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**By Regd. Post**  
**RTI MATTER**

No. VI.23014/132/2013-VS  
Government of India  
Ministry of Home Affairs  
(PP Division)

NDCC-II Building, 3<sup>rd</sup> Floor,  
Jai Singh Road, New Delhi-110001,  
Dated: 14<sup>th</sup> August, 2013

To

Shri S.D. Phene,  
204, Maharaja GHS,  
Sector-9, Vashi,  
Navi Mumbai-400703.

**Subject:- First Appeal under the RTI Act-2005.**

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Sir,

Please refer to your First Appeal dated 02.07.2013 received in this unit on 16.07.2013.

39  
2. Your ground of First Appeal has been examined and it is found that the CPIO has correctly stated that your query does not fall within the definition of the term 'information' under the RTI Act-2005 as the term 'information' does not include answers to the question like 'why'. In this connection, attention is invited to the decision dated 3.4.2008 of the High Court of Bombay at Goa in Writ Petition No.419 of 2007 in the case of Dr. Celsa Pinto Vs. Goa State Information Commission. The relevant part of the judgement is reproduced as under:

"The definition of information cannot include within its fold answers to the question "why" which would be same thing as asking the reason for a justification for a particular thing. The public information authorities cannot expect to communicate to the citizen the reason why a certain thing was done or not done in the sense of a justification because the citizen makes a requisition about information. Justifications are matter within the domain of adjudicating authorities and cannot properly be classified as information".

3. It may be seen that it has been clearly laid down that the public authorities cannot be expected to communicate the reasons why a certain thing was done or not done in the sense of justification, which are matter within the domain of adjudicating authorities and cannot be classified as information. Accordingly the reasons for arriving at decision regarding principles to be followed or modalities of charges to be recovered cannot be disclosed under the provisions of the RTI Act, 2005.

4. Basically, it is seen that in your RTI application you have formulated three alternatives with regard to the quantum of fees/monies to be charged from an individual on account of security provided to him and have asked 'why' the MHA does not accept any of the said alternative suggestions. However, as indicated above, it is not possible for the

Government to answer queries as to why its policy cannot be based on any of the suggestions made. More importantly, security, even when it is provided at no cost to the public exchequer, is provided only on the basis of a comprehensive assessment of threat by the security agencies and not on the basis whether such individual can afford to pay for such security cover or not.

5. In the light of position indicated above, there is no reason to interfere with the response sent to you by CPIO with reference to your RTI Application dated 23.04.2013.
6. Your First Appeal is disposed of accordingly.
7. This issues with the approval of Joint Secretary (PP) & Appellate Authority.

Yours faithfully,

*Pranab Biswas*

(Pranab Biswas)

Under secretary to the Govt. of India

☎ - 23438086

APPEAL UNDER RTI ACT, 2005

15/90

डायरी नं० 23/18 JS (PP&VS)/2013  
 Dy. No. 23/18  
 दिनांक/बाले 23/7/13

From:  
 S.D. PHENE, 204 MAHARAJA CHS, SECTOR 9,  
 VASHI, NAVI MUMBAI- 400703

To:  
 Shri Lokesh Jha, Jt. Secretary (PP) of Appellate Authority,  
 Ministry of Home Affairs, 3rd Floor, NDCC-II Building,  
 Jai Singh Road, New Delhi-110003

2nd July, 2013

Sub: Appeal under RTI Act, 2005

Sir,  
 I am enclosing herewith the following: -

Dy No-141/RTI/10/13  
 DT-16/7/2013 RTI Act.

(1) My application dt. 23.04.2013 under

(2) CPIO's reply no. VI.2304/132/2013-VS dt. 24.06.2013 (Xerox copy).


2. The CPIO has effectively rejected my application for having used the word 'why'. He appears to have misunderstood the implications and applicability of the judgement dt. 03.04.2008 of the Goa Bench of the Bombay High Court in writ petition no. 419 of 2007 (Dr. Celsa Pinto Vs Goa Information Commissioner) circulated with OMs no. 1/3/2009-IR dt. 01.06.2009 and 20.05.2011 of the Ministry of Personnel, etc.

3. That judgement applies to the circumstances of that specific case. The implications of the term 'why' used in it cannot be mechanically generalised to mean that no query with the word 'why' would be admissible under section 2(f) of the RTI Act under any or all circumstances. Such a sweeping generalisation would militate against the very preamble of that Act as well as its numerous interpretations by the Supreme Court. The preamble says "... whereas democracy requires an informed citizenry and transparency of information which are vital to its functioning and also to contain corruption and to hold Governments and their instrumentalities accountable to the governed" while the Supreme Court has repeatedly held that information sought if available, should be made available unless exempted specifically by the RTI Act, if public authorities refuse to answer the 'whys' for their actions where would be their transparency and accountability? Moreover, this flimsy, verbal excuse would not be taken that!

12/7  
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4. This brings up the question of 'availability'.  
 It is possible that the information sought may not be available with the CPIO personally. But it is actually sought from the entire Ministry of Home Affairs of which the CPIO is only a representative - and the only authorized one as far as the information seeking citizen is concerned. It is the statutory responsibility of the CPIO to seek the assistance of all concerned in the Ministry from the lowest to the highest, under section 5(4), read with section 5(5) of the RTI Act, collect the required information and then give the reply. If ~~it is~~ he <sup>then</sup> finds that the information sought is not available in the Ministry he should clearly reply accordingly. That will then inform the citizen how the Ministry functions even without the information sought.

5. As the CPIO has thus failed to furnish the information sought in violation of both the letter and spirit of the RTI Act, through this appeal I request you to furnish the information sought by me, by setting aside the CPIO's letter dt. 24.06.2013.

Yours faithfully,  
  
 (S.D. PHENE)

Encl:  
 Xerox copies (2, as mentioned above)