

**Sri Lanka Red Cross Society v Ministry of Home Affairs**

RTICAppeal(In-Person)/113/2018 - 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) – heard as part of a formal meeting of the Commission on 20.04.2018

**Chairperson:** Mr. Mahinda Gammampila  
**Commission Members:** Ms. Kishali Pinto-Jayawardena  
Mr. S.G. Punchihewa  
Dr. Selvy Thiruchandran  
Justice Rohini Walgama  
**Present:** Director-General Mr. Piyathissa Ranasinghe

**Appellant:** Sri Lanka Red Cross Society  
**Notice Issued to:** Neil de Alwis, Secretary, Ministry of Home Affairs

**Appearance/ Represented by:**

Appellant - Mr. Hemal Waravita  
Mr. Palitha Yaggahawita Attorney-at-Law  
Public Authority - D. R. B. N. B. Karunathilaka – Information Officer

<b>RTI Request filed on</b>	15.06.2017 and 07.07.2017 (reminder)
<b>IO responded on</b>	04.08.2017
<b>First Appeal to DO filed on</b>	14.08.2017
<b>DO responded on</b>	08.12.2017
<b>Appeal to RTIC filed on</b>	28.12.2017

**Brief Background Facts:**

The Appellant Society had by information request dated 15.06.2017 requested the inquiry report in relation to an inquiry conducted subsequent to a complaint made by the Appellant Society on 15.08.2016 and the recording of evidence at length on 11.01.2017 (the complaint was in relation to the alleged fraudulent transfer of the land on which the Appellant Society's Gas Station is located, by certain officers).

The IO responding on 04.08.2017 denied the information on the basis that the report submitted by the inquiry division contained statements by the relevant parties which would result in an invasion of privacy if provided and on the basis that the recommendations of the said inquiry have not been carried out. Dissatisfied with this response, the Appellant lodged an appeal with the DO on 14.08.2017. The DO responded on 08.12.2017 reiterating the response of the IO. The Appellant Society thereafter preferred an appeal to the Commission on 28.12.2017.

**Matters Arising During the Course of the Hearing:**

As the Appellant Society had not averred citizenship, it was notified that it needs to, as of record aver citizenship to the effect that its membership falls within the definition of a citizen as defined in Section 43 of the RTI Act.

The Appellant Society reiterated the information request and the background to it seeking the said inquiry report. The DO, in his written submission to the Commission, reiterated the response to the appeal made to him.

As the PA relied on the privacy exemption, the Commission queried from the PA as to the manner in which the said exemption was contended to apply in the circumstances of the case and as to who had given evidence at the said inquiry, to which question, the PA responded stating that officers of the PA as well as those of the Appellant Society had given evidence at the said inquiry.

**Order:**

The refusal of the IO/DO to disclose the information requested on the ground that the recommendations of the inquiry report have not been carried out, is unacceptable under and in terms of the RTI Act. Further the PA has failed to demonstrate the manner in which the statements affect the privacy of the parties giving statements in evidence as it is an inquiry conducted by the PA in its official capacity.

The attention of the PA is drawn to Section 32 (4) of the Act which states that ‘On appeal, the burden of proof shall be on the public authority to show that it acted in compliance with this Act in processing a request.’ The rationale provided by the PA in refusing the information is clearly not in accordance with the Act. The PA is directed to file written submissions specifying the precise manner in which the privacy exemption applies in the circumstances of the case.

Further hearing of the appeal is fixed for 5<sup>th</sup> June 2018.

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