack of application of mind to the contents of my RTI application. **Hence the filing of this first appeal before this Hon'ble First Appellate Authority.**

9.1.c) Further, the information I have sought in my RTI application is of immense public interest for the following reasons, though not limited only to them:

- i) The information sought pertains to a decision taken by the Union Cabinet Committee on Security for containing the law and order problems affecting areas with significant presence of Left Wing militant extremism. The citizens of India have the right to know what decision was taken by the Union Cabinet in this regard and what materials were placed before it to arrive at such decision because it is a matter that affects their security and well being.
- ii) Under Rule 3 read with Appendix III of the Rules of Procedure in Regard to Proceedings of the Cabinet (a copy of which the Hon'ble Central Information Commission was pleased to direct the Cabinet Secretariat to supply to this Appellant in the matter of *Venkatesh Nayak vs CPIO, Cabinet Secretariat*, File NO. CIC/WB/A/2009/000990-SM, decision dated 4th March, 2011) every Cabinet Note/summary/memorandum is required to be classified 'Secret' or 'Top Secret'. So unless a document bearing such classification is declassified, it cannot be made public under the Official Secrets Act and the Manual of Departmental Security Instructions. As contents of the Cabinet Note which was the subject of my RTI application had reached the media, I merely sought to know the details of the declassification process that may have preceded the dissemination of the said Cabinet Note to the media. If the Cabinet Note had been disseminated without compliance with such procedures, that amounts to an offence under law and every citizen of India is duty bound to assist the Government to identify the culprits. Hence there is an enormous amount of public interest in seeking this information. The CPIO mentioned at para #3 above has not applied his mind adequately to the queries raised in my RTIO application. Hence the filing of this first appeal before this Hon'ble First Appellate Authority.

9) I hereby verify that the aforementioned facts are true to the best of my knowledge. I also declare that I have authenticated the Annexes to this appeal.


Signature of the Appellant
(Venkatesh Nayak)

अव्यक्त COUNTERFOIL

इसे फाइलकर प्रेषक अपने पास रख ले।
To be detached and kept
by the Sender.

No. RTI/GOI/MHA/2014/2

Date: 05/06/2014

From,
Venkatesh Nayak
B-117, 2nd Floor
Sarvodaya Enclave
New Delhi- 110 017

पोस्टल आर्डर
रुपए 10.00 Rs.
POSTAL ORDER

कितने अंदा काला
To whom payable No
किस/शाक्यने में
At what Office Ministry of Home Affairs
क्या इसे क्रॉस किया है
Whether crossed No
भेजने की तारीख
Date sent 05/06/14

Ministry of Home Affairs

At what Office Ministry of Home Affairs

Whether crossed No

Date sent 05/06/14

23F 433305

To,
The Central Public Information Officer
Ministry of Home Affairs
Government of India
North Block
New Delhi- 110 001

Dear sir,

Sub: Request for information under the *Right to Information Act, 2005*

Apropos of the news report attached to this RTI application, as published on page #4 of the Economic Times, Delhi edn. on 03/06/2014, under the title: "Anti Naxal Battle: Will Air Force Gunships Enter Fight Now?", I would like to obtain the following information from your public authority:

- 1) The exact date on which the Note mentioned in the news report was placed before the Cabinet Committee on Security for its consideration;
- 2) The decision taken by the Cabinet Committee on Security on the proposal contained in the said Note, if any;
- 3) The security classification accorded to the said Note as on the date of submission to the Cabinet Committee on Security;
- 4) The number of times the security classification accorded to the said Note has been evaluated for downgrading till date, as per Rule 7 of the *Public Records Rules, 1997*, along with the exact date of each evaluation;
- 5) The security classification accorded to the said Note as on the date of this RTI application;
- 6) The name and designation of the officer in whose custody the said Note was retained immediately prior to the disclosure of its contents to the mass media;
- 7) The name and designation of the officer who authorised disclosure of the contents of the said Note to the mass media;
- 8) The details of action that are required to be taken under the applicable laws in instances, if any of unauthorised disclosure of classified documents such as the said Note; and

True copy
self attested
S.S. Venkatesh Nayak

ANTI-NAXAL BATTLE

Will Air Force Gunships Enter Fight Now?

Securitymen await BJP government's decision on using armed forces against Naxals

AMAN SHARMA
NEW DELHI

The security establishment at the Union Home Ministry is keenly watching if the Narendra Modi-led government will bite the bullet on using the armed forces in its fight against the Naxals as proposed to the Cabinet by the Home Ministry under the tenure of P Chidambaram in 2012. The move was thwarted by the Defence Ministry then.

ET has accessed a note put before the Cabinet Committee on Security by the Home Ministry in 2012 which had proposed using Indian Air Force gunships to strike against the Naxals if there was clear and specific intelligence of their presence in an area. It was proposed that in case there was specific intelligence that there was a "large congregation of armed military platoons" of Naxals in a particular area, IAF gunships could be used to attack them from air.

It was also proposed in that note by the Home Ministry that Rashtriya Rifles of the Indian Army should be posted in Naxal-dominated areas in "non-combat roles" to fill up the huge gaps in security presence there. The note had mentioned that there were still large areas in Naxal-dominated parts where there was no security presence and it would take 3-4 years for the paramilitary forces like CRPF and BSF to increase their manpower to have their footprints there.

