

Review Article

Dental/ Medical Practice and Right to Information Act: Current Status

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ABSTRACT

The quest for information is one of the basic instincts in any civilised society. Secrecy is mostly doubted and apprehensions are raised that something wrong is being done, if it is not open. Attempts are being made worldwide to enact laws for bringing transparency in the functioning of the government. The first attempt to allow free access to information held in government custody in India came in the form of the Freedom of Information Act in 2002, while Right to Information (RTI) Act 2005¹ is a further refinement of this Act. In India, large proportion of health care services involving both dental and medical services are being provided in the public sector. Accordingly, as per the provisions of the RTI Act, they are under the ambit of RTI Act. Thus, the information existing in these public offices can be asked by any citizen of this country without specifying any reason. While providing information related to a patient, on one side there is issue of openness that comes up following the law of the land, while on other side there are apprehensions regarding the breach of trust that exists between the doctor and patient governed by code of dental/ medical ethics. What are the provisions in law and the available court judgments related on this aspect? The paper attempts to highlight this important aspect of dental/ medical profession in light of the law and related judgments.

Keywords: Right to Information, Dental Profession, Medical Profession, Judgements

INTRODUCTION

The quest for information is one of the basic instincts in any civilised society. Secrecy is mostly doubted and apprehensions are held that something wrong is being done if it is not open. Secrecy and lack of information also leads to corruption in public life. However, one of the most neglected rights in democracies throughout the world has been the Right to Information. Even though it is one of the most cherished human rights, most countries throughout the world, including India, have largely disregarded it. The Right to Freedom of Information is considered to be a customary international law, which is exemplified from its enshrinement in various international covenants and treaties, most notably the Universal Declaration of Human Rights, the International Covenant on Civil and Political Rights and the European Commission on Human Rights as well as its enumeration in numerous national constitutions.

In the last few decades, freedom of information has been recognised as an internationally protected human right, and societies across the world have been moving away from opaque and secretive administrative systems to open and transparent systems. In fact, About two centuries ago, in the year 1776, Sweden is supposed to have put in place the first set of laws for transparency in public affairs.. In addition, there is an exciting global trend towards recognition of the Right to Information by States, intergovernmental organisations, civil society and the people. There is a growing body of authoritative statements supporting the Right to Information, made in the context of official human rights mechanism, including the United Nations, the Commonwealth, the Organisation of American States and the Council of Europe. All this amounts to a clear international recognition of the Right to Information. Numerous laws giving effect to this right have, in the last few years, been enacted by nations in all regions of the world. Many intergovernmental

organisations and professional organisations now have in place information disclosure systems which are reviewed and updated on a regular basis ¹.

The first attempt to allow free access to information held in government custody in India came in the form of the Freedom of Information Act in 2002, while Right to Information (RTI) Act 2005 ² is a further refinement of this Act.

THE RIGHT TO INFORMATION ACT, 2005 (SALIENT FEATURES)

The Right to Information Act, 2005 was passed by the Indian Parliament on 12 May 2005, received the assent of the President on the 15th June 2005, and came into force on being published in the Gazette of India on the 21st June, 2005.

The act was made with the objective of:-

To provide for setting out the practical regime of right to information for citizens to secure access to information under the control of public authorities, in order to promote transparency and accountability in the working of every public authority, the constitution of a Central Information Commission and State Information Commissions and for matters connected therewith or incidental thereto.

WHEREAS the Constitution of India has established democratic Republic;

AND 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;

AND WHEREAS revelation of information in actual practice is likely to conflict with other public interests including efficient operations of the Governments, optimum use of limited fiscal resources and the preservation of confidentiality of sensitive information;

AND WHEREAS it is necessary to harmonise these conflicting interests while preserving the paramountcy of the democratic ideal;

NOW, THEREFORE, it is expedient to provide for furnishing certain information to citizens who desire to have it ².

