

**G.D.R.U.U. Abeyrathna v. Department of Examinations and Nishantha Hettiarachchi v.  
Department of Examinations**

RTIC Appeal/182/2017 with RTIC Appeal/183/2017 (*Appeal heard as a part of a formal meeting of the Commission on 30.01.2018*)

*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)*

**Chairperson:** Mr. Mahinda Gammampila

**Commission Members:** Ms. Kishali Pinto-Jayawardena  
Justice Rohini Walgama

**Present:** Director-General Mr. Piyathissa Ranasinghe

**Appellants:** Professor G. D. R. U. U. Abeyrathna and Mr. Nishantha Hettiarachchi

**Notice issued to:** Mr. W.M.N.J.Pushpakumara, Commissioner General of Examinations,

**Appearance/ Represented by:**

Appellants - Professor G. D. R. U. U. Abeyrathna and Mr. Nishantha Hettiarachchi

PA - Absent

<b>RTI request filed on</b>	12.06.2017
<b>IO responded on</b>	14.06.2017 (The date is unclear on the response. In the appeal to the Commission it is recorded as 20.06.2017 by the Appellant)
<b>First Appeal to DO filed on</b>	22.07.2017
<b>DO responded on</b>	-
<b>Appeal to RTIC filed on</b>	16.08.2017

**Brief factual Background:**

Both Appellants filed the information request and appeal to the DO in common. However they had submitted two separate appeals bearing the same date to the Commission. The following

information for the last six years with reference to G.C.E. Advanced Level Examination in Political Science was requested by the information request dated 12.06.2017:

1. Name of the Controlling Chief Examiner/Names of Controlling Chief Examiners (CCE) for Different years (from 2011-2016) Examiners in Political Science for the last six years
2. The highest educational and professional qualifications of the CCEs
3. Has he/she been nominated by an Academic Department of any Sri Lankan University, if nominated, give us details of the year of nomination and the department that has recommended his/her name
4. Have you searched for his/her academic and professional qualifications? If so, please provide the relevant information of such search
5. Has he/she been awarded emeritus professorship by any university, if she/he is retired from the university service?
6. If you have depended on one person alone for the last six years as the CCE of the above examination, please provide us reasons for such choice.
7. Did not universities in Sri Lanka nominate persons to serve in the paper setting panels for the above examination? If so nominated, give us details of those nominations and reasons for not taking their service
8. Who served in the paper setting panels for the last six years? Give us details
9. Give us qualifications (both academic and professional) of those members of the paper setting panels for each and every year for the six years duration.
10. Did you take into account that there are persons in above panel who have been conducting private tuition classes?
11. Personally, we would like to know the reason for not giving us an opportunity to serve for the above examination at least as chief examiners
12. Why had you given appointment to university lecturers of University of Sabaragamuwa, University of Kelaniya to serve as chief examiners in examination centres in Galle and Matara while giving appointments to lecturer of university of Ruhuna to serve as chief examiners in Kegalle and Kandy
13. If we are correct, how much extra public money had been incurred by appointing people from distant universities to the panel situated in Matara and Galle

14. How many erroneous questions were in the MCQ paper for the last six years (please provide us information on a year by year basis)
15. How many times, the same model answer had been provided to the examiners for different questions in different years?
16. The number of panels that the Controlling Chief of the above examination had served in re-scrutinizing of answer scripts on appeals by candidates for the above examination.

The Commissioner General responding to the information request, had denied information citing Section 5(1)(l) of the RTI Act. (i.e. *'disclosure of the information would harm the integrity of an examination being conducted by the Department of Examination or a Higher Educational Institution'*)

#### **Matters Arising During the Hearing:**

The Appellants were present. The Public Authority was absent.

The Appellants stated that there was clear public interest in the disclosure of the information and that the information related to past data and does not relate to any future exams that were to be conducted by the PA.

It was noted that the details of examiners were generally provided only if the Commission was satisfied that sufficient public interest existed in the disclosure of such information.

#### **Order**

The PA has failed to appear before the Commission subsequent to the issuance of notices. A warning letter is to be sent to the PA directing the PA to appear before the Commission. The attention of the PA is drawn to Section 39 (1)(c) of the RTI Act which states that,

*[E]very person who... fails or refuses to appear before the Commission when requested to do so by 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.*

The PA is directed to be present at the next date fixed for hearing.

The Appeal is re-fixed for hearing on 23.02.2018

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RTICAppeal(In-Person)/182/2017 with RTICAppeal(In-Person)/183/2017 - *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 23.02.2018

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

**Appellant:**

**Notice Issued to:**

**Appearance/ Represented by:** Mr. H. J. M. C. A. Jayasundara, Commissioner of Examinations (Admin), Department of Examinations  
Mr. Nishantha Hettiarachchi,

### **Matters Arising During the Hearing**

The Appellant Mr. Nishantha Hettiarachchi was present before the Commission. Professor Abeyrathne had excused himself from attending the proceedings. The Information Officer (IO), Mr. H.J.M.C.A.Jayasundara, Commissioner of Examinations (Admin) was also present before the Commission representing the Public Authority (PA). The PA refused to provide the information requested citing Section 5(1) (l) of the Right to Information Act, No.12 of 2016.

