

P. Narangoda v University of Kelaniya

RTIC Appeal (In-Person Hearing)/ [333]/ [2021]- Order adopted subsequent to the hearing/ consideration at a part of the formal meeting of the Commission on [20.04.2021]

Order under Section 32 (1) of the Right to Information Act, No. 12 of 2016 and Record of Proceedings under Rule 28 of the Right to Information Rules of 2017 (Fees and Appeal Procedure)

Chairperson: Mr. Mahinda Gammampila

Commission Member: Mr. S.G. Punchihewa

Commission Member: Dr. Selvy Thiruchandran

Director-General: Mr. D. G. M. V. Hapuarachchi

Appellant: P. Narangoda

Notice issued to: Designated Officer (DO), University of Kelaniya

Appearance/ Represented by:

Appellant – Prof. P.Narangoda

K.G. Jinasena, Attorney-at-Law for the Appellant

PA - Kaushalya Disanayake, Senior Assistant Registrar, Legal and Documentation

W.M. Karunaratne, Registrar

RTI Request filed on	10.03.2020, 16.05.2020 and 12.10.2020
IO responded on	22.05.2020, 16.06.2020 and 06.07.2020
First Appeal to DO filed on	08.07.2020
DO responded on	28.07.2020
Appeal to RTIC filed on	First submission- 14.11.2020 Second submission- 08.12.2020

Brief Factual Background:

The Appellant by letter dated 10.03.2020, 16.05.2020 and 12.10.2020 requested the following;

“The report on inquiry conducted by Mr. Wasala M. Wijepala, Deputy Auditor General (retired) under his letter dated 14th July 2018 with Ref. No. ඩබ්/කැට්/2018/05, on or/and around 17 through 30th July 2018;

- 1. A certified copy of the complete report and;*
- 2. A soft copy, according to the Clause No.03 (1) of the Part 1, of the Right to Information Act, No 12 of 2016.*

The Information Officer (IO) on 22.05.2020, 16.06.2020 and 06.07.2020 responded stating the following;

22.05.2020 by Mr. W.M. Karunartne, Registrar

“This refers to your request dated 16.05.2020 regarding the above.

I would like to inform you the requested report is not in my custody and therefore I am unable to provide a certified a copy for your reference.”

16.06.2020

*“This refers to your request dated 10.03.2020 regarding the above.
Please refer to attached letter issued by Mr. W.M. Karunartne, Registrar of this University.
(22.05.2020)”*

06.07.2020

*“This refers to your request dated 10.03.2020 regarding the above.
I would like to inform you the requested report is not in my custody and therefore I am unable to provide a certified a copy for your reference.”*

Dissatisfied with the responses of the IO the Appellant lodged an appeal with the DO on 08.07.2020. The DO responded on 28.07.2020 stating the following;

*“..... I wish to inform that, with regard to a complaint made by Mr. G.R.N. Wijayarathna Senior lecturer of the Department of Fine Arts, the former Vice Chancellor had appointed Mr. W.M. Wijepala a retired Deputy Auditor General to conduct a Preliminary investigation and to submit a report to the Vice Chancellor.
After completion the investigation, Mr. Wijepala has submitted a letter to the Vice Chancellor requesting payments for conducting the investigation and on that request the payments have been made to him.*

*However, the report relating to the above mentioned investigation has not been handed over to me or as far as I am concern to any other officer in this University, by the former Vice Chancellor and therefore it is not available in the University.
As such I wish to inform you that I am not in a position to submit a copy of the report which was not handed over to me.”*

Dissatisfied with the response of the DO the Appellant preferred an appeal to the Commission on 14.11.2020 and 08.12.2020 respectively.

Matters Arising During the Course of the Hearing:

Both parties were present.

Upon being queried by the Commission, the Appellant explained the background of the investigation report on which the information request was based.

In regard to the substantive contents of the information asked for, the Registrar of the Public Authority (PA) explained its position pertaining to the denial of the release of the information requested as follows;

- Under the recommendation of the University Council, the former Vice Chancellor had appointed Mr. W.M. Wijepala a retired Deputy Auditor General to conduct a Preliminary investigation with regard to a complaint made by Mr. G.R.N. Wijayarathna Senior lecturer of the Department of Fine Arts and thereby to submit a report to the Vice Chancellor. At that time an appointment letter by the former Vice Chancellor was sent to Mr. W.M. Wijepala.

- There is information to the nature to prove that after completion of the investigation, Mr. Wijepala has submitted the report to the former Vice Chancellor and that he in return was in receipt of the same report as he has instructed the Institutional Education Division (ආයතන අධ්‍යාපන අංශය) of the PA to make the payment for conducting the investigation and as such the payment has been made to Mr. W.M. Wijepala.
- The general procedure is to submit the investigation report to the Vice Chancellor and then refer it to the Legal Officer for further action, but in this instance no such action was taken by the former Vice Chancellor.
- However, the report relating to the above-mentioned investigation has not been handed over to the Registrar or any other officer in this University, by the former Vice Chancellor and therefore it is not in the custody of the University.