The Act as notified contains VI chapters dealing with the following aspects:

Chapter I- Preliminary

Chapter II- Right to information and obligations of public authorities

Chapter III- The Central Information Commission

Chapter IV- The State Information Commission

Chapter V- Powers and functions of the Information Commissions, appeal and penalties

Chapter VI- Miscellaneous

The Act defines the term information under Section 2 (f) as:

“information” means any material in any form, including records, documents, memos, e-mails, opinions, advices, press releases, circulars, orders, logbooks, contracts, reports, papers, samples, models, data material held in any electronic form and information relating to any private body which can be accessed by a public authority under any other law for the time being in force;

In simple terms, ‘information’ is something that has to exist in one form or other. In order to get the information the law is usually utilised by its citizens. With lot of advertisement and publicity about the Act, it is becoming a popular means of getting information from the public authorities. A proper implementation of the RTI Act will be a major contribution in taking India towards a true participatory democracy and the *Swaraj* we deserve and desire.

Section 2 (j) of the act defines the meaning of ‘Right to Information’ and states:

“Right to information” means the right to information accessible under this Act which is held by or under the control of any public authority and includes the right to-

- Inspection of work, documents, records;
- Taking notes, extracts, or certified copies of documents or records;
- Taking certified samples of material;
- Obtaining information in the form of diskettes, floppies, tapes, video cassettes or in any other electronic mode or through printouts where such information is stored in a computer or in any other device;.

The salient features of the law are:

1. It extends to the whole of India except the state of Jammu and Kashmir.
2. It applies to all “public authority” meaning any authority or body or institution of self- government established or constituted—
 - (a) by or under the Constitution;
 - (b) by any other law made by Parliament;
 - (c) by any other law made by State Legislature;
 - (d) by notification issued or order made by the appropriate Government,and includes any—
 - (i) body owned, controlled or substantially financed;
 - (ii) non-Government organisation substantially financed, directly or indirectly by funds provided by the appropriate Government;
3. Under Section 4. (1) Every public authority shall—
 - a) Maintain all its records duly catalogued and indexed in a manner and the form which facilitates the right to information under this Act and ensure that all records that are appropriate to be computerised are, within a reasonable time and subject to availability of resources, computerised and connected through a network all over the country on different systems so that access to such records is facilitated;

- b) Publish within one hundred and twenty days from the enactment of this Act,—
 - (i) the particulars of its organisation, functions and duties;
 - (ii) the powers and duties of its officers and employees;
 - (iii) the procedure followed in the decision making process, including channels of supervision and accountability;
 - (iv) the norms set by it for the discharge of its functions;
 - (v) the rules, regulations, instructions, manuals and records, held by it or under its control or used by its employees for discharging its functions;
 - (vi) a statement of the categories of documents that are held by it or under its control;
 - (vii) the particulars of any arrangement that exist for consultation with, or representation by, the members of the public in relation to the formulation of its policy or implementation thereof;
 - (viii) a statement of the boards, councils, committees and other bodies consisting of two or more persons constituted as its part or for the purpose of its advice, and as to whether meetings of those boards, councils, committees and other bodies are open to the public, or the minutes of such meetings are accessible for public;
 - (ix) a directory of its officers and employees;
 - (x) the monthly remuneration received by each of its officers and employees, including the system of compensation as provided in its regulations;
 - (xi) the budget allocated to each of its agency, indicating the particulars of all plans, proposed expenditures and reports on disbursements made;
 - (xii) the manner of execution of subsidy programmes, including the amounts allocated and the details of beneficiaries of such programmes;
 - (xiii) particulars of recipients of concessions, permits or authorisations granted by it;

