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CENTRAL INFORMATION COMMISSION  
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Baba Gangnath Marg  
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Munirka, New Delhi-110067

File no.: CIC/DEOIT/C/2020/685084

In the matter of:

Saurav Das

... Complainant

VS

1. Central Public Information Officer,  
National E-Governance Division (NEGD),  
Ministry of Electronics and Information Technology,  
Department of Electronics and Information Technology,  
Electronics Niketan, 6, CGO Complex, Lodhi Road,  
New Delhi- 110003

&

2. Central Public Information Officer,  
Ministry of Electronics and Information Technology,  
Electronics Niketan, 6, CGO Complex, Lodhi Road,  
New Delhi- 110 003

... Respondents

RTI application filed on	:	01/08/2020
CPIO replied on	:	07/08/2020
First appeal filed on	:	Not on record
First Appellate Authority order	:	Not on record
Complaint dated	:	10/09/2020
Date of Hearing	:	22/10/2020
Date of Decision	:	26/10/2020

The following were present:

Complainant: Present over VC

Respondent: Shri S.K Tyagi, Deputy Director and CPIO, Shri D K Sagar, Deputy Director Electronics and Shri R A Dhawan, Senior General Manager (HR & Admn) and CPIO NeGD

Information Sought:

The complainant has sought the following information:

1. Provide the certified true copy of the entire file related to the creation of the Aarogya Setu app including a) origin of proposal, b) approval details, c) companies, d) people, govt. departments involved, e) file notings related to the app, f) comments on files by various officers, g) copies of communications between private people involved in making/developing the app and government departments concerned, etc. h) copies of request for collaboration with people from industry who have helped in making this app i) all communications received from all contributors/advisers of this app who have helped make this app. The responses be also provided. j) Internal notes, memos, file notings, correspondences while making this app and finalising it. k) Minutes of the meetings held while creating this app. l) Notings/documents related to any meetings between the Government and private contributors to this app. m) Details of meetings/inputs received from any other government agency on this app.
2. Provide the details of the law/legislation under which the app was created and is being handled.
3. Whether the Government of India has any proposal to bring in a law separately for this App and its handling.
4. And other related information.

Grounds for Complaint

The CPIO, NEGD and Ministry of Electronics & Information Technology did not provide any information.

Submissions made by Complainant and Respondent during Hearing:

The complainant requested to hold a hearing on an urgent basis due to the immense public interest in the matter and need for immediate public scrutiny. He also had pointed out that any failure by the public authorities to perform their duties as outlined in the Protocol, 2020 and its failure to inform the usage of people's personal and user data will have a severe and irreversible detrimental effect on people's right to privacy and therefore their fundamental right to life and liberty. He also submitted that the Aarogya Setu App will be rendered useless once the pandemic is over. In such a situation, if the normal time period of waiting is followed, it would take almost 2 years for the first hearing to come up before this Commission. He further submitted that this would lead to the matter becoming infructuous and of no use. Therefore, there is an urgent need to act and hear this matter urgently and on priority basis.

The Commission accepting the matter as related to right to privacy which is an essence of right to life and liberty deemed it fit to provide an opportunity of early hearing to the complainant and accordingly the hearing was fixed on priority basis.

The complainant in his complaint to the Commission mentioned that there was no reply given by the CPIO, National E-Governance Division, MeitY and CPIO, MeitY.

He further submitted that he filed this RTI application seeking to get information about the process of creation of Aarogya Setu App and other information relating to its creation. He further clarified that the present RTI also contains a few points which were also asked to the NIC vide RTI with reg. no. NICHQ/R/E/20/00283 dt. 01/08/2020. It was noted by the Commission that the referred RTI was adjudicated by the Commission in case no. CIC/NICHQ/C/2020/685079 on 22.10.2020.

The complainant further submitted that the information was anyway not provided by the NIC in that case since it stated that it “does not hold the information” relating to the App’s creation, which is very surprising since it is the App’s developer. Now MeitY also has not provided any information relating to the App’s creation and other matters.

He strongly pleaded that in effect, no one has any information on how this App was created, the files relating to its creation, who has given inputs for this App’s creation, what audit measures exists to check for misuse of the personal data of millions of Indians, whether any anonymisation protocols for user data have been developed and about who this data is being shared with. This is despite the fact that any omissions and commissions by these public authorities and any failure to perform their duties as outlined and mandated under the Protocol, 2020, could essentially lead to security compromise of millions of Indians’ personal and user data. This would be a grave breach of fundamental right to privacy on a massive scale and threaten people’s constitutionally guaranteed right to life and liberty.