As a response to the above, the Appellant and the Attorney-at-Law for the Appellant submitted the following;

- The Registrar being the custodian of physical records of the PA and the Secretary to the University Council is under the duty to have a copy of the same in his custody and thereby he cannot abdicate his responsibility by simply stating that the report has not been handed over to the Registrar or any other officer in this University, by the former Vice Chancellor and therefore it is not in the custody of the University.
- A letter dated 2018.07.14 by the Mr. W.M.Wijepala was produced to the Commission as a proof of his appointment as an investigation officer.
- Mr. Wijepala has submitted a letter dated 2018.09.26 to the Vice Chancellor requesting a payment for conducting the investigation. As a proof of the same the Appellant submitted the letter dated 2018.09.26 to the Commission.
- On the above request, a payment of Rs. 74,500.00 has been made to Mr. Wijepala. As a proof of the same the Appellant submitted a letter dated 14.07.2020 and signed by the present Registrar.

Upon being queried from the Registrar as to what steps he took to locate the report in question, the Registrar responded as follows;

- When the investigating officer was inquired of a copy of the same report, he submitted that he usually does not keep a copy of the investigation report after the completion of the investigation and submission of the same to the relevant authority
- When the former Vice chancellor was also inquired regarding the same, he did not respond.

Order:

On consideration of the facts in the Appeal, firstly it is observed that the PA has relied on the fact that the investigation report in question is not in the custody of the Registrar in terms of Section 3 of the Right to Information as a ground to deny release of the information.

The PA is notified that the right of the citizen to acquire information from a PA arises when the PA concerned is in the possession, custody or control of the information requested under and in terms of Section 3 (1) of the Right to Information Act, No.12 of 2016.

Section 3(1) of the Act reads as follows:

(1) Subject to the provisions of section 5 of this Act, every citizen shall have a right of access to information which is in the possession, custody or control of a public authority.

Upon perusal of the letters dated 2018.07.14, 2018.09.26 and 2020.07.14 and verbal submissions of both parties it is evident that Mr. W.M.Wijepala was appointed as an investigation officer of the said investigation, an investigation was conducted and a report was submitted after the completion of the same and thereby a payment of Rs. 74,500.00 was made to Mr. W.M.Wijepala on the request made by him to former Vice Chancellor and therefore the rationale behind the PA's submission that the report is not in its custody is unclear and unacceptable.

Therefore, the attention of the PA is drawn to the fact the mere citation of the fact that the report is not in its custody without an adequate justification is insufficient in this instance. The PA is required to submit reasons for the denial of release of information under Section 03 of the Right to Information Act. Further, the PA is directed to inquire from former Vice Chancellor and Mr. W.M.Wijepala as to whether they are in custody of a copy of the investigation report.

It is also noted that the PA requested further time to consult the University Council to ascertain further steps in relation to the information requested. As such, the Appeal hearing is adjourned until the said University Council informs the PA of its decision.

The Public Authority is directed to produce a comprehensive response as to the decision of the University Council on the next date of hearing. In the wake of verbal and written submissions and documentation of the PA as to the question as to whether the investigation report in question is in the possession, custody or control of the PA will be entered into on the next hearing date.

The matter is re-fixed as an in-person hearing on 15.06.2021 at 11.30 am. for consideration of the decision of the University Council decision and to ascertain further steps in relation to the release of the requested information.

The Appeal is adjourned.

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Note: In view of the prevailing situation in the country due to the threat posed by COVID 19, and as such in order to minimise interaction between persons, the appeal scheduled for in-person hearings on 15.06.2021 at 11.30 am in terms of Rule 20 of the Right to Information Rules of 2017 (Fees and Appeal Procedure, gazette no. 2004/66, 03.02.2017) will be considered as documentary proceeding on 29.06.2021 under Rule 19 in the first instance. As such this appeal will be considered by the Commission based on the written submissions/ documentation presented at that date. This is subject to change at a later point.
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RTIC Appeal (Documentary Proceeding)/ [333]/ [2021]- Order adopted subsequent to the hearing/ consideration at a part of the formal meeting of the Commission on 29.06.2021.

Order under Section 32 (1) of the Right to Information Act, No. 12 of 2016 and Record of Proceedings under Rule 28 of the Right to Information Rules of 2017 (Fees and Appeal Procedure)

Chairperson: Mr. Mahinda Gammampila
Commission Member: Ms. Kishali Pinto-Jayawardena
Commission Member: Mr. S.G. Punchihewa

Director-General: Mr. D. G. M. V. Hapuarachchi

Appellant: P. Narangoda
Notice issued to: Designated Officer (DO), University of Kelaniya

Appearance/ Represented by:

As a documentary proceeding

Matters Arising During the Course of the Hearing:

In view of the prevailing situation in the country due to the threat posed by COVID 19, and as such in order to minimise interaction between persons, the appeals scheduled for in-person hearings in terms of Rule 20 of the Right to Information Rules of 2017 (Fees and Appeal Procedure, gazette no. 2004/66, 03.02.2017) will be considered as documentary proceedings under Rule 19. As such this appeal is considered by the Commission based on the documents present on file to date and the parties are notified of the directions below. This is subject to change at a later point.