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- (xiv) details in respect of the information, available to or held by it, reduced in an electronic form;
- (xv) the particulars of facilities available to citizens for obtaining information, including the working hours of a library or reading room, if maintained for public use;
- (xvi) the names, designations and other particulars of the Public Information Officers;
- (xvii) such other information as may be prescribed; and thereafter update these publications every year;
- c) Publish all relevant facts while formulating important policies or announcing the decisions which affect public;
- d) Provide reasons for its administrative or quasi-judicial decisions to affected persons.
4. Exemptions under Sections 8 and 9 are:
- (1) Notwithstanding anything contained in this Act, there shall be no obligation to give any citizen,-
- a. information, disclosure of which would prejudicially affect the sovereignty and integrity of India, the security, strategic, scientific or economic interests of the State, relation with foreign State or which lead to the incitement of an offence;
- b. information which has been expressly forbidden to be published by any court of law or tribunal or the disclosure of which may constitute contempt of court;
- c. information, the disclosure of which would cause a breach of privilege of Parliament or the State Legislature;
- d. information including commercial confidence, trade secrets or intellectual property, the disclosure of which would harm the competitive position of a third party, unless the competent authority is satisfied that larger public interest warrants the disclosure of such information;
- e. information available to a person in his fiduciary relationship, unless the competent authority is satisfied that the larger public interest warrants the disclosure of such information;
- f. information received in confidence from foreign government;
- g. information, the disclosure of which would endanger the life or physical safety of any person or identify the source of information or assistance given in confidence for law enforcement or security purposes;
- h. information which would impede the process of investigation or apprehension or prosecution of offenders;
- i. cabinet papers including records of deliberations of the Council of Ministers, Secretaries and other officers.
- Provided that the decisions of Council of Ministers, the reasons thereof, and the material on the basis of which the decisions were taken shall be made public after the decision has been taken, and the matter is complete, or over:
- Provided further that those matters, which come under the exemptions specified in this section, shall not be disclosed;
- j. Information which relates to personal information the disclosure of which has no relationship to any public activity or interest, or which would cause unwarranted invasion of the privacy of the individual unless the Central Public Information Officer or the State Public Information Officer or the appellate authority, as the case may be, is satisfied that the larger public interest justifies the disclosure of such information:
- * Provided that the information, which cannot be denied to the Parliament or a State Legislature shall not be denied to any person.
- (2) Notwithstanding anything in the Official Secrets Act, 1923 nor any of the exemptions permissible in accordance with sub-section (1), a public authority may allow access to information, if public interest

in disclosure outweighs the harm to the protected interests.

- (3) Subject to the provisions of clauses (a), (c) and (i) of sub-section (1), any information relating to any occurrence, event or matter which has taken place, occurred or happened twenty years before the date on which any request is made under section 6 shall be provided to any person making a request under that section:

Provided that where any question arises as to the date from which the said period of twenty years has to be computed, the decision of the Central Government shall be final, subject to the usual appeals provided for in this Act.

- (4) Without prejudice to the provisions of section 8, a Central Public Information Officer or a State Public Information Officer, as the case may be, may reject a request for information where such a request for providing access would involve an infringement of copyright subsisting in a person other than the State.
5. A fee of Rs.10/- should accompany the application under the RTI Act.
6. The reply to the applicant should be made available within 30 days of receipt of application.
7. If the requisition concerns the 'life and liberty' of a person, talk to the appropriate person and provide the information immediately i.e. within 24 hours of receipt of application.
8. Under Section 20 (1) where the Central Information Commission or the State Information Commission, as the case may be, at the time of deciding any complaint or appeal is of the opinion that the Central Public Information Officer or the State Public Information Officer, as the case may be, has, without any reasonable cause, refused to receive an application for information or has not furnished information within the time specified under sub-section (1) of section 7 or malafidely denied the request for information or knowingly given incorrect, incomplete or misleading

information or destroyed information which was the subject of the request or obstructed in any manner in furnishing the 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.

DENTAL/MEDICAL PROFESSION AND RTI ACT

A law can only be as good as the society which uses it. RTI Act, meant for 'promoting transparency and accountability in the working of public authority' is most commonly used in our hospital for obtaining case sheets, wound certificates and postmortem reports by advocates to expedite settlement of their cases in MACT².

The medical profession is on the same pedestal as far as RTI act is concerned. If any information is sought which is not covered under the exemption clauses as aforesaid from any public authority, then he is supposed to comply with them. Though there are some grey areas that need debate and deliberations. If a third party applies for information about a particular patient's illness and other details that divulge the identity of the patient, it can be denied under Section 8 clause (e) Fiduciary relationship.

