

Verite Research (Pvt.) Ltd. v. Central Bank of Sri Lanka

RTICAppeal(In person)/25/2018 and RTICAppeal(In person)/26/2018 (*Order adopted as part of a formal meeting of the Commission on 16.03.2018*)

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

Dr. Selvy Thiruchandran

Justice Rohini Walgama

Present: Director-General Mr. Piyathissa Ranasinghe

Appellant: Verite Research (Pvt.) Ltd.

Notice issued to: Dr. Indrajith Coomaraswamy, Governor, Central Bank of Sri Lanka

Appearance/ Represented by:

Appellant - Gehan Gunatilleke, AAL, Verite Research (Pvt.) Ltd.

Malsirini de Silva, AAL, Verite Reseach (Pvt.) Ltd.

Anushan Kapilan, Research Assistant, Verite Research (Pvt.) Ltd.

PA - P.N. Weerasinghe, Deputy Governor, Central Bank of Sri Lanka (CBSL)

K.N.N.M. Bandara, Superintendent – EPF, CBSL

S.H. Gunawardena, Director – Communications, CBSL

K.G.P. Sirikumara, Additional Director, CBSL

W.G. Prabath, Deputy Superintendent, CBSL

D.S. Meemadunne, Senior Manager, CBSL

M. Ariyaratne, Assistant Director, CBSL

D. Wilathgamuwa, Senior Assistant Director, CBSL

RTICAppeal/25/2018

RTI Request filed on:	29.05.2017
IO responded on:	31.05.2017 (acknowledgement) 20.07.2017

First Appeal to DO filed on:	08.08.2017
DO responded on:	07.09.2017
Appeal to RTIC filed on:	06.11.2017

RTICAppeal/26/2018

RTI Request filed on:	15.05.2017
IO responded on:	30.06.2017
First Appeal to DO filed on:	24.07.2017
DO responded on:	07.09.2017
Appeal to RTIC filed on:	06.11.2017

Brief Factual Background

In RTICAppeal/25/2018, the Appellant submitted an information request to the Public Authority on 29.05.2017 requesting the following information:

‘A list of all secondary market transactions of the 30 year treasury bond issued on 27th February 2015 from the date of issue till 31st May 2017. Details of the transactions should include the following information:

- Date of transaction
- ISIN Number of the bond
- Coupon rate of the bond
- The yield to maturity (net of taxes) of the bond during each transaction
- Face value of the bond
- Cost of the bond
- The price at which the bond was sold
- Names of the parties involved in the transaction’

On 20.07.2017 the Information Officer (IO) denied the information requested citing Sections 5 (1) (a), (d) and (j) of the RTI Act, No. 12 of 2016. The Appellant submitted an appeal to the Designated Officer (DO) on 08.08.2017. The DO responded on 07.09.2017 rejecting the appeal citing Section 5 (1) (a) of the Act. He further cited Sections 54 (1) and 54 (2) of the Registered Stock and Securities Ordinance No 2 of 2004.

(1) No person shall be entitled to inspect, or to receive information derived from, any registered stock or security in the possession of the Government or any register, book or other document kept or maintained by or on behalf of the Government in relation to

registered stock or securities, save on payment of such fee and save in such circumstances and on such terms and conditions as may be prescribed.

(2) Nothing in this section shall apply to the Auditor-General or to the Commissioner-General of Inland Revenue

Thereafter, the Appellant preferred an appeal to the Commission on 06.11.2017.