He further argued that there seems to be a pattern among these public authorities to wilfully withhold information from any applicant asking for this information as no public authority has any details about any of the questions as asked which to him seems out-rightly false, malafide and done with an effort to frustrate and harass the applicant to give up.

He further requested that a senior level officer of the Ministry of Electronics and Information Technology be recognised as the deemed CPIO by this Commission in this matter and he/she be directed to furnish all the information in detail to the Complainant after collecting them from all relevant CPIOs.

He further submitted that due to the many credible media reports questioning the Aarogya Setu App and its making and handling, it is of utmost importance to bring transparency in the making and current handling of this App, which collects vast amounts of user and personal data of individuals. If the right to privacy is breached due to inept handling of people's personal and user data, it will be a breach to one's right to life and liberty. The information as asked for would fall under the category of threat to life and liberty of millions of Indians and if the urgent hearing is not provided, the matter will become infructuous and it is the mandate of the Commission to prioritise matters pertaining to one's, but in this case, millions of Indians' liberty on priority. This will be in larger public interest involved in the matter.

He also pressed for action against the CPIO, National E-Governance Division, MeitY under section 20(1) and 20(2) of the RTI Act for wilfully and repeatedly refusing to act in conformity with the RTI Act despite sending repeated reminders requesting them to furnish the information.

He further requested to convert this Complaint to a Second Appeal as the matter could not have waited if the first appeal route was followed and the Complainant had no faith in approaching the FAA of the public authorities.

Shri D K Sagar Deputy Director and CPIO, Department of Electronics submitted that a timely reply was given to the applicant on 07.08.2020 informing him that the RTI application has been transferred to the PIO, NeGD u/s 6(3) of the RTI Act. Shri R A Dhawan, Senior General Manager (HR & Admn) and CPIO NeGD submitted a copy of the reply dated 02.10.2020 in which he stated that the information sought in the RTI does not relate to NeGD. Accordingly, NeGD do not have any information on the above. He could not explain why it took him almost two months to provide a reply and that too informing that the information sought is not related to NeGD. Shri S.K Tyagi, Deputy Director and CPIO, MeitY was also present during the hearing and hence he was asked as to from where the information relating to the creation of Arogya Setu app can be

accessed. He also could not give a plausible explanation except that the creation of the same involves inputs from NITI Ayog. He further could not explain as to how it is possible that the App was created and the Ministry of Electronics and Information Technology has no clue about its origin. The Commission took note of the fact that on the same day two more complaints were also decided and the CPIO, from NIC was present in those cases but the CPIO NIC had also transferred those RTIs to different public authorities to obtain information of similar nature. Apparently, the CPIO, MeitY and all concerned CPIOs present during the hearing have provided a very evasive kind of reply as well as submissions and not even attempted to trace the holder of the information in this case. Moreover, the applicant has rightly pointed out that the App is being used by masses at large and can have wide reaching effects and breach of privacy cannot be ruled out completely. This Commission would not get into the right to privacy aspects as the technical details of the App and the regulatory mechanism has not yet been examined by any competent Court of Law.

Observations:

After hearing the averments of all the concerned parties and also the CPIO NIC who was present in this case on the basis of oral direction by the Commission, the denial of information by all the concerned authorities cannot be accepted at all.

It is relevant to mention here that Sec 6(3) of the RTI Act cannot be used by public authorities to push off the matter.

Taking note of the decision in case no. 685079 of the same complainant decided on 22.10.2020, the present complaint cannot be converted into an appeal. However, the complainant's plea that the CPIO, National E-Governance Division, MEITY should be penalised under section 20(1) and 20(2) of the RTI Act for wilfully and repeatedly refusing to act in conformity with the RTI Act despite sending repeated reminders requesting them to furnish the information seems correct in the absence of a reasoned and justifiable reply from the CPIOs concerned.

The reply dated 07.08.2020 given by the Department of Electronics & Information Technology was perused and the same read as follows:

*"The online RTI request has been transferred to PIO, NeGD under section 6(3) of the RTI Act. Hence, the said online RTI request is disposed off from the portal."*

Shri R A Dhwan's submission that information sought is not related to NeGD and Shri Tyagi's and Shri Sagar's submissions that the RTI application was transferred to NeGD shows that ultimately the steps taken till today failed to locate the source from where information can be accessed. The Commission observes that it is a current issue and it is not possible that there was no file movement while creating this App, a citizen cannot go round in circles to find out the custodian.

