

Kumudinie Mudalige v Sri Lanka Export Development Board

RTIC Appeal (Documentary Proceeding)/[1846]/[2019]- Order adopted as part of the formal meeting of the Commission on [30.06.2020]

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 Member: Ms.Kishali Pinto-Jayawardena

Commission Member: Mr.S.G. Punchihewa

Commission Member: Dr. SelvyThiruchandran

Commission Member: Justice Rohini Walgama

Director General : D.G. Hapuarachchi

Appellant: KumudinieMudalige

Notice issued to: Designated Officer (DO), Sri Lanka Export Development Board

RTI Request filed on	25.07.2019
IO responded on	08.08.2019
First Appeal to DO filed on	09.08.2019
DO responded on	28.08.2019
Appeal to RTIC filed on	05.09.2019

Brief Factual Background:

The Appellant had by request dated 25.07.2019 requested the following information,
Following information in related to the interview held on 4th July 2019 for the post of Director Policy and Strategic planning (HMI-1)

- 1. No of applicants internal and external*
- 2. No of applicants received*
- 3. Results/ Final decision of the interview*
- 4. Marks obtained by the applicants in the interview with the rank (certified copies)*
- 5. Marking scheme*

The Information Officer (IO) on 08.08.2019 responded stating the following,

- 1. With regard to item no. 01- 16*
- 2. With regard to item no. 02 - 2*
- 3. With regard to item no.03 - Results/final decision of the interview panel is both candidates have not performed well in the interview and therefore re advertise for the post*

4. *With regard to item no. 05- The marking sheet is in the custody of chairperson and chief executive, could be given on arrival from overseas.*
5. *With regard to item no.06- Marking scheme is attached.*

Dissatisfied with the response of the IO the Appellant lodged an appeal with the DO on 09.08.2019. The DO responded on 28.08.2019 stating the following,

1. *With regard to item no. 01 – internal 02 and external 14*
2. *With regard to item no. 02- 16*
3. *With regard to item no.03- Both candidates do not qualify for the Position of Director-Policy and Strategic Planning*
4. *With regard to item no. 04 – Certified copies of the Mark Sheet of the interview held on 04.07.2019 could not be disclosed since it would cause unwarranted invasion of the privacy of the individual and required to be kept confidential by reason of the existence of a fiduciary. However, marks obtained by the Appellant was disclosed.*
5. *With regard to item no.05 – Marking scheme as per the Scheme of Recruitment was disclosed.*

Dissatisfied with the response of the DO the Appellant preferred an appeal to the Commission on 05.09.2019.

Matters Arising During the Course of the Hearing:

In view of the prevailing situation in the country due to the threat posed by COVID 19, and as such in order to minimise interaction between persons, the appeals scheduled for in-person hearings in terms of Rule 20 of the RTI Commission's Appeal and Rules on Fees and Appeal Procedures (Gazette No. 2004/66, 03.02.2017) will be considered as documentary proceedings under Rule 19 in the first instance. As such this appeal is considered by the Commission based on the documents present on file to date and the parties are notified of the directions below. This is subject to change at a later point.

Order:

The attention of the Public Authority (PA) is drawn to the fact that the function of this Commission is to ascertain whether the information requested can be legitimately and in law, be made available to the Appellant, subsequent to a consideration of whether the information does not fall within the purview of the several exemptions detailed in Section 5 (1) of the RTI Act. In the event that the information does fall within the purview of an exemption in Section 5 (1), it is the duty of this Commission to ascertain as to whether the whether the public override in Section 5 (4) is found to apply.

In this appeal, the PA has relied on Section 5(1)(a) to deny the information asked for in relation to item no.4.

Section 5 (1) (a) states as follows;

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

Section 5 (4) states that;

Notwithstanding the provisions of subsection (1), a request for information shall not be refused where the public interest in disclosing the information outweighs the harm that would result from its disclosure.

It is evident that the Appellant requests marks pertaining to an interview at which he too was a candidate and alleges bias in the selection to a particular post.

