



**Jammu and Kashmir State Information Commission**  
جموں اینڈ کشمیر اسٹیٹ انفارمیشن کمیشن  
(Constituted under the Right to Information Act, 2009)  
Old Assembly Complex, Srinagar, 0194-2506660, 2506661 [www.jksic.nic.in](http://www.jksic.nic.in)  
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File No. SIC/K/SA/84/2017  
Decision No. SIC/K/SA/84/2017/**106**

Appellant: Khursheed Ahmad Khan  
S/O Mohammad Khalil Khan  
R/O Wataporra, Bandipora.

Respondents: 1. Medical Superintendent, SKIMS  
(First Appellate Authority).  
2. Joint Medical Superintendent, SKIMS  
(Public Information Officer).

Date of Registration : 26-10-2017

Date of Decision : 23-02-2018

**FINAL ORDER**

This 2<sup>nd</sup> Appeal has arisen out of the RTI application filed by Mr Khursheed Ahmad Khan on 10-06-2017 with the Public Information Officer (hereinafter referred to as 'PIO'), Sheri Kashmir Institute of Medical Sciences, (SKIMS) Soura seeking copies of the following documents: -

1. documents forwarded by Director SKIMS detailing selection of Governing Body and Apical Selection Panel and subsequently signed by Hon'ble Chief Minister, alongwith its annexure;
2. letter written by Director SKIMS in response to the clarification sought by the Principal Secretary to the Hon'ble Chief Minister regarding resignation of Dr. Altaf Gauhar Haji due to alleged harassment; and
3. present status of 'Mobile SKIMS' initiative which was going on smoothly till 2006.

As the PIO failed to provide the information to the applicant within the specified period, the applicant filed first appeal with the First Appellate Authority (hereinafter FAA, for short), SKIMS on 11-07-2017. This Appeal was not disposed of by the FAA within the prescribed period forcing the applicant to file this 2<sup>nd</sup> appeal before the State Information Commission on 12-09-2017. The appeal was registered in the Commission on 26-10-2017 after the appellant made good the procedural deficiencies in the appeal as were pointed out to him by the registry.

#### **Proceedings before the Commission:**

In pursuance to the notice issued by the Commission, the PIO, SKIMS and the FAA, SKIMS filed their counter statement on 18-11-2017 stating therein that since the information sought by the applicant, now appellant, was not available with the PIO, the matter was taken up with the office of Director, SKIMS and Administrative Officer (Policy), SKIMS. The office of Director, SKIMS finally forwarded the information with respect to point No. 3 of the RTI request viz, present status of Mobile SKIMS initiative to the PIO on 10-11-2017 and the same was provided to the appellant on 11-11-2017. As regards point Nos 1 and 2, the information is still awaited from the office of Director, SKIMS.

The appeal came up for hearing before the Commission on 28-12-2017. The PIO SKIMS, Dr. Farooq Ahmad Jan appeared before the Commission and submitted that the information in respect of point 3 has been provided to the appellant on 11-11-2017. With regard to information relating to point Nos. 1 and 2, the PIO submitted that the same has not been provided to him by the office of Director, SKIMS, which alone holds the said information, on the ground of being confidential. During the hearing, the attention of the PIO was drawn towards section 8 of the Jammu and Kashmir Right to Information Act, 2009 and he was asked to specify under which of the clauses of this section he claimed exemption from disclosure of the information sought by the appellant. On his failure to justify exemption from disclosure of the information sought by the appellant, the PIO was directed to file a written statement specifying the relevant clause of section 8 of the RTI Act under which exemption of the information from disclosure is claimed by him. Vide interim order dated 28-12-2017, the Commission also brought it into the notice of Director SKIMS that being a Public Authority, it was his statutory obligation under the J&K RTI Act, 2009 to facilitate the access to information to the information seeker.

The appeal again came up for hearing before the Commission on 22-01-2018. The PIO attended the hearing. However, he failed to file written statement claiming exemption of the information sought by the appellant from disclosure. On being asked to justify non-providing of information to the appellant, the PIO submitted that the information with respect to points 1 and 2 is held by the office of Director, SKIMS and the said office has refused to part away with the said information with the result he has failed to provide the same to the appellant. The Commission drew attention of the PIO towards sub-section (4) of section 5 of the J&K RTI Act, 2009 where under he has an option of seeking assistance of any officer as he considers it necessary for the proper discharge of his duties and

advised him to formally seek the assistance of the office of Director SKIMS, if the information sought by the appellant is held by that office so that the said office is treated as PIO for any contravention of the provisions of the RTI Act in terms of section 5(5). Director SKIMS was also directed to either prove by filing a written statement that the information sought is exempted from disclosure or make available the same to the PIO so that he can furnish the same to the appellant.