The traditional definition of a *fiduciary* is a person who occupies a position of *trust* in relation to someone else, therefore requiring him to act for the latter's benefit within the scope of that relationship. In business or law, we generally mean someone who has specific duties, such as those attend a particular profession or role, e.g. financial analyst or trustee. The information must be given by the holder of information when there is a choice- as when a litigant goes to a particular lawyer, or a patient goes to particular doctor. It is also necessary that the principal character of the relationship is the trust placed by the provider of information in the person to whom the information is given. An equally important characteristic for the relationship to qualify as a fiduciary relationship is that the provider of information gives the information for using it for the benefit of the giver. When a committee is formed to give a report, the information

provided by it in the report cannot be said to be given in a fiduciary relationship. All relationships usually have an element of trust, but all of them cannot be classified as fiduciary³.

However, there is a general tendency to provide the records of a patient under RTI application by majority of Public Information Officer (PIO), an official appointed under Section 5 (1) of the RTI act, to provide the patient related information. All regulatory and professional bodies like Medical Council of India (MCI)⁴, Dental Council of India (DCI)⁵, Indian Medical Association (IMA)⁶, Indian Dental Association (IDA)⁷ etc. all contain regulations/ guidelines dealing with patient's autonomy.

The Modern Code of ethics as adopted both by MCI and IMA say that:

“ I will respect the secrets which are confined in me. “

The Hippocratic Oath also states that:

“Whatsoever in the course of practice I see or hear (or even outside my practice in social intercourse) that ought never to be published abroad, I will not divulge, but will consider such things to be holy secrets.”

IDA Code of Professional Conduct says that:

“Dentists are obliged to safeguard the confidentiality of patient records.”

Confidentiality of the records should be maintained unless requested to by the court or the law enforcement agencies. So, there is no provision at present in the code of professional conduct to provide the patient related information to any other person other than the patient himself or requested by the court or law enforcing agencies.

Dentist (Code of Ethics) Regulations, 1976⁸, Under Form of Declaration Point (v) states-

“I shall honour the secrets which are confided in me by my patients during the professional services”. Thereby meaning the secrets told by the patients should not be divulged. If a dentist does that he violates the code of ethics.

Various Courts/ Information Commission Judgments

The Delhi High Court on 12th January, 2010 ruled that income tax returns and medical records do not fall under the purview of Right To Information (RTI) Act “unless public interest is attached” holding in its landmark judgment that the Chief Justice of India (CJI) came under the ambit of the transparent law. Quoting an American writer that “one man's freedom of information is another man's invasion of privacy”, a full bench constituting of Chief Justice Ajit Prakash Shah and Justices S Muralidhar and Vikramjit Sen said: “Personal information including tax returns, medical records etc. cannot be disclosed in view of Section 8(1)(j) of the act.”

“If, however, the applicant can show sufficient public interest in disclosure, the bar (preventing disclosure) is lifted and after duly notifying the third party (the individual concerned with the information or whose records are sought) and after considering his views, the authority can disclose it,” they said⁹.

Another court judgment from the Mumbai High Court on 23rd March, 2007 gave the ruling that the medical records of convicts or persons facing trial who are admitted to government-funded hospitals can be disclosed under the Right to Information Act, irrespective of what regulations under the Indian Medical Council Act say. A division bench of Justices F I Rebello and R M Sawant gave this ruling while dealing with former Maharashtra Forest Minister Surupsingh Naik's petition reported at AIR 2007 Bom. (Surup Singh Hrya Naik V. State of Maharashtra)¹⁰, the Bombay High Court has expressed the procedural safeguards being required to be met before divulging third party information and on the effect of the proviso appearing in Section 8(1) of the RTI Act, 2005. The question that is required to be necessary is the right of an individual, to keep certain matters confidential on the one hand and the right of the public to be informed on the other, considering the provisions of the RTI Act, 2005. (LINES REPEATED). For example, does a person convicted for contempt of court, during the period of his incarceration can claim privilege or confidentiality in respect of his medical records