Section 5(1)(l) reads as follows:

*“Disclosure of the information would harm the integrity of an examination being conducted by the Department of Examination or a Higher Educational Institution”;*

The Commission inquired from the PA as to how the information requested is relating to an Examination ‘being conducted’ as required in the cited exemption. The PA in response stated that the Advanced Level Examination is an annual examination, the confidentiality of which is

one of biggest concerns of the Department of Examination. The PA was informed in consequence that it should specify as to how each and every item of the information requested was confidential since on the face value of some of the information requested, for example item number 2, item number 6 etc., the said requested information did not relate to the substantive requirements of the exemption under which information was refused. The PA handed over a letter dated 14.06.2017 where it had denied the information requested under Section 5 (1) (I).

## **Order**

In this appeal, the following is recorded.

1. Item 1 of the information request - the PA contended that the information related to the release of names and was excepted under Section 5 (1)(I) but requested for further time of two weeks to reconsider the matter.
2. Item 2 of the information request - the PA agreed to provide the information requested at the next hearing since the PA conceded that the information requested fell neither under the cited exemption Section 5(1)(I) nor under any of the exemptions of the Right to Information Act under which information could be refused.
3. Item 3 of the information request - the PA clarified that nominations by universities are not sought in order to ensure the confidentiality of the process. In such instances, university academics are contacted by the Department of Examinations initially where such academics would provide their services in the capacity of moderators and based on performance would thereafter be appointed to the panel and then ultimately to the position of the Controlling Chief Examiner (CCE).
4. Item 4 of the information request - the PA was apprised of the fact that the Public Examinations Act could not be cited as an exemption since the Right to Information Act could not be overridden by the citation of another Act. In fact, Section 4 of the Right to Information Act reads as follows:

*The provisions of this Act shall have effect notwithstanding anything to the contrary in any other written law and accordingly in the event of any inconsistency or conflict between the provisions of this Act and such other written law, the provisions of this Act shall prevail.*

The PA agreed to provide the information at the next hearing of the appeal.

5. Item 5 of the information request - The PA stated on record that it was not in the possession of the said information and that the same would only be in the possession of different universities.

6. Item 6 of the information request – the PA answered the said question in the affirmative and clarified that although the panel was subjected to changes from time to time, the CCE had remained the same for the last six years.
7. Item 7 of the information request - the PA agreed to provide the information requested at the next hearing of the appeal.
8. Item 8 of the information request - the PA requested for an extension of time of two weeks to decide on whether or not to provide the information requested.
9. Item number 9 of the information request - Since the information requested related to item 2 of the information request, the PA conceded to provide the information at the next hearing of the appeal.
10. Item number 10 of the information request - the PA submitted that the members of the panel did not conduct private tuition classes.
11. Item 11 of the information request - the PA states that it chose the relevant individuals as chief examiners and did not prefer the Appellant in that regard. The Commission informed the Appellant that it was not within its purview to hear the matter further.
12. Item 12 of the information request - the PA stated that such decisions were discretionary powers exercised by the Department of Examination. The Appellant conceded the fact.
13. Item 13 of the information request - the Appellant agreed to amend the phrasing of the information request from “how much extra public money” to “how much public money” in order to rectify the imprecise nature of the information requested. The Commission informed the PA that it was under an obligation to provide the information requested in item 13 given the fact that public funds had been expended.
14. Item 14 of the information request - the Appellant expressed his satisfaction with the response provided by the PA.
15. Item 15 of the information request - The PA handed over the marking schemes of the relevant years The Appellant informed that he was in possession of all the marking schemes except for the years 2015 and 2016 which was provided to him before the Commission by the PA voluntarily. The Appellant expressed his satisfaction with the information received pertaining item 15 of the information request.

16. Item 16 of the information request - the PA informed that there was only one re-scrutiny panel at the Department of Examination and that it was headed by the CCE.

In sum, the PA provided the information requested in items 3, 6, 10, 11, 12, 14, 15 and 16 and stated on record that it was not in possession of the information requested in item 5 of the instant information request.

The PA agreed to provide the information requested under items 2, 4, 7 and 9 at the next hearing of the appeal before the Commission.

With regards to items 1, 8 and 13, the PA is directed to reconsider the information request of the Appellant dated 12.06.2017 and to inform the Commission of its decision, as required by Section 25 of the RTI Act, either to provide the information requested or to reject the request on any one or more of the grounds referred to in Section 5 of the RTI Act, when the matter is taken up at the next hearing.

The Appeal is hereby adjourned.

Next date of hearing: 24<sup>th</sup> April, 2018

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RTIC Appeal/182/2017 with RTIC Appeal/183/2017

*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) adopted as part of a formal meeting of the Commission on 24.04.2018 and all previous Orders in this Appeal considered and approved by the Full Bench of the Commission on this date.*

**Chairperson:** Mr. Mahinda Gammanpila

**Commission Members:** Ms Kishali Pinto-Jayawardena

Mr. S. G. Punchihewa

Dr. Selvy Thiruchandran

Justice Rohini Walgama

**Present:** Director-General Mr. Piyathissa Ranasinghe

**Appellants:** Professor G. D. R. U. U. Abeyrathna and Mr. Nishantha Hettiarachchi

**Notice issued to:** Mr. W.M.N.J.Pushpakumara, Commissioner General of Examinations,

**Appearance/ Represented by:** Mr. Nishantha Hettiarachchi,

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

The PA was absent and had requested by prior notice that it be excused at the hearing.

**Order:**

The PA is directed to respond to the above stated portions of the information request as agreed by the PA at the hearing held on 23.02.2018 by 15.05.2018.

The Appeal is adjourned. This 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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