

NAGALAND INFORMATION COMMISSION
Old Secretariat Complex,
Post Box No. 148
Nagaland, Kohima - 797001.
Tel: 0370-2291041, Fax: 0370-2291774, Website: www.nlsic.gov.in



No. NIC/Complaint-4/2013-14

Dated Kohima, the 29th November, 2013.

Complainant: (i) Shri. N. Yona Konyak,
Member,
NPCC, Vigilance Cell,
Congress Bhavan,
Kohima, Mobile No. 9436001872.

(ii) Shri. K. Wetsah,
Member,
NPCC, Vigilance Cell,
Congress Bhavan,
Kohima, Mobile No. 9436001640.

Respondent: (i) Shri B. Kezo, IPS,
Director General of Police & First Appellate Authority,
Nagaland, Kohima.

(ii) Shri. Lungriading, IPS,
Inspector General of Police (Hqtr) & PIO,
Office of the Director General of Police,
Nagaland, Kohima.

Public Authority: Office of the Director General of Police, Nagaland, Kohima.

Date of Hearing: 28.11.2013 at 1:00 PM.

Date of Decision: 29.11.2013.

Present:

- i. Shri. B. Kezo, IPS, Director General of Police & First Appellate Authority, Nagaland, Kohima.
- ii. Shri. Lungriading, IPS, Inspector General of Police (Hqtr) & PIO, Office of the Director General of Police, Nagaland, Kohima.
- iii. The complainants, (i) Shri. N. Yona Konyak, Member, NPCC, Vigilance Cell, Congress Bhavan, Kohima, Mobile No. 9436001872, and (ii) Shri. Wetsah, Member, NPCC, Vigilance Cell, Congress Bhavan, Kohima, Mobile No. 9436001640.

FACTS OF THE CASE

The applicants had earlier submitted a RTI application dated 16.08.2013 alongwith the prescribed fee of Rs. 10/- paid in cash, addressed to the PIO, Office of the Director General of Police, Nagaland, Kohima and which was received by the Office of the Director

General of Police, Nagaland, Kohima on 16.08.2013, seeking information from 2003 to 31.07.2013 on the following:-

1. Total number of Civilian killed in UG related violence.
2. Total number of undergrounds killed in factional clashes.
3. Total number of Arms & ammunition seized, specify types of arms & ammunitions.
4. Total number of arms & ammunition released, specifying type of arms & ammunition.
5. Total number of UG arrests made in connection with killing.
6. Total number of UG arrested for kidnapping civilians.
7. Total number of convicted UG in connection with killing & kidnapping.

Shri. Lungriading, IPS, Inspector General of Police (Hqtr) & PIO, Office of the Director General of Police, Nagaland, Kohima, had vide letter No. PHQ(CON-II) 185/2013 (Pt)/3326 dated 20.08.2013 furnished the reply to the applicants stating that the Government of Nagaland had issued a Notification exempting all matters relating to Crime Branch/INT (Nagaland Police) from the purview of the RTI Act, 2005, and hence the information sought could not be provided. A copy of the Notification of the Government of Nagaland vide No. POL/ESTT-3/44/2006 (PT-I) dated 26.11.2012 was also enclosed.

On being not satisfied with the reply of the PIO, Office of the Director General of Police, Nagaland, Kohima, the applicants (now complainants) had submitted a complaint dated 16.09.2013 before the Nagaland Information Commission stating that the PIO, Office of the Director General of Police, Nagaland, Kohima had denied the information sought in compliance with the Notification of the Government of Nagaland vide No. POL/ESTT-3/44/2006 (PT-I) dated 26.11.2012. Further, the applicants(now complainants) stated that the information sought were regularly made public through various media and had appealed to this Commission to clarify and give decision on the following:-

1. Whether all the information sought is actually exempted from disclosure and if so, under what section of the Act?
2. Whether the Notification of the State Government can prevail over the RTI Act? And
3. Whether the desired information can/should be furnished to the aggrieved petitioners?

OBSERVATIONS AND FINDINGS

During the hearing held on 28.11.2013, the IGP(Hqtr) & PIO, Office of the Director General of Police, Nagaland, Kohima submitted before the Commission that since the Police Department is answerable to the Nagaland Legislative Assembly, it had mentioned the statistics of crime rates etc. in its Annual Administrative Report, however, disclosure to a citizen even through RTI is not permitted. Moreover, since the information sought by the applicants were from 2003 onwards, the PIO contended that the information sought falls before the commencement of the RTI Act in 2005 and hence cannot be provided.