maintained by a public authority? The contention in this regard is that keeping the larger public interest in mind should this information be disclosed, as persons in high office or high position, in order to avoid serving their remand in jail / prison or orders of detention or remand to police custody or judicial remand with the connivance of officials get themselves admitted into hospitals. The public, therefore, has a right to know as to whether such a person was genuinely admitted or made a fake attempt to avoid punishment / custody and thus defeat judicial orders. The public right in such a case must prevail over the private interest of such third person as the objectives of the Right to Information Act is to make the public authorities accountable and their actions open. The contention that the information could be misused is of no consequence, as the Parliament wherever it has chosen to deny such information has so specifically provided. The question then is what is the true import of the proviso, which sets out that the information, which cannot be denied to Parliament or a State Legislature shall not be denied to any other person. Are the medical records of a patient maintained in a public hospital covered by the provisions of the Act? Can this information be withheld from the Parliament or the State Legislature on the ground that such information is confidential. Generally, such information cannot be denied to Parliament or the State Legislature unless the person who opposes the release of information makes out a case that such information is not available to Parliament or State legislature under the Act. By its very Constitution and the plenary powers which the Legislature enjoys, such information cannot be denied to the Parliament or State Legislature by any public authority and, therefore, the public authorities shall be under obligation to make all such information readily available for their disclosure to a citizen on demand under the Act.

The Central Information Commission (CIC) also recently denied a man access to information about his fiancée's health and the treatment she had undergone at a psychiatric centre, claiming that a patient-doctor relationship was based on trust, which could not be breached. Dipchand Chavanriya, a resident of Ghaziabad, had filed a Right to Information (RTI) petition seeking

access to the medical records of his fiancée, Jyoti, from the Institute of Human Behaviour and Allied Science in Shahdara..

The CIC, the apex transparency panel in the country, however, denied the information to Chavanriya claiming that the RTI cannot act as a "detective" to unearth the medical history of a person.

Chavanriya had stated in his application on January 2009 that Jyoti's medical problem and treatment at the psychiatric centre would affect his "personal life" and therefore it was essential that he should be provided that information. Six questions were raised to the Public Information Officer (PIO) out of which certain questions related to the treatment, the "physical problem", length of the treatment and the last date of medical consultation at the hospital.

The PIO, however, claimed exemption citing "fiduciary" (bond of trust) relationship between the doctor and the patient, following which he appealed to the CIC.

Consequently, the Commission dismissed Chavanriya's appeal on the ground that "it is undeniable that the relationship between a patient and a doctor is a fiduciary relationship hence the exemption appears to have been applied correctly".

"A person cannot use RTI to breach the bond of trust between the physician and patient for his own personal need. But we (CIC) would consider if the information seeker has applied in public good, for example, if he suspects if the other person has a communicable disease, which will harm the public at large".

"The relationship between a confessor-confessee, lawyer-client, doctor-patient, chartered accountant-client is fiduciary (bond of trust) and exempted from disclosure under the RTI Act. It is information given by persons placed in an inferior position to another in a superior position, the latter thus has a duty to keep the information confidential".

Hearing the case, Information Commissioner observed, "the appellants claim the information is important since it affects his personal life. He does not dispute the claim

of fiduciary relationship but feels that since it is important for him personally the information should be provided.⁴¹

Bio Data and Medical Records Under

Section 8 (1)(j)

One Bhagwan Chand Saxena asked for copies of the bio data submitted by four Candidates at the time of their appointment as Assistant Directors and also copies of their medical reports submitted by the medical authorities declaring these candidates as fit or unfit. The CIC held that when a candidate submits his application for appointment to a post in a public authority, the same becomes a public document and he cannot object to the disclosure on the ground of invasion of privacy and directed the PIO to provide copies of the bio data. As far as medical reports are concerned, they are purely personal to the individuals and furnishing the copies of medical reports would amount to invasion of privacy of the individuals and need not be furnished. However, the PIO will disclose to the requester the information whether all the four candidates had been declared medically fit or not.