Therefore the PA is directed to substantiate the applicability of Section 5 (1) (a) of the RTI Act given that the information concerned pertains to transparency of procedures adopted by Public Authorities when conducting interviews in pursuance of its public function for which purpose, public funds are utilized. The PA is further directed to clarify how the information requested relates to private details of the other applicants amounting to an ‘unwarranted invasion of privacy’ outweighing the larger public interest in disclosure and not merely an assessment of the said applicants by the PA on defined and applicable criteria.

As such the PA is directed to revert within two weeks of the receipt of this Order, with a copy to the Appellant.

The Appeal is adjourned.

Next Date of Consideration: 18.08.2020

Order is 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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RTIC Appeal (Documentary Proceeding)/ [1846]/[2019]- Order adopted as part of the formal meeting of the Commission on [18.08.2020]

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 Member:** Ms.Kishali Pinto-Jayawardena
- Commission Member:** Mr.S.G. Punchihewa
- Commission Member:** Dr. SelvyThiruchandran
- Commission Member:** Justice Rohini Walgama

Director General : D.G.M.V. Hapuarachchi

Appellant: Kumudinie Mudalige
Notice issued to: Designated Officer (DO), Sri Lanka Export Development Board

Matters Arising During the Course of the Hearing:

In view of the prevailing situation in the country due to the threat posed by COVID 19, and as such in order to minimise interaction between persons, the appeals scheduled for in-person hearings in terms of Rule 20 of the RTI Commission's Appeal and Rules on Fees and Appeal Procedures (Gazette No. 2004/66, 03.02.2017) will be considered as documentary proceedings under Rule 19 in the first instance. As such this appeal is considered by the Commission based on the documents present on file to date and the parties are notified of the directions below. This is subject to change at a later point.

Order:

It is noted that the information items No.1, 2, 3 and 5 of the information request have been provided to the Appellant by the response of the DO dated 28.08.2019.

It is also noted in compliance with the Order dated 30.06.2020, the PA has forwarded a certified copy of the mark sheet of the interview held on 04.07.2019 for the post of Director Policy and Strategic Planning for the perusal of the Commission in order to make a determination.

The matter is re-fixed for hearing on 17.11.2020 at 12.00 p.m. for consideration under in-person hearing and to ascertain further steps in relation to the release of the requested information item No. 4. The attendance of the Public Authority and the Appellant is compulsory.

The Appeal is adjourned.

Order is 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).

RTIC Appeal (In-Person Hearing)/ [1846]/[2019]- Order adopted as part of the formal meeting of the Commission on [26.01.2021]

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 Member: Ms.Kishali Pinto-Jayawardena
Commission Member: Mr.S.G. Punchihewa
Commission Member: Justice Rohini Walgama

Director General : D.G.M.V. Hapuarachchi

Appellant: Kumudinie Mudalige
Notice issued to: Designated Officer (DO), Sri Lanka Export Development Board

Appearance/ Represented by:

Appellant – Kumudinie Mudalige

PA – Indrakeerthi SRP, Information Officer/Director

Matters Arising During the Course of the Hearing:

The Appellant and the Public Authority was present.

Upon queried, the PA submitted that it has provided the information relating to item No. 04, namely, marks obtained by the applicants in the interview with the rank (certified copies) to the Appellant and hence the Appellant confirmed the same.

Order:

It is noted that the information items No.1, 2, 3 and 5 of the information request have been provided to the Appellant by the response of the DO dated 28.08.2019.

In response to the Order dated 18.08.2020, the PA has provided information relating item No. 04, namely, marks obtained by the applicants in the interview with the rank (certified copies) to the Appellant.

The Commission appreciated the cooperation of the Public Authority in adhering to provisions of the Right to Information Act in relation to this appeal.

In the foregoing circumstances, it is also noted that the Appellant is in receipt of information pertaining to items No. 1,2,3,4 and 5. Thus, the Appeal is concluded.

Order is 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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Mahinda Gammampila – Chairman

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Kishali Pinto – Jayawardena – Commission Member

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S.G. Punchihewa – Commission Member

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R. Walgama – Commission Member