It was suggested then by the Home Ministry that Rashtriya Rifles should be deployed in such areas to provide cover for development activities but not in combat roles. The RR, however, was planned to be mandated to fire back in self defence if attacked by the extremists. However, the Defence Ministry then did not agree with the Home Ministry's proposals and UPA could not

When UPA Failed to Act

2012, P CHIDAMBARAM had proposed using IAF gunships to strike against the Naxals



HE PROPOSED posting Rashtriya Rifles in Naxal areas in 'non-combat roles'

WANTED RR cover for development activities

HIS MOVES were opposed by the Defence Ministry

EXPECTATIONS NOW

UAVS providing pin-pointed and actionable intelligence

NARENDRA MODI and Rajnath Singh have taken a tough stand against the Naxals



RAJNATH HAS been consulting anti-Naxal experts



Home Min Official

It remains to be seen whether armed forces would be allowed to take the fight to Naxals

make much headway.

A senior Home Ministry official told ET on Tuesday that it would be "interesting" to see the new government's approach towards this issue as the BJP, and its top leaders including Narendra Modi and Rajnath Singh, have taken a tough stand against the Naxals.

"A major Naxal attack could test the temperament of the new BJP government... it remains to be seen if a recourse to the armed forces is taken to take the fight to the Naxals, especially since there was an earlier proposal on the table to do this but got lost in the indecisiveness of the UPA government," the official said.

"There is a case for the air support to go beyond support role," a ministry official said. Also, lately, the UAVs employed by the National Technical Research Organisation in Naxal areas have provided good pin-pointed intelligence on the presence of Naxals in remote areas.

True copy self attested S.S. Venkatesh Nayak



ANNEXE-2

IMMEDIATE/ RTI Matter

Government of India
Ministry of Home Affairs
(Left Wing Extremism Division)

North Block, New Delhi

Subject: Information sought by Shri Venkatesh Nayak, under the RTI Act, 2005.

This has reference to RTI application dated 05.06.2014 received from Shri Venkatesh Nayak, B-117, 2nd Floor, Sarvodaya Enclave, New Delhi-110017 under Right to Information Act, 2005. The said application was received by the undersigned vide OM No.A-43020/01/2014-RTI dated 11.06.2014 of this Ministry.

2. As the information sought by the applicant relates to LWEO Wing, therefore, the said application is being transferred to you for providing information to the applicant directly.

Encl: As above.



(Rambir Singh)
CPIO & Director (NM-I)
Tel.: 2309 2962

Shri Anand Jain, CPIO & Dir (LWEO-I), MHA, North Block, New Delhi.

MHA.ID No.II-18015/06/2014-NM-II

Dated 18.06.2014

Copy to:-

1. ✓ Shri Venkatesh Nayak, B-117, 2nd Floor, Sarvodaya Enclave, New Delhi-1100017.
2. Shri S.Samanta, Under Secretary, RTI, MHA, North Block, New Delhi w.r.to O.M. No. A-43030/01/2014-RTI dated 11.06.2014.

True Copy
Self attested
S.S. Venkatesh Nayak

(10)

No. I-11034/37/2014-NM/ANO-I
Government of India/Bharat Sarkar
Ministry of Home Affairs/Grih Mantralaya
Left Wing Extremism Division
(LWEO-I Wing)

Room No. 13-A, North Block
New Delhi, dated the 1st July, 2014

To

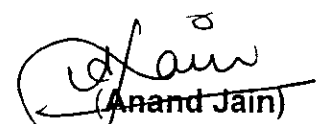
Shri Venkatesh Nayak,
B-117, 2nd Floor, Sarvodaya Enclave,
New Delhi - 110017

Subject: RTI application – under Right to Information Act-2005

Please refer to this Ministry's communication No. II-18015/06/2014-NM-II dated 18.06.2014 under reference to your RTI application dated 05.06.2014 received in this office/section on 19.06.2014 through Shri Rambir Singh, Director (LWE-I) & CPIO, Ministry of Home Affairs, North Block, New Delhi.

2. The information sought in your application is not available in the LWEO-I Wing of this Ministry. Therefore, information of this Wing may be treated as 'NIL'.

3. Appeal u/s 19(1) of the Act, if any, is to be made within 30 days of receipt of this communication and the same in respect of this information lies with Sh. M. A. Ganapathy, Joint Secretary, Naxal Management Division, Room No.193-A/1, North Block, Ministry of Home Affairs, New Delhi.


(Anand Jain)

Director (LWEO-I) & CPIO
Telefax No: 011-2309 4019

True copy
Self attested
S.S. Venkatesh Nayak

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9) A clear photocopy of the said Note along with Annexures, if any.

I am a citizen of India. I have enclosed an IPO (bearing #23F 433305) for Rs. 10/- towards payment of the prescribed application fee. I would like to receive this information at my postal address mentioned above. Kindly inform me of the additional fee payable for obtaining this information.

Thanking you,
Yours sincerely,

S. S. Venkatesh Nayak
5/6/14
Venkatesh Nayak

भारतीय डाक
SP HAUZ KHAS 11001
ED440789392
Counter No: 2, OP-Cod
TO: CENTRAL PUBLIC INFO India Post
NEW DELHI. PIN: 110001
FROM: VENKATESH NAYAK, NO
WT: 20 grams,
Amt: 17.00, 05/06/2014, 10:15
Rs. 2.00/Track on www.indiapost.gov

True Copy
Self attested
S. S. Venkatesh Nayak
2

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