The CPIO, NIC's submissions that the entire file related to creation of the App is not with NIC is understandable, but the same submissions if accepted from MeITY, NeGD and NIC in toto, then it becomes more relevant to now find out how an App was created and there is no information with any of the relevant public authorities.

The Commission observed that none of the CPIOs provided any information. Therefore, the Commission directs the CPIO, NIC to explain this matter in writing as to how the website <https://aarogyasetu.gov.in/> was created with the domain name gov.in, if they do not have any information about it. Moreover, the registry is directed to send an e-mail to the e-mail id-support.aarogyasetu.gov.in as mentioned in the website directing them to send the concerned authority to be present before the Commission on the next date of hearing.

Furthermore, as per the website <https://aarogyasetu.gov.in/> it is mentioned that the content is owned, updated and maintained by the MyGov, MeitY. Therefore, Shri Tyagi is directed to explain in writing who is the concerned CPIO to explain regarding MyGov, MeitY maintaining the app. The CPIO NIC also should explain that when in the website it is mentioned that Aarogya Setu Platform is designed, developed and hosted by National Informatics Centre, Ministry of Electronics & Information Technology, Government of India, then how is it that they do not have any information about creation of the App.

None of the CPIOs were able to explain anything regarding who created the App, where are the files, and the same is extremely preposterous.

It is relevant to quote the Hon'ble Supreme Court decision in *Namit Sharma v. Union of India* 2012 (8) SCALE 593 in which it was held that the purpose and object for the enactment of the RTI Act was to make the government more transparent and accountable to the public and to ensure access to information to every citizen from the public authorities.

Further, the Hon'ble Supreme Court in ICAI v. Shaunak H Satya & Ors SLP (C) No.2040/2011 further held that the right to information regarding the functioning of public authorities is a fundamental right as envisaged under Article 19 of the Constitution of India. Further, it was pointed out that the very preamble of the RTI Act, 2005, substantiates the fact that the Act, does not create any new right but only provides machinery to effectuate the fundamental right to information. Furthermore, the Information Commissions are the implementing agencies/machinery. The right to access to information has only exemptions provided in Section 8 of the RTI Act. The Government of the people means the information should be open to public for informed citizenry.

Keeping in view the above ratio, the Commission took cognizance of the present complaint u/s 18(f) of the RTI Act and as per the mandate under that provision is of the view that it is necessary to identify the source/ custodian of information in respect of the complainant's request for obtaining access to records under this Act. The addressees cannot simply wash their hands off by stating that the information is not available with them. Some effort should have been put in to find out the custodian(s) of the information sought, by the concerned public authorities when apparently they are the relevant parties.

Interim Decision:

In view of the above observations, the Commission is constrained to issue a show cause notice to the concerned CPIOs

1. Shri S.K Tyagi, Deputy Director and CPIO,
2. Shri D K Sagar, Deputy Director Electronics
3. Shri R A Dhawan, Senior General Manager (HR & Admn) and CPIO NeGD
4. Shri Swarup Dutta, Scientist F and CPIO NIC

to explain why penalty u/s 20 of the RTI Act should not be imposed on them for prima facie obstruction of information and providing an evasive reply.

The CPIO, NIC to shall also submit written submissions detailing their role in creation of the website <https://aarogyasetu.gov.in/> with the domain name gov.in. The CPIO, NeGD shall also explain the delay of about 2 months in replying to the RTI application.

The Commission directs the above-mentioned CPIOs to appear before the bench on 24.11.2020 at 01.15 pm to show cause as to why action should not be initiated against them under Section 20 of the RTI Act. The CPIOs are also directed to send a copy of all supporting documents upon which they choose to rely upon during the hearing. The said documents be sent to the

Commission atleast 5 days prior to the hearing via linkpaper. If any other persons are responsible for the said omission, the CPIO shall serve a copy of this order on such persons to direct their presence before the bench as well.

The Registry shall endorse a copy of this interim order to the Secretary MeitY, CEO MyGOV and Director General NIC for information and necessary action.

The case is adjourned accordingly

Vanaja N. Sarna (□□□□ □□ .  
□□□□)

Information Commissioner  
(□□□□□□□□)

Authenticated true copy

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A.K. Assija (□ . □□ . □□□□□□)

Dy. Registrar (□□-□□□□□□)

011- 26182594 /

□□□□□□/ Date

Copy to:

Office of CEO, MyGov

3rd Floor, Room no-3015

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