In RTICAppeal/26/2018, the Appellant submitted an information request to the Public Authority on 15.05.2017 requesting the following information:

1. Decision-making process for investment of EPF funds, including all committees and bodies involved, approval processes and structures, and any guidelines and rules to be followed. (if any of the formal structures and processes do not exist , give details of all alternative structures and processes by which the EPF funds are managed.)
2. Any guidelines and rules that govern Investment Committee
3. Names and designations of members of the Investment Committee
4. Annual reports of the EPF Dept. from the years 2014,2015 and 2016
5. A list of the following assets held by EPF as at 30.04.2017
 - All govt. securities categorized by maturity period and yield to maturity
 - All listed and unlisted equities (mentioning the name of the company, purchase cost and current market value)
 - All Rupee loans
 - All corporate debentures
6. A list of all govt. securities market transactions of the EPF from January 2015 to 30.04.2017. The list should include the following market activities.
 - Primary market transactions held through auctions
 - Primary market transactions held through direct placement
 - Secondary market transactions

Details of the transactions specified above should include the following information:

- Date of purchase
- Date of bill/ bond issue (if different from the date of purchase)
- ISIN number of the bill/bond
- Coupon rate of the bill/bond
- The yield to maturity (net of taxes) of the bill/bond
- Face value of the bill/bond
- Purchase cost of the bill/bond
- The price of each bill/bond
- Counter party (party with whom the transaction was held)

The IO responded on 30.06.2017 providing responses to all except item Nos. 4 and 6, citing Section 5 (1) (a) of the RTI Act as an exemption prohibiting the release of information asked for in item 6 of the information request. With regard to item 4, the PA said that the 2016 Annual Report of the EPF Department had not been finalised as yet.

The Appellant appealed to the DO on 24.07.2017. The DO responded that item 4 would be provided once the approval of Cabinet was received. Where information pertinent to item 6 was concerned, it was stated that there was an investigation of secondary market transactions on Government securities of EPF by the Presidential Commission of Inquiry (COI) to investigate, inquire and report on the issuance of Treasury Bonds (Bond Commission) during the period 1st January 2015 to 31st March 2016. The COI requested similar information and the PA had provided the information to the Commission under the “Confidential and non-publishable” category. Therefore, the PA submitted that the Appellant’s request would be considered once the investigation by the Commission was completed.

The Appellant not being satisfied with this response appealed to the RTI Commission on 06.11.2017.

Matters arising during the Course of the Hearing

By consensus between both parties, it was agreed that both appeals RTICAppeal/25/2018 and RTICAppeal/26/2018 would be heard together.

With regard to the substantive matters in issue in the appeals, the Appellant submitted that its first appeal concerned information connected to secondary market transactions relating details as specified of a 30 year treasury bond issued on 27th February 2015 from the date of issue till 31st May 2017 and that the second appeal related to investments made in relation to the EPF fund and that, with regard to that request, two items had not been provided of which one was the annual report of the EPF department for the year 2016.

The Appellant stated that, according to Section 5 (1) (i) of the EPF Act, No. 15 of 1958, certain financial information needs to be provided to the concerned Minister each year within 3 months after the 31st of December and therefore there was a statutory duty cast on the PA to release the information. The Appellant therefore noted that any exemptions in the RTI Act would still have to be read in line with this statutory duty. The Appellant noted that though it was stated that the Report for the year 2016 had not been published yet, it was not clear from the submissions of the PA as to whether there is a pending cabinet paper in this regard.

The PA submitted that the response was in the negative to the first request as it related to matters that were strictly market sensitive. Where the second information request was concerned, while it was under a statutory duty in terms of Section 5 (1) (h) read with Section 5(1)(i) of the EPF Act to prepare the necessary statements for each year within 3 months after the thirty-first day of December of that year and forward the same to the Minister, it was of the opinion that the RTI Act was not the forum to enforce this duty.

Section 5 (1) (h) of the EPF Act;

‘shall cause to be prepared in respect of the Fund for each year a statement of receipts and payments, a statement of income and expenditure, a statement of assets and liabilities, and a statement of investments showing the face value, purchase price, and market value of each of the investments.’