ICPB/A-9/CIC/2006 - 3 April 2006

Appeal No.2006/406A/02 (Convict's right to privacy)

The honourable High Court had given verdict in favour of supremacy of the RTI Act over regulations framed under the Indian Medical Council Act. In this reference, the honourable High Court has given its verdict. In paragraph 17 of their judgment which is quoted as follows:

“The law as discussed may now be set out. The confidentiality required to be maintained,

regarding the medical records of a patient including a convict considering that the Regulations framed by the Medical Council of India cannot override the provisions of the Right to Information Act. If there be any inconsistency between the Regulations and the Right to Information Act, the provisions of the Act would prevail over the Regulations and the information will have to be made available in terms of the Act.

The Act, however, carves out some exceptions, including the release of personal information, the disclosure of which has no relationship to any public activity or interest

or which would cause unwarranted invasion of the right to privacy. In such cases discretion has been conferred on the concerned PIO to make available the information, if

satisfied that the larger public interest justifies the disclosure. This discretion must be exercised, bearing in mind the facts of each case and the larger public interest.

Normally if a person sentenced or convicted or remanded to police or judicial custody, is admitted to a hospital / nursing home, his medical records should be made available to the person asking for the information provided such hospital / nursing home is maintained by the State or Public Authority or any other Public Body. It (remove space)

is only under rare and exceptional cases and for good and valid reasons recorded in

writing, can the information be denied.

In those cases where the information sought cannot be denied to either Parliament or State Legislature, as the case may be, then the information cannot be denied unless the third person satisfies the authority that Parliament/Legislature is not entitled to the information. There is no discretion in such cases to be exercised by the concerned Information Officer. The information has to be either granted or rejected, as the case may be.

Every public authority, whose expenditure is met partly or wholly from the funds voted

by the Parliament/Legislature or Government funds that are availed off is accountable to Parliament/Legislature, as they have an interest to know that the funds are spent on the object for which they are released and the employees confirm to the Rules. The conduct of the employees of such an organisation subject to their statutory rights can also be taken into account. If patients are to be admitted in hospital for treatment then those employees in the hospital are duty bound to admit only

those who are eligible for admission and medical treatment.

The records of such an institution, therefore, ought to be available to Parliament or the State Legislature. The Parliament/Legislature and/or its Committees are entitled to such records even if they are confidential or personal records of a patient. Once a patient admits himself to a hospital the records must be made available to the Parliament/Legislature provided there is no legal bar. We find no legal bar, except the provisions of the regulations framed under the Indian Medical Council Act. Those provisions, however, would be inconsistent with the proviso to Section 8(1)(j) of the Right to Information Act.

The Right to Information Act would, therefore, prevail over the said regulations. In one of its earlier decisions, the Commission had directed PIO to disclose information (about hospitalisation of a convict) mainly on the following counts:

- 1) Since there is a feeling in the minds of people that highly placed people and people with money power can spend their jail term not in the prison but in the hospital, public interest will be better served if this information about hospitalisation is disclosed even though this information is of a 3rd person and personal in nature;
- 2) As per the proviso to section 8(1) (j) of the Act, "Information which cannot be denied to the Parliament or a State Legislature shall not be denied to any person". The information about hospitalisation, medication and discharge report of a patient in the Government hospital, if required by the Legislature cannot be denied to them.

Appeal No.2010/4337/02

In another appeal to the CIC an applicant sought information on the following points:

1. According to medical records available with you Smt. Lakhani has ever done abortion. If yes, when and where?
2. During her pregnancy had she ever reported any pain or trouble? Was she admitted by her colleagues

as stated by Smt. Kiran in her petition that too with severe pain?