The office of the Commission contacted via telephone the PA on 13.06.2021 and 28.06.2021 respectively to inquire the steps taken by the PA as to the information request. Accordingly, responding to the direction dated 20.04.2021, the PA has provided the copies of the following letters via emails dated 06.05.2021, 10.05.2021 and 28.06.2021;

1. A copy of the letter dated 03.05.2021 sent to Prof. D.M. Semasinghe, former Vice Chancellor in respect of the availability of the inquiry report and;
2. A copy of the letter dated 07.05.2021 sent to the Mr. W.M.Wijepala, Inquiry officer in respect of the availability of a copy of the inquiry report.

As informed via telephone on 13.06.2021, the PA requested further time to consult the University Council to ascertain further steps in relation to the information requested as University Council meetings were postponed due to the prevailing situation in the country due to the threat posed by COVID 19.

Order:

The Commission takes note of the letters tendered by the PA and as such, the PA is directed to produce the responses of such letters on or before the next hearing.

It is also noted that the PA requested further time to consult the University Council to ascertain further steps in relation to the information requested. As such, the Public Authority is directed to produce a comprehensive response as to the decision of the University Council on the next date of hearing.

This Appeal is adjourned for an in-person hearing, on 20.07.2021 at 10.00 am, at which the attendance of both parties is required.

The parties are informed that in the event that an in-person hearing as scheduled below is unable to be conducted on the next date due to the prevailing health emergency caused by the global pandemic, the parties and/or their legal representatives are directed to be available either *via* phone or through the digital communication application Zoom for the purposes of the in-person hearing.

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RTIC Appeal (In person hearing)/ [333]/ [2021]- Order adopted subsequent to the hearing/ consideration at a part of the formal meeting of the Commission on 20.07.2021.

Order under Section 32 (1) of the Right to Information Act, No. 12 of 2016 and Record of Proceedings under Rule 28 of the Right to Information Rules of 2017 (Fees and Appeal Procedure)

Chairperson: Mr. Mahinda Gammampila
Commission Member: Ms. Kishali Pinto-Jayawardena
Commission Member: Mr. S.G. Punchihewa

Director-General: Mr. D. G. M. V. Hapuarachchi

Appellant: P. Narangoda
Notice issued to: Designated Officer (DO), University of Kelaniya

Appearance/ Represented by:

Appellant – Prof. P.Narangoda
K.G. Jinasena, Attorney-at-Law for the Appellant

PA - Kaushalya Disanayake, Senior Assistant Registrar, Legal and Documentation
K.K.K. Dharmarathilake

Matters Arising During the Course of the Hearing:

Both the parties were present.

Order

Given the nature of the information requested by the Appellant and also, that the said information is such that can be legitimately released under and in terms of the RTI Act, the Commission directed the Public Authority to release the information (including any other findings) in possession, custody and control of the PA in terms of Section 3 of the RTI Act

The Appellant is informed that if he is not in receipt of the information thus ordered to be released by the Commission from the PA within one month of the receipt of the information, the Appellant may inform the Commission of the same in writing.

The PA is reminded that the failure to comply with the Order of the Commission is a punishable offense in terms of the RTI Act. Section 39 (1) (e) states that,

Every person who....fails or refuses to comply with or give effect to a decision of the Commission... commits an offence under this Act and shall on conviction after summary trial by a Magistrate be liable to a fine not exceeding fifty thousand rupees or to imprisonment for a term not exceeding two years or to both such fine and imprisonment.

Accordingly non-compliance with an order of the Commission is an offence under and in terms of the Act can result in a prosecution in terms of Section 39 (4) of the Act. Section 39 (4) states as follows:

A prosecution under this Act shall be instituted by the Commission.

Alternatively, the PA can appeal from a decision of the RTI Commission in terms of Section 34 of the RTI Act,

34. (1) A citizen or public authority who is aggrieved by the decision of the Commission made under section 32, may appeal against such decision to the Court of Appeal within one month of the date on which such decision was communicated to such citizen or public authority.

(2) Until rules are made under Article 136 of the Constitution pertaining to appeals under this section, the rules made under that Article pertaining to an application by way of revision to the Court of Appeal, shall apply in respect of every appeal made under subsection (1) of this section.

Subject to the above direction, the Appeal is concluded.

Order is directed to be conveyed to both parties in terms of Rule 27 (3) of the Commission's Rules on Fees and Appeal Procedures (Gazette No. 2004/66, 03.02.2017).

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Mahinda Gammampila – Chairman

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Kishali Pinto – Jayawardena – Commission Member

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S.G. Punchihewa – Commission Member