Section 5 (1) (i) of the EPF Act;

shall transmit to the Minister a copy of each of the statements prepared under the preceding paragraph (h) for each year within three months after the thirty-first day of December of that year;

With regard to the Annual Reports, the PA submitted that it had been compliant with the statutory requirements but the requirement is very limited and currently it takes a longer time for financial statement to be prepared due to the complex nature of these statements. The PA informed the Commission that the reports for 2014 and 2015 had been made available to the Appellant but that the 2016 report had not been completed yet and that, even though some parts of it are in the public forum, the whole report had not been finalised. It was only in draft form, and the PA had received approval from the external auditors to proceed with its contents only recently.

The PA further clarified that all the accounts had been finalised but that the Committee on Public Accounts (COPA) had raised some issues which the PA had to reply to. It observed that a lengthy internal procedure had to be followed in respect of the same, whereby after printing, the Report had to be sent to Parliament, and that the Monetary Board would need to revise the Report after receiving comments from Parliament.

The Appellant stated that, while taking into account the affirmation on record by the PA in regard to the on-going process of approval of the Annual Report, 2016, it requests consideration that whatever information that the PA could yield in this respect, may be handed over.

In respect of item 6 of the information request in RTICAppeal/26/2018, the PA submitted that it was primarily relying on Section 5 (1) (a) of the Act which is as follows,

'5. (1) Subject to the provisions of subsection (2) a request under this Act for access to information shall be refused, where-

(a) the information relates to personal information the disclosure of which has no relationship to any public activity or interest, or which would cause unwarranted invasion of the privacy of the individual unless the larger public interest justifies the disclosure of such information or the person concerned has consented in writing to such disclosure;'

The PA further invoked Section 5 (1) (h) (i) of the RTI Act which is to the effect that information may be refused where;

'(h) the disclosure of such information would

(i) cause grave prejudice to the prevention or detection of any crime or the apprehension or prosecution of offenders; or

It was observed that some of the information in relation to this request was before the Commission to Investigate Allegations of Bribery or Corruption (CIABOC) following the Report of the Presidential Commission of Inquiry to investigate, inquire and report on the issuance of Treasury Bonds (Bond Commission).

The Appellant noted in response however that these matters related to the utilising of public funds and therefore the information should be made public. Further, it was contended that the subject matter before the CIABOC was limited to a defined period while other parts of the

information requested could be severed and given, as provided for in Section 6 of the RTI Act which is as follows,

'Where a request for information is refused on any of the grounds referred to in section 5, access shall nevertheless be given to that part of any record or document which contains any information that is not exempted from being disclosed under that section, and which can reasonably be severed from any part that contains information exempted from being disclosed.'

It further submitted that transactions in relation to the treasury market had been shrouded in secrecy which was the main reason for allegations of corruption in the process being rampant thereto.

The PA submitted that the Bond Commission had entered into several findings about the market and that even though the Inquiry before that Commission was in relation to market transactions pertaining to a particular time period. It submitted that as an example if a 30 year bond is issued, the bond is traded for 30 years. These bonds are identified by a particular ISIN number. Therefore, the inquiry was not limited to a particular time period and the information requested thus relates to matters in regard to which, investigations are still going on.

Submitting that such investigations could be hampered if the regulator itself released all this information and that consequently, this would affect the public interest, the PA noted that, in fact, public highlighting of these matters had come about due to the desire of the Monetary Board to safeguard the process from corrupt practices. Further, that this was market sensitive information and if competitors approaching the market obtain the information in advance, the PA would find itself in a disadvantaged position when it competes in the market. It was also clarified that the date of bond issue can be figured out through the date of purchase coupon and that information relating to the 'yield to maturity' as asked for by the Appellant in RTICAppeal/26/2018 pertained to market sensitive information which impacted on interests of the EPF fund.

The Appellant submitted in counter that it had asked for all transactions relating to EPF because there is a public right to know how the funds have been utilised. The Appellant submitted that it was difficult to argue that all the requested information fell within the on-going investigation arising as a consequence of the report of the Bond Commission. It further noted that the investigations of the Bond Commission were as a result of the relevant information thereto having been leaked from within the PA itself. It pointed out that the manner in which such transactions are being conducted is not in the public domain and that it needed the information for the research in which it was engaged in rather than for any other purpose.