3. Xerox, certified copies of all medical records. The CIC opined that, "We cannot agree that information regarding a possible abortion has any relationship to any public activity or interest. The denial of the information regarding abortion therefore, is justified, both u/s 8 (1) (j), since disclosure would amount to invasion of privacy, and 8(1) (e) since it would directly transgress the fiduciary relationship between doctor and patient. This issue is therefore, disposed of accordingly".

Appeal No.CIC/WB/A/2006/00378 dated 27-6-2006

Decision No. CIC/SG/A/2009/001425/4169

Mr.Ram Kumar Gupta V/S Public Information Officer, Municipal Corporation of Delhi

Hindu Rao Hospital, Delhi.

Information sought:

- (i) The certified copy of MLC (ii) Certified copy of Post Mortem Report

Reply of PIO

"The information cannot be disclosed to you as per directions of SHO, Roop Nagar."

Grounds for First Appeal:

Refusal to provide any information from the PIO.

Order of the First Appellate Authority:

The First Appellate Authority ordered "Since the case is at the investigation stage and being third party information, required information cannot be provided."

Grounds for Second Appeal

- (i) No information provided by the PIO
- (ii) Post Mortem report is a public document.

Relevant Facts emerging during Hearing:

The Appellant is seeking a certified copy of MLC and Post Mortem report of Smt. Chameli Devi who has expired on 31/05/2008. It is evident from the reply of the

FAA that some police investigation is being conducted in the matter. The Appellant does not claim any relationship with Smt. Chameli Devi. The PIO states that the case is under investigation and the son of late Smt. Chameli Devi has also stated that he would not like the information to be disclosed. The Police has also stated that this information should not be divulged. Taking into account the total facts of the case and particularly the objections of Smt. Chameli Devi's son the Commission ruled that Section 8(1)(j) can be invoked to deny the information since the Medical Record of the deceased are certainly personal information, the disclosure of which could be considered an invasion of the privacy. The Appellant had made no case to establish any larger public interest.

Decision:

The appeal is dismissed.

The information sought by the Appellant is covered under the Exemption of Section 8(1)(j).

This decision is announced in open chamber.

Notice of this decision be given free of cost to the parties.

Any information in compliance with this order will be provided free of cost as per Section 7(6) of the RTI Act.

Shailesh Gandhi

Information Commissioner

17 July 2009)

Decision No.CIC/AD/A/2009/001196

MR. RAJ KUMAR V/S M/O HEALTH & FAMILY WELFARE

The Applicant filed an RTI application dated 02.04.09 with the CPIO/ Safdarjung Hospital, New Delhi, requesting for the Medico Legal Reports prepared in the month of February 2000 about patients brought to the hospital by the police in criminal cases, in a given format. The CPIO replied on 11.04.09 stating that information is exempted from disclosure as belonging to a third party

and also since it is held in a fiduciary relation with the patient. Being aggrieved by the order of the CPIO, the Applicant filed his first appeal before the Appellate Authority on 17.04.09. The First Appellate Authority replied on 12.05.09, providing the names of the patients and directing the CPIO to provide the information to the Appellant after getting the no objection certificates from the patients.

Decision

The Respondent submitted that the Medico Legal Report of a patient is third party information and accordingly on 14.5.09 submissions were invited from the 8 patients against the given MLC nos. whether to disclose the information sought by the Appellant or not. While giving the patient 10 days time to get back by the CPIO with their responses. The patient against MLC No.13589 responded on 23.5.09 denying disclosure of information since it is personal. The remaining 7 have not responded till date.

The Respondent informed the Commission that submissions were invited under Section 11(1) from the eight patients regarding disclosure of information since it was third party information as the Appellant had sought details/nature of injuries afflicted on the person, and that one of the patients had replied strongly objecting to the disclosure. The Respondent produced the communication in this regard before the Commission. The Appellant submitted that MLCs are prepared by the Hospital as a State function for record of injuries inflicted on a body of a person during an assault or an accident and are used by the State/Police/Prosecution in legal proceedings for fixing the quantum of punishment and criminal liability by the Court of Law. The Commission observed in this connection, as averred also by the Appellant, that MLCs are indeed legal requirements in criminal cases and that they are not prepared at the instance of the patient but to record injuries inflicted on a person, to be used by Courts in criminal proceedings and hence are not held in fiduciary relation with the patient and that refusal of information under Section 8(1)(e) is unsustainable. However, in view of the nature of information being sought and considering the same as third party information, and in view of the strong objection expressed

