

**Independent Sevaka Sangamaya (of the Ceylon Fishery Harbours Corporation) v
Ceylon Fishery Harbours Corporation**

RTICAppeal(In-Person)/112/2018 - *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: Independent Sevaka Sangamaya
Notice Issued to: General Manager Ceylon Fishery Harbours Corporation

Appearance/ Represented by:

Appellant - Mr. D. D. Thrimawithana
Public Authority - Percy Samarasinghe, General Manager Ceylon Fishery Harbours Corporation

RTI Request filed on	22.08.2017
IO responded on	28.08.2017
First Appeal to DO filed on	21.09.2017
DO responded on	04.10.2017, 27.11.2017
Appeal to RTIC filed on	28.12.2017

Brief Factual Background:

The Appellant Union by request dated 22.08.2017 requested the following items of information

pertaining to cases filed by the Ceylon Fishery Harbours Corporation (the PA) against external parties and vice versa;

1. The number of cases filed by the PA against external persons/ parties
2. The number of cases filed by external persons/ parties against the PA. The Parties against whom the cases were file against.
3. The amount of money spent on each case to date
4. The names of the lawyers appearing for the aforesaid cases

The IO responding on 28.08.2017 denied the information on the basis that it falls under Section 5 (1) (c) (ii) (the regulation of credit) and 5 (1) (f) (consists of any communication, between a professional and a public authority to whom such professional provides services).

Dissatisfied with this response, the Appellant appealed to the DO on 21.09.2017. The DO responding on 27.11.2017 provided the Appellant with information obtained from the legal officer of the PA by internal memo dated 16.11.2017. The Legal Officer had informed the General Manager that only information pertaining to cases which had been concluded could be provided.

The Appellant on 29.11.2017 informed the PA that the information is inadequate and incomplete, pointing out that in relation to certain FR cases, the only information that had been provided was that the case was dismissed. The Appellant further noted that no information in relation to item 4 of the request had been provided. Accordingly, as the response of the DO was inadequate, the Appellant Union preferred an appeal to the Commission on 28.12.2017.

Matters Arising During the Course of the Hearing:

The Appellant Union had submitted, in writing, as of record on 25.04.2018 that its entire membership consists of citizens of Sri Lanka, and that it therefore falls within the definition of citizen in Section 43 of the RTI Act.

The PA submitted in its written submissions dated 18.04.2018 that it had provided information in relation to cases which had been concluded but that the information had not been provided in relation to pending cases as the release of the information may be prejudicial to the said cases. The PA further submitted that the information requested could not be located in one particular file and that it was willing to allow the Appellant to inspect the relevant files and to locate the necessary information.

During the hearing, in relation to the amount spent on lawyers' fees, the PA submitted that specific files containing the information could not be located according to the response given by the Legal Division of the PA. Accordingly the PA submitted that an inquiry had been commenced in regard to the matter and in any event, the information could be obtained from files held in the Finance Division. The PA reiterated that it was unable to release information in relation to pending cases.

Upon being informed by the Commission that the mere pendency of a case in court does not result in the information becoming exempted information under any subsection of Section 5 and upon being asked as to what types of cases are filed by and against it, the PA responded, clarifying that most of the cases concerned loan recovery matters.

Order:

The Appellant is directed to inspect the file as agreed by the PA. The matter will be taken up again on 05.06.2018 consequent to which the other matters in issue in this appeal will be examined.

The Appeal is adjourned.

RTIC Appeal (In – person) 112/2018 (*Order adopted as part of a formal meeting of the Commission on 05.06.2018*)

At the Right to Information Commission of Sri Lanka

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

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Justice Rohini Walgama

Present: Director-General Mr. Piyathissa Ranasinghe

Appellant: Independent Sevaka Sangamaya

Notice issued to: General Manager Ceylon Fishery Harbours Corporation

Appearance/ Represented by:

Appellant - Mr. D.D. Thrimawithana, Chairman of Independent Sevaka Sangamaya

PA - Percy Samarasinghe, General Manager Ceylon Fishery Harbours Corporation

Matters Arising During the Hearing

Upon being queried, in relation to the amount spent on lawyers' fees (item No.4 of the information request) the PA submitted the progress of the following inquiries that had commenced as per the directions given by the Order of the Commission dated 20.04.2018;

1. According to the response given by the Legal Division of the PA, the files containing the information could not be located.
2. With regard to the matter, in any event, the information could be obtained from files held in the Financial Division.

As per the inquiry held in relation to the response of the Legal Division of the PA, the PA submitted that a preliminary report has been presented to the Chairman and as per the report, the vouchers of the lawyers containing the information could not be located.

Further as per the inspection held by the Appellant in relation to the Ledger Accounts for the period from 01.02.2011 to 01.08.2017 held in the Financial Division, the Appellant submitted that no information had been compiled for the year 2011 and the information for the years 2012 to 2017 was inadequate and incomplete, pointing out that the only information that had provided in the Ledger Accounts was that the number of the case, a note stating lawyers' fees and some names of lawyers'.

Upon being informed by the Commission that the information available in the Ledger Accounts should match against the information available in the Cash Book, the PA agreed to allow the Appellant to inspect the relevant files and to locate the necessary information.

Order

The Public Authority is agreeable to provide the information in relation to the public funds expended towards retaining counsel. In such instances, what is relevant under and in terms of the RTI Act is not the names of the counsel but the moneys expended as aforesaid.

The corporation of the PA with regard to provision of the information requested in the instant appeal is noted as of record, as exemplifying the principles of the RTI Act in regard to enhancing the transparency and accountability of Public Authorities.

The PA was directed to inspect the file (Cash book) as agreed by the PA. The matter will be taken up on 19.06.2018 to ascertain status of the information requested/provided.

The Appeal is adjourned.
