

Analytical review

Fiduciary Information under sec 8 (1) (e) of RTI Act:

Understanding the true scope of the exclusion clause

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Legal Updates

The RTI Act is one of the rare legislations that empower the citizens and bind the bureaucracy. Rest of the laws does exactly the opposite. However benign might have been the purpose of the RTI Act, its actual operation continues to be bogged by the burden of bureaucracy. At the first blush, a PIO hides behind one or the other of the exclusions given under section 8 and declines to provide the information under some pretext. The information seeker has the right to file an appeal, but how many persons have the time, patience and resources to go for appeals?

Section 8 of the RTI Act enlists some special instances when the authorities are exempted from disclosing information sought for. This includes information that would be prejudicial to national integrity, security or economic interests; would constitute contempt of court of law; would hamper police investigations; would affect commercial interests like trade secrets; would impede the process of investigation; would affect 'fiduciary' relationships; would harm the person physically.

One of the common exceptions relied upon by the authorities is that the information being sought is with the regulatory agency in "fiduciary relationship" [Sec 8 (1) (e)]. This article explains the meaning of information in fiduciary capacity in sec. 8 (1) (e) and how, in most cases, the information held by a regulator cannot be said to be information held in fiduciary capacity.

The plea of fiduciary relationship, advanced by several regulatory bodies has not impressed us. Fiduciary relationship is not to be equated with privacy and confidentiality. It is one where a party stands in a relationship of trust to another party and is generally obliged to protect the interest of the other party. While entrusting any information under any Act, rule, proceedings etc. that is no agreement between the provider of the information and the regulatory authority that the information provided is to be kept immune from the scrutiny of the public authority. It is to be kept in mind that RTI is premised on disclosure being the norm, and refusal being the exception.

MEANING OF 'FIDUCIARY'

The word "fiduciary" has been defined in **Black's Law Dictionary** as follows: which reads thus:

Fiduciary- The term is derived from the Roman law and means-

As a noun-a person holding the character of a trustee, or a character analogous to that of a trustee, in respect to the trust and confidence

Legal Updates

involved in it and the scruples good faith and candor which it requires or a person having duty created, by his undertaking, to act primarily for another's benefit in matters connected with such undertaking.

It is evident from the above that a fiduciary is a trustee. In context of information, if the information was reposed with a person for safe keeping, or a person came to be vested with confidential information, and there is a question of good faith between the information provider or concerned entity, and the person having the information, it can be said that there is a relation of trusteeship.

The Advanced Law Lexicon, 3rd Edition, 2005, defines fiduciary relationship as:

"a relationship in which one person is under a duty to act for the benefit of the other on the matters within the scope of the relationship. Fiduciary relationship usually arises in one of the four situations:

- (1) when one person places trust in the faithful integrity of another, who as a result gains superiority or influence over the first,
- (2) when one person assumes control and responsibility over another,
- (3) when one person has a duty to act or give advice to another on matters falling within the scope of the relationship, or
- (4) when there is specific relationship that has traditionally been recognized as involving fiduciary duties, as with a lawyer and a client, or a stockbroker and a customer "

CASE LAW

The scope of the exemption in sub-section 8(1) (e) of the RTI Act was discussed by the Supreme Court in *CPIO, Supreme Court of India, New Delhi v. Subhash Chandra Agarwal and another* (Writ Petition No. 288/200) decided on 2nd September, 2009. The Apex court held that the purpose of the exemption is to permit screening and preservation of confidential and sensitive information made available due to fiduciary relationship.

THE WORD 'FIDUCIARY' AS DESCRIBED UNDER VARIOUS JUDGMENTS

In *Bristol & West Building Society v. Mothew* [1998] Ch 1, the term fiduciary, was described as under:

Legal Updates

"A fiduciary is someone who has undertaken to act for and on behalf of another in a particular matter in circumstances which give rise to a relationship of trust and confidence."

It is to be therefore noted that a fiduciary relationship is build up when one acts for another's benefit. However, a public authority such as SEBI cannot be acting primarily for benefit connected with such undertaking but for the benefit of the entire public, i.e. in the public interest.

In *Woolf vs. Superior Court* (2003) 107, the California Court of Appeals defined fiduciary relationship as-

"Any relationship existing between the parties to the transaction where one of the parties is duty bound to act with utmost good faith for the benefit of the other party. Such a relationship ordinarily arises where confidence is reposed by one person in the integrity of another, and in such a relation the party in whom the confidence is reposed, if he voluntarily accepts or assumes to accept the confidence, can take no advantage from his acts relating to the interests of the other party without the latter's knowledge and consent".

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 that attend a particular professional 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. All relationships usually have an element of trust, but all of them cannot be classified as fiduciary.

WHEN IS INFORMATION CONSIDERED TO BE AVAILABLE IN FIDUCIARY RELATIONSHIP?

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Only that information can be considered as "available to a person in his fiduciary relationship", which is available to a person in an explicit relationship of trust (typically that of a lawyer, medical practitioner or financial advisor), where the trustee has been given access to the information on the mutual understanding that it is solely to be used for protecting the interests or promoting the welfare of the person giving the information, and where the withholding (or not proactively making public) of such information is not contrary to the law of the land.

If information is at all available with a regulatory agency in fiduciary relationship, there is a reason to withhold the disclosure of the same. However, where information is required by mandate of law to be provided to an authority, it cannot be said that such information is being provided in fiduciary relationship.

Admittedly, the authorities are not a public library of information, nor are a databank where people deposit information because they love to keep it with them. We have no hesitation to hold that even if there be any agreement the same cannot be used as a shield to counter a request from any citizen seeking information and the RTI Act would obviously override such assurance.

CAN REGULATORY BODIES TAKE RECOURSE TO SEC 8 (1) (E)?

It is not necessary in case of RTI applications for a citizen to provide the reason for which the information may be required. If there is information available with an authority covered by the RTI Act, the information available must, on requisition, be made available to a citizen seeking the same. The RTI Act works on the noble principle that statutory authorities seek information and are seized and possessed of information as repositories of public faith. There is no question of hide and seek in the functioning of statutory authorities, as what they are, and what powers they enjoy, are for the larger interest of the citizens of India. No statutory authority is above the republic of India. In democratic setup in which India functions, the people of India are supreme. Hence, no statutory authority can pretend to play a hide and seek with the citizens of the country. The exceptions contained in Section 8 are exceptional pieces of information, for which, disclosure is not warranted or not desirable for variety of reasons. However, the broad spirit of the RTI Act is full transparency.

It is surprising and unfortunate to find that on being requisitioned, the authorities generally take the ground that the information is being held by them in a fiduciary capacity. A mere cryptic statement that the information is protected under a

Legal Updates

fiduciary relationship does not do service to the object of the RTI Act at all. As contended above, whatever information the authorities have, it has because it has power to seek the information under the law, rules, and proceedings and not because the information provider provided the information for safe keeping.

This article can also be viewed on: <http://www.moneylife.in/article/disclosure-of-fiduciary-information-under-sec-8-1-e-of-the-rti-act-this-is-the-true-scope-of-the-exclusion-clause/17761.html>