The PA stated that the Appellant's request would be reconsidered once the investigations were concluded but that the requested information was highly market sensitive, which factor had been acknowledged by the Bond Commission in its proceedings.

Order

As the Appellant is a company incorporated under the Companies Act, No. 7 of 2007, it is required to aver citizenship under and in terms of Section 3 read with Sections 24(1) and 43

of the Act (*TISL v. Prime Minister's Office/Presidential Secretariat* (RTICAppeal/05/2017 & RTIC Appeal/06/201, RTIC Minutes of 23.02.2018).

In this instance, while the Appellant had not averred citizenship in its original information requests, it had averred citizenship in the appeals filed to the Commission under Section 32 (1) of the Act. The Appellant averred the same as of record in these hearings as per the Order of the Commission in *TISL v. Prime Minister's Office/Presidential Secretariat* (RTICAppeal/05/2017 & RTICAppeal/06/201, RTIC Minutes of 23.02.2018). The Commission records the submission of the Public Authority that it had processed the instant information requests disregarding non-conformity to the jurisdictional requirements laid down in the RTI Act as the objective of the Public Authority was to respond in good faith to information requests in the spirit of the RTI Act.

Where the substantial matters in issue in both appeals are concerned, the attention of the Public Authority is drawn to the duty laid on it to satisfy the burden of proof laid on it under Section 32 (4) to establish as to how the public interest override specified in Section 5(4) of the RTI Act is defeated in respect of the exemptions cited in refusing the release the information. In other words, it is under a burden to demonstrate that the harm that may result in the release of the said information would be greater than the public interest in bringing light to bear on the conducting of the transactions in issue, which involve public funds. This duty is even more onerous where Section 5(1)(d) of the Act is claimed as an exemption to release information (as the Public Authority has done in RTI Appeal/25/2017) as the public interest test is contained inherently in that exemption itself as well as in the general override in Section 5(4).

We take note of the Public Authority's objection raising Section 5(1)(a) (privacy exemption) and Section 5 (1) (h) (i) (on-going investigations) in relation to information asked for in RTIC/25/2017 and those portions of the information request in RTIC Appeal 26/2017 which had been declined.

Where both exemptions are concerned, the Public Authority is under a duty to specify as to how respectively, 'an unwarranted invasion' of privacy' and 'serious prejudice' may be caused to 'on-going investigations' as statutorily required. Further, a lack of clarity arises regarding the applicability of the exemption in Section 5(1)(j) (contempt of court), in relation to the information requested in RTIC/25/2017.

The Public Authority's request to file Written Submission on the matters in issue is granted. Written submissions of the PA (with copy to Appellant) to be filed on or before the 5th of April. The Appellant may if it so wishes file counter submissions (with copy to the PA) on or before the 13th of April.

As agreed by the Public Authority before this Commission, it is directed to provide the information requested in the first two points of item 6 (as highlighted below) in RTIC Appeal/26/2018, namely,

6. 'A list of all govt. securities market transactions of the EPF from January 2015 to 30.04.2017. The list should include the following market activities.

- Primary market transactions held through auctions
- Primary market transactions held through direct placement

- Secondary market transactions

Details of the transactions specified above should include the following information:

- **Date of purchase**
- **Date of bill/ bond issue (if different from the date of purchase)**

Where the request has been made for the Annual Report of the PA in respect of the year 2016, the Public Authority is directed to consider the feasibility of providing whatever information that would ordinarily be contained in the Annual Report relative to the year in question. If so required, such information may be severed and provided to the Appellant as provided for in Section 6 of the RTI Act as follows,

'Where a request for information is refused on any of the grounds referred to in section 5, access shall nevertheless be given to that part of any record or document which contains any information that is not exempted from being disclosed under that section, and which can reasonably be severed from any part that contains information exempted from being disclosed.'

The Appeal is adjourned. Next date of hearing: May 09th, 2018.
