

February 21, 2006

Proceedings of the Central Information Commission
Appellate Authority under Section 19 (3) of the
Right to Information Act, 2005.

Present:

1. Shri A.N. Tiwari, Information Commissioner
2. Smt. Padma Balasubramanian, Information Commissioner

This second appeal to the Commission filed by the appellant, Shri S.C. Sharma, arose from the order of the Appellate Authority in the Ministry of Home Affairs (Shri L.C. Goyal), upholding the orders of the PIO, Shri J.P.S. Verma, in the request for information filed by Shri S.C. Sharma. The appellant had asked for a copy of the order through which the Ministry of Home Affairs had authorized the CBI to intercept telephone calls under the Indian Telegraph Act, 1885.

2. Both the PIO and the Appellate Authority held that the requested information could not be supplied to Shri Sharma as it attracted the exemptions under Section 8(1)(a)(g) and (h) of the Right to Information Act, 2005. Heard arguments of the appellant, Shri S.C. Sharma, who was present in person, and Shri L.C. Goyal, appearing on his own behalf as appellate authority of the Ministry of Home Affairs under the RTI Act.

3. The Union Home Secretary is empowered under the Indian Telegraph Act, 1885 (Section 5(2)) to authorize specified intelligence and law enforcement agencies to intercept messages in the interest of sovereignty and integrity of India, security of the state etc.

4. The intelligence and law enforcement agency so authorized is required to obtain fresh orders of the Union Home Ministry in each case of proposed interception of messages for the purpose of surveillance.

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5. Quite clearly, the specific cases of interception and surveillance by the authorized agency has to be kept highly confidential because of the very nature of the surveillance operation. Its security implications are undisputed. As such all cases of this nature will be covered by the exemptions provided under Section 8(1)(a) of the RTI Act. But to say the same about the authorization of the Union Home Ministry to select intelligence and law enforcement agencies, investing them with general power of surveillance, won't be correct. It is difficult to see how a mere authorization to a law enforcement or security agency, such as the CBI to confer on it the powers to intercept messages could constitute a security risk to the State. The fact that the CBI and other security and law enforcement agencies are usually empowered to do such interceptions is well known. CBI even prosecutes the offenders in open Courts on the basis of intercepted messages. The proceedings of the Court are well publicized. It is, therefore, common knowledge that the CBI is vested with the authority by the Union Home Ministry either to intercept messages over a period of time or at a given time. To say that the matter which is already in common domain should be formally denied to a requester for information on grounds of state security will mean stretching the exemption under Section 8(1)(a) of the RTI Act a bit too far.

6. During personal hearing, Shri L.C. Goyal, appearing for the Home Ministry, argued that the authorization by the Union Home Ministry to the select security or law enforcement agencies to intercept messages and the actual interception of the messages were both parts of a common process. It would not be possible to separate the two and declassify one of these i.e. the authorization given by the Home Ministry to intercept message, while the other i.e. – actual interception of message by the authorized agency, remains Top Secret.

7. It is difficult to agree to this proposition. For the reasons which we have explained above while the second part of this process, decidedly qualifies to be classified as Top Secret, the same cannot be said about the first part of the authorization. If that part is also classified as top secret, it shall be a clear case of over-classification. It cannot be open to

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a governmental agency to wrongly classify its document as Secret or Top Secret and, then claim the privilege or the exemption provided under Section 8, especially Section 8(1)(a). In spite of our repeated queries, the representative of the Union Home Ministry could not explain as to what specific security concerns he have had in mind regarding disclosure of the authorization by MHA to a security agency to intercept messages.

8. We are, therefore, of the view that the information as requested by the appellant Shri S.C. Sharma viz. the authorization given by the Union Home Ministry to the CBI under Section 5 (2) of the Indian Telegraph Act should be made available to the appellant. The appeal is accordingly allowed.

(A. N. TIWARI)
INFORMATION COMMISSIONER

(PADMA BALASUBRAMANIAN)
INFORMATION COMMISSIONER

Authenticated true copy:

(P.K. Gera)
Registrar