The appeal was again listed today for hearing. The appellant was present in person while as the respondents were represented by Dr. Farooq Ahmad Jan, Jt. Medical Suptd./PIO and Mr Firdous Ahmad, Private Secretary to Director, SKIMS. The PIO submitted a written statement enclosing a joint communication dated 03-02-2017 of the office of Director SKIMS and the AO (Policy) stating therein that the desired information of point No. 1 and 2 is not available with their offices and will be forwarded to him (PIO) as soon as it is received by their offices. In the said communication, PS to Director SKIMS and AO (Policy), SKIMS has informed the PIO that the matter has been taken up with higher authorities to provide the desired information. A copy of the communication dated 03-02-2017 from Director SKIMS addressed to Special Secretary to Chief Secretary has also been enclosed whereby these documents have been sought from Chief Secretary's office as the same were submitted to Hon'ble Chief Minister through that office in confidential manner without retaining a copy in the Director's office. The PIO accordingly sought some more time for providing the information to the appellant and assured that as soon as he gets the said information, he will furnish the same to the appellant.

**Decision:**

Just as justice delayed amounts to justice denied, information delayed amounts to denial of information. Sub-section (1) of section 7 of the J&K RTI Act,

2009 specifies a maximum of 30 days for providing information to an applicant making a request for information. Sub-section (2) thereof provides that if the PIO fails to give decision on the request for information within the period specified under sub-section (1), the PIO shall be deemed to have refused the request. In other words, information delayed is information refused or denied. By virtue of section 19, the RTI Act overrides not only the State Official Secrets Act, Samvat 1977 but all other laws for the time being in force, or instruments having the effect by virtue of any law other than the RTI Act, so far as they are inconsistent with the provisions of the RTI Act. Therefore, after the commencement of the RTI Act, 2009 every kind of information like any material, document, record, order, report, paper, file etc held by a public authority is subject to disclosure unless the same is specifically exempted under section 8 of the Act. The information sought by the appellant in the present appeal can by no stretch of imagination be deemed to be covered under section 8 of the Act. The PIO also failed to prove that the information sought by the appellant in this case is exempted from disclosure under section 8 of the Act. Therefore, the public authority (Director SKIMS) as well as its PIO are under the statutory obligation to provide the information to the appellant as sought by him as long as the same is held by, and is available with, the public authority. Non-availability of information cannot be claimed as a ruse or subterfuge to deny information but it has to be established with hard evidence, documentary or circumstantial.

In terms of sub-section (11) of section 16 of the J&K RTI Act, 2009, the State Information Commission is bound to decide and dispose of an appeal within a maximum period of 120 days. The maximum permissible period for the Commission to decide the present appeal is expiring today on 23<sup>rd</sup> of February, 2018. Therefore, this appeal cannot be kept on board any further to allow some more time to the PIO as sought by him and it has to be disposed of.

Section 17 of the Act provides that where the State Information Commission at the time of deciding an appeal is of the opinion that the PIO has, without any reasonable cause refused to receive an application for information or has not furnished information within the time specified under section 7(1) or malafidely denied the request for information or knowingly given incorrect, incomplete or misleading information, it shall impose a penalty of two hundred and fifty rupees each day till application is received or information is furnished, so however, the total amount of such penalty shall not exceed twenty-five thousand rupees. It is beyond any doubt that in the present case the PIO has failed to provide information to appellant within the time specified in section 7(1) of the Act. Out of the three points on which information was sought by the appellant, the information has been provided to him in respect of only one point, i.e., the 3<sup>rd</sup> point and that too belatedly much after the expiry of specified period. The Information in respect of point 1 and point 2 is yet to be provided to the appellant. However, the PIO has been able to demonstrate that the information sought by the appellant was not available with him or held by him. It was held by, and supposed to be available with, the office of Director SKIMS or Administrative Officer (Policy), SKIMS. The PIO has repeatedly taken up the matter with both these offices though without any success. Therefore, failure on the part of PIO to collect the information and deliver the same to the appellant has not been deliberate, willful and malafide. Hence, the facts and circumstances leading to the failure of the PIO in providing timely information to the appellant in the present appeal do not call for invoking penalty clause against the PIO. The failure of the PIO to provide information is in fact the failure of the public authority to facilitate and ensure access to information. If the claim of the public authority that it has not kept/preserved an office copy of the communication submitted to the office of Hon'ble Chief Minister is believed to be true, it still is a failure on its part to maintain records in

the manner it is supposed to maintain in terms of section 4(1)(a). The PS to Director SKIMS, who represented the Director during the hearing before the Commission extended an assurance that the public authority is making all efforts to collect the information and as soon as the same is collected, it will be furnished to the appellant. In the peculiar circumstances of the case, the Commission can only hope that the public authority is conscious of its obligations and responsibilities under the RTI Act and will live up to its assurance by providing the information to the appellant as soon as it could find out or collect the same. In the meantime, the PIO shall provide a copy each of the Government Order No. 24-SKIMS and G.O 26-SKIMS dated September 01, 2016 to the appellant within a period of one week from today, as directed during the hearing.

The appeal is accordingly disposed of.

Sd/-

(Mohammad Ashraf Mir)  
State Information Commissioner.

Copy to the:-

1. Director SKIMS Soura, Srinagar
2. Administrative Officer (Policy) SKIMS, Soura, Srinagar
3. FAA/Dy. Medical Superintendent/PIO SKIMS Soura Srinagar
4. Mr. Khurshid Ahmad Khan S/o Muhammad Khalil Khan R/o Watapora, Bandipora

( M. S. BHAT )  
Deputy Registrar,  
J&K State Information Commission, Sgr