

Thilak Ranjith Silva v. Sri Lanka Police-Headquarters

RTICAppeal(In-Person)/142/2018 - 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 09.05.2018

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: Mr. Thilak Ranjith Silva
Notice Issued to: Designated Officer, Sri Lanka Police, Headquarters

Appearance/ Represented by:

Appellant - Mr. Thilak Ranjith Silva
Public Authority - N/A

RTI Request filed on	21.11.2017 (sent on 27.11.2017)
IO responded on	N/A
First Appeal to DO filed on	30.12.2017
DO responded on	N/A
Appeal to RTIC filed on	09.01.2018

Brief Background Facts

The Appellant had requested the following information in relation to an accident that had occurred on 13.02.2017 at Ruhunuketha Junction in Batticaloa- Polonnaruwa Road by an information request dated 21.11.2017

1. Certified copies of the rough notes (දළසටහන) and investigation report which recorded the place and the way in which the accident occurred

2. Certified copies of the extracts recording the date and the time on which the lorry driver and/or his assistant was arrested
3. Certified copies of the extracts recording the time when the lorry driver had been produced to the District Medical Officer to obtain the Medical Report
4. Certified copies of the G.H.T. copy (ජී.එච්.ටී. පිටපතක්) inclusive of the Medical Report of the Lorry driver
5. Certified copies of the extracts of notes recording the production of the accused lorry driver to the court and other appearances made by the driver before the court
6. Certified copies of the extracts of the post mortem report conducted on 14.02.2017 at the Polonnaruwa Hospital
7. Certified copies of entries made in the Productions Book concerning the Motorcycle and the Lorry
8. Investigation Report made by the vehicle inspector (මෝටර් රථ පරීක්ෂකතුමා) pertaining to the investigation
9. Certified copies of the notes made by the police officers who conducted the investigation on that day on their pocket information books
10. The times when the police officers who conducted the investigation went off-duty on the same day after conducting the investigation
11. A certified copy of the Temporary license issued to the driver inclusive of the number of the same and the date issued
12. Copies of the photos obtained by the police officers regarding the accident

Upon receiving no response from the Information Officer (IO), the Appellant had made an appeal to the Designated Officer (DO) on 30.12.2017. Upon receiving no response from the DO, the Appellant made an appeal to the Commission by letter dated 09.01.2018.

Matters Arising During the Hearing

The Public Authority (PA) was absent although it had been noticed under Rule 20 of the Rules of the Commission gazetted on February 3rd 2017 (Gazette No 2004/66) to be present at the appeal hearing.

The Appellant informed the Commission that subsequent to his appeal to the Commission, the IO of the PA had provided him with a response to his information request dated 21.11.2017 on 17.01.2018. Therein, the Appellant submitted that he was satisfied with the information received pertaining to items 1, 2, 4, 6, 7, 8 and 11. With regards to items 3, 5 and 11 of the information request, the Appellant claimed that the information provided by the PA was incomplete and misleading and that the PA had failed to provide the information requested under items 9 and 12 of the information request.

The PA by letter dated 08.05.2018 sent via fax addressed to the Commission, copied to the Appellant, had informed the Commission that the information requested by the Appellant was refused under Section 5(1)(j) of the Right to Information Act, No.12 of 2016. Furthermore, the PA had submitted that action had been instituted in the Magistrate's Court of Manampitiya against the accused driver in the investigation regarding which the information had been sought and on 23.04.2018 the Magistrate had ordered all 3 files maintained on the investigation by the PA to be forwarded to the Attorney General's Department to decide on further action to be taken. Therefore, the PA has opined that granting the information requested by the Appellant would cause prejudice and affect adversely on the impartiality of the court proceedings.

Subsequently, the Appellant brought to the cognizance of the Commission the fact that the 3 information requests made by the Appellant dated 29.12.2017, 05.03.2018 and 16.04.2018 to the Public Authority pertaining to the same investigation had also gone unanswered similar to the present appeal before the Commission.

Order

In the instant matter, failure to adhere to the proper procedure mandated by the RTI Act, No 12 of 2016 (the Act) and RTI Regulations gazetted on February 3rd 2017 (Gazette No 2004/66) is evidenced on the part of the Public Authority.

In the first instance, the DO has failed to appear before this Commission or send a representative on his behalf, despite being noticed to do so under the RTI Act and the Rules of the Commission gazetted on February 3rd 2017 (Gazette No 2004/66). The Public Authority has provided no explanation as to the failure thereof. This constitutes an offence under and in terms of Section 39 (1) (c) of the Act, incurring specific legal consequences in terms of that Section.

In such an eventuality, the Commission is empowered under Section 39(4) to initiate a prosecution in the relevant court. Section 39 further specifies that the conviction of such an offence carries with it the penalty of a fine and/or imprisonment for a term not exceeding two years.

The PA has refused the information requested by the Appellant under Section 5(1)(j) of the RTI Act, which reads as follows;

the disclosure of such information would be in contempt of court or prejudicial to the maintenance of the authority and impartiality of the judiciary

In *Ceylon Bank Employees Union v People's Bank* (RTIC Minutes 30.01.2018), this Commission noted that information may only be refused strictly within the four corners of Section 5(1), which refusal is finally subject to the public interest override in Section 5 (4) in

terms of which, information cannot be declined ‘where the public interest in disclosing the information outweighs the harm that would result from such disclosure.’

If the exception in Section 5(10(j)) is invoked to justify refusal, there must be a real risk (emphasis ours), as opposed to a remote possibility, that interference or prejudice would result in ‘contempt of court’ or be ‘prejudicial to the maintenance of the authority and impartiality of the judiciary.’

We are mindful that in assessing the relevance of the exemption set out in Section 5(1)(j) of the Act and in the light of the principle of maximum public disclosure that the Act is premised on, this Commission is called upon to apply the primary principle of the Right to Information against the exceptions set out in Section 5(1) of the Act which must be narrowly interpreted.

The Public Authority’s submissions in this regard conspicuously lack the establishing of a connection between this requested information and the manner in which ‘a real risk’ may therein be posed to the ‘authority and impartiality of the judiciary’ so that ‘prejudice’ is caused thereby.

In the foregoing circumstances, the Public Authority is directed to more fully substantiate its refusal to provide the information requested and is strictly required to present itself before the Commission along with the required documents for the Commission’s perusal on the next date of hearing.

The Appeal is hereby adjourned.
Next date of hearing: 30.05.2018
