

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

RTI Request filed on	15.06.2017 and 07.07.2017 (reminder)
IO responded on	04.08.2017
First Appeal to DO filed on	14.08.2017
DO responded on	08.12.2017
Appeal to RTIC filed on	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 5th June 2018.

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 05.06.2018

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

Appearance/ Represented by:

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

Matters Arising During the Course of the Hearing:

The Commission questioned the PA with regard to its position on submitting the requested report and its findings. The PA submitted that the particular investigation concluded on 31.05.2017 and the report had been submitted to the Authority on 01.06.2017. The PA further submitted that the

report was handed over to the Additional Secretary of the Ministry and it presently is in the custody of the subject Minister. In explaining its position with regard to the refusal to submit the requested information, the PA stated that though the investigation had concluded no action had been taken with regard to the matter to date and hence, the report cannot be submitted.

Expressing its concerns regarding the response of the Public Authority, the Appellant submitted that this was not sufficient justification for refusing the information under the RTI Act. The Appellant also submitted of record that it had filed its membership to establish citizenship within the meaning of Section 43 of the Act by way of document dated 05.06.2018 which stated *inter alia* that the Appellant Society was established in Sri Lanka under the Royal Charter in 1952.

Order:

The Public Authority is required to establish an exemption under Section 5 (1) in order to refuse the information and also required in terms of Section 32(4) to satisfy the burden of proof in regard to why the harm in disclosure is greater than the public interest.

It is evidenced that the justification for refusing to release the information as contained in the responses of the IO and the DO through letters to the Appellant respectively dated 04.08.2017 and 08.12.2017(viz; invasion of privacy presumably under Section 5 (1)(a) and on the basis that the recommendations of the said inquiry have not been carried out) have now been varied to the extent of claiming that the reason is that the subject Minister has retained the file in question. The attention of the PA is strictly directed to the fact that the subject Minister has retained the file and that therefore the information cannot be given is not a legal basis to refuse information under and in terms of the RTI Act, No 12 of 2016.

The PA is directed to file a written response before this Commission, signed by the Designated Officer, affirming the above ground as the basis for the failure to submit requested information. The Appellant is directed to submit minutes of the ongoing case in relation to this matter before the Court of Appeal.

The Appeal is hereby adjourned. Next date of hearing: 31.07.2018