by one of the patients to the submissions invited from all eight patients under Section 11(1) by the CPIO regarding disclosure of information to the Appellant, the Commission directs the CPIO to provide the information in the given format, to the Appellant in respect to the remaining 7 patients who have responded to the CPIO's letter. The appeal is accordingly disposed off.

(Annapurna Dixit)

Information Commissioner

1.10.2009

File No: **CIC/AD/A/2011/001703**

ORDER

Background

1. The Applicant filed an RTI Application dated 27.04.10 with the PIO, DRM Office, Southern Railway, Palakkad seeking medical records related to the mental health of one Shri M. Thennarasan for the period 1994 to 2000. The PIO(Medical) replied on 07.05.10 stating that information sought regarding medical treatment particulars/medical records are personal in nature and belonging to a third party and hence cannot be revealed. In response to the first appeal (**Copy not in file**), Shri Sita Ram Sinku, Appellate Authority replied on 27.05.10 stating that the third party has been advised to give his consent for providing the personal information vide letter dated 21.05.10 and that Applicant will be advised further on receipt of the reply from the third party. Being aggrieved with the reply, the Applicant filed a second appeal dated 02.06.10 before CIC stating that she is the legally wedded wife of the third party and that third party's mental state is not under his control and that she is the competent person to get information regarding the medical treatment taken from the Southern Railway Medical Branch.

Decision

2. During the hearing, the Respondents submitted that as per the code of Medical Ethics, medical records can only be provided to the patient or to his authorised

attendant or to the legal authorities. In this case since the patient is not capable of receiving the records or has not authorised any other person to receive them on his behalf. They however admitted that the records can be given to a person who has obtained the permission from a court of law to receive such documents.

3. The Commission after hearing the Respondents plea finds no reason to interfere with the decision of the Appellate Authority and to reject the appeal.

4. The case is accordingly closed at the Commission's end.

(Annapurna Dixit)

Information Commissioner

07-09-2011

Normally, the medical report of a person suffering from AIDS is not supposed to be disclosed. But, the Supreme Court has held that if a prospective spouse has an apprehension that the other prospective spouse is suffering from AIDS, the former has a right to seek information about the latter's disease from the hospital which includes blood reports of the latter. This right is part of the right to life and, therefore, guaranteed under Article 21 of the Constitution. Since the "right to life" includes right to lead a healthy life as to enjoy all the faculties of the human body in their prime condition, the disclosure that the prospective spouse is a HIV (+) cannot be said to have in any way either violated the rule of confidentiality or the right to privacy. Moreover, where there is a clash of two fundamental rights, namely the right to privacy which is part of the right to life and the right to live a healthy life which is a fundamental right guaranteed under Article 21 of the Constitution of India, the right which would advance the public morality or public interest would alone be enforced for the reason that moral considerations cannot be kept at bay and the persons deciding the issues shall have to be sensitive in disclosure of such issues¹².

CONCLUSION

The confidentiality required to be maintained regarding the medical records of a patient considering the Regulations framed by the various regulating bodies such as the Dental Council of India and Medical Council of India. However they cannot override the provisions of the Right to Information Act. If any inconsistency comes up between the Regulations and the Right to Information Act, the provisions of the Act would prevail over the Regulations and the information will have to be made available in terms of the Act.

The Act, however, carves out some exceptions, including the release of personal information, the disclosure of which has no relationship to any public activity or interest

or which would cause unwarranted invasion of the right to privacy. In such cases discretion has been conferred on the concerned PIO to make available the information, if satisfied that the larger public interest justifies the disclosure. This discretion must be exercised, bearing in mind the facts of each case and the larger public interest.

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