The Commission overruled the above submissions of the PIO and pointed out that under Section 8 (1) (j), information which cannot be denied to the Parliament or a State Legislature shall not be denied to any person, and hence a citizen has every right to seek information. Also, since Section 8(2) of the RTI Act, 2005, envisages that any information

relating to any occurrence, event or matter which has taken place, occurred or happened 20 (twenty years) before the date on which any request is made shall be provided to any person making a request, the Commission observed that the information sought by the above applicants from 2003 to 2013 is not tenable.

The Commission observed that the information sought by the applicants which are mentioned above are of very general nature. Furthermore, such type of information has been regularly featured by the media in the local papers which clearly indicates that such general information is already very much in the public domain. Furthermore, the Home Department has regularly featured such general information under reference in their Annual Administrative Reports particularly in the Annual Administrative Reports of 2011-12 and 2012-13. Such being the case, the contention of the Police Department that information sought by the applicants cannot be provided on account of the Notification issued vide No. POL/ESTT-3/44/2006 (PT-I) dated 26.11.2012, which has been issued in pursuance to Section 24 of the RTI Act, 2005, is not found rational or tenable.

The stand and contention of the IGP(Hqtr) & PIO that the Notification of the Home Department issued on 26.11.2012 exempts such disclosures as is being sought is not convincing or tenable.

Though the Notification issued by the Home Department on 26.11.2012 is within the ambit of Section 24(4) of the RTI Act, 2005, the Home Department has itself negated its own orders by publishing such information in their Annual Administrative Reports which has been very much put in the public domain. Furthermore, the Home Department has not prevented or challenged the media from publishing such general information as is being sought by the applicants. In brief, the Commission is of the strong opinion that the information sought by the applicants in their application dated 16.08.2013 is not adequately covered by the Home Department's Notification of 26.11.2012. Therefore, the Commission does not find any grounds for the information sought being exempted from disclosures as the information of the same nature and character has been published by the Home Department itself and put into the public domain through their Annual Administrative Reports of 2011-12 and 2012-13. The Commission also found that in this instance, the Notification of the Home Department issued on 26.11.2012 cannot prevail over the RTI Act, 2005.

Since the information sought was from 2003 to 31st July, 2013, and that the Notification was effective from 11.11.2012, the Commission **opined** that the information from 2003 up to November, 2012 be given. However, since the Annual Administrative Report for 2012-13 covers the period from April, 2012 to March, 2013, the information may be provided from 2003 upto March, 2013. And the part of information pertaining to the period from April, 2013 to July, 2013 may not be provided, since it falls under the current financial year i.e. from April, 2013 to March, 2014, which will be reflected in the Annual Administrative Report for 2013-14 only after the year is completed.

DECISION

1. In view of the findings and observations already recorded in the preceeding paragraphs, the Commission is pleased to order that the information sought by the applicants in their RTI application dated 16.08.2013 be furnished by the IGP(Hqtr) &

PIO within 20 days from the date of receipt of this Order, with a copy to this Commission.

2. Though the legality of the Notification issued vide No. POL/ESTT-3/44/2006 (PT-I) dated 26.11.2012, is not questioned, the Commission under the authority vested under Section 25 (3) (g) and 25 (5) of the RTI Act, 2005 is pleased to order that the Notification issued by the Home Department on 26.11.2012 be modified and made more elaborate and specific in order to ensure that it would be easy to determine whether or not information sought by citizens are actually covered by the Notification.
3. On receipt of the information so furnished by the IGP(Hqtr) & PIO, the applicants (now complainants) shall intimate to the public authority and this Commission of having received the information and also about their satisfaction of the information so received.
4. The Commission rejected the three (3) clarifications sought/raised by the applicants (now complainants) in their complaint dated 16.09.2013 from the Commission, since they were not the points of complaints made in their original RTI application.

Decision pronounced in the presence of all parties concerned.

Copies be given to:-

- i. Shri. B. Kezo, IPS, Director General of Police & First Appellate Authority, Nagaland, Kohima.
- ii. Shri. Lungriading, IPS, Inspector General of Police (Hqtr) & PIO, Office of the Director General of Police, Nagaland, Kohima.
- iii. The complainants:-
 - a. Shri. N. Yona Konyak, Member, NPCC, Vigilance Cell, Congress Bhavan, Kohima, Mobile No. 9436001872, and
 - b. Shri. Wetsah, Member, NPCC, Vigilance Cell, Congress Bhavan, Kohima, Mobile No. 9436001640.

Sd/-
KEVININO P. MERU
State Information Commissioner,
Nagaland, Kohima.

Sd/-
BUKCHEM PHOM
State Information Commissioner,
Nagaland, Kohima

Authenticated by:-

(SOYIMNA AIER KOZA)
Secretary