

Nalaka Chaminda Jayaweera v Sri Lanka Institute of Architects

RTIC Appeal (In-Person Hearing)/1440/2019- Order adopted as part of the formal meeting of the Commission on 05.11.2019

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. Selvy Thiruchandran
Commission Member: Justice Rohini Walgama

Director General : D.G. Hapuarachchi

Appellant : Nalaka Chaminda Jayaweera
Notice issued to : Designated Officer (DO), Sri Lanka Institute of Architects

Appearance/ Represented by:

Appellant - Nalaka Chaminda Jayaweera
Ashar Stanislaw, Attorney-at-law
PA - Hemantha Hulangama – General Manager

RTI Request filed on	06.03.2019
IO responded on	28.03.2019, 08.04.2019
First Appeal to DO filed on	16.04.2019
DO responded on	No response
Appeal to RTIC filed on	22.04.2019

Brief Factual Background:

The Appellant had by request dated 06.03.2019 requested for following information;

As you are aware SLIA as a professional institute comes under the provisions of the “Right to Information” Act No. 12 of 2016 (hereinafter referred to as RTI) and thereby I do hereby request you to release the certified copies of the following documents and/ or reports and/ or information; on the following three (3) key items identified and listed as A,B and C; below.

A. *As claimed by the SLIA President 2017-2019, Archt. D.H Wijewardene at the AGM on 23.02.2019 at BMICH; SLIA has purchased a Tent Structure/ Tent/ Steel Structure/ similar element (hereinafter referred as the ITEM); at a cost of more than Rs. 6 million. Thereby I do hereby request you to release the certified copies of the following documents, reports minutes and information.*

1. *“The business proposal” or the business plan” or any other similar document presented to the SLIA Council in order to acquire such an ITEM which is definitely a heavy capital investment.*

2. *Conceptual Layouts Plans, Drawings and Technical Specifications prepared for the purpose of buying such ITEM.*
 3. *The quotation obtained from possible suppliers for such ITEM most probably & technically should be based on drawings & technical specifications as specified A.2 above.*
 4. *Evolution of the possible quotations/ bids submitted by suppliers as per A. 3 above; and the report presented to the Council along with recommendations to decide on the best competitive supplier.*
 5. *If the space available at the SLIA premises of 120/7, Vidya Mawatha, Colombo 07; is not sufficient to store the ITEM; the logistics that have made to store the ITEM.*
 6. *If SLIA building, the security agreement provided for such ITEM at the identified storing place.*
 7. *As such outside storing cannot secured by the already available security service for the SLIA building, the security agreement provided for such ITEM at the identified storing place.*
 8. *Insurance Policy on the said ITEM either stored in present SLIA office or any other location owned/rented/leased by SLIA.*
 9. *The actual usage of such ITEM by the SLIA is restricted only for 5 days per year and can consider another maximum 5 days for assembling and disassembling the said ITEM; thereby making unstable period of maximum 10 days per year. As a result it is idling for 355 days per year and thereby the proposal that has been made in the “business plan” or any other similar document, to maximize the utility value and/ or to reduce the idling time.*
 10. *Whether the ITEM is imported brand new or locally produced by manufacturer OR reconditioned in another country OR reconditioned locally.*
 11. *Manufacturer’s specifications, standards and other technical details of the ITEM and possible certification by the manufacturing plant.*
 12. *The date of purchase of such ITEM, guarantees, warrantees and issued by the supplier and the maintenance agreement for such ITEM.*
 13. *Details of official Registration of possible Agreements as specified above.*
 14. *The copies of the Board Minutes and/ or committee minutes and/ or Office bearers Minutes and/ or council Minutes and/ or Special Minutes for the purchase of the ITEM.*
 15. *Any other document that relates to purchase, storing and using of the said ITEM.*
- B. *I do hereby request you to release the report that has been handed over to SLIA by M/S B.R De Silva & CO. as claimed by the Archt. D.H Wijewardane, President 2017-2019 at the AGM held on 23.02.2019 at BMICH and as admitted & claimed by the representative of the M/S B.R De Silva & Co at the same meeting.*
- C. *I do hereby request you to release the following details of the proceedings within the period of release of Interim Audit Report (2018) for the period ended as at 31.12.2018 to the Final Audit Report (2018) for the period ended as at 31.12.2018 to the final audit report and then to the AGM, which includes;*
1. *The Interim Audit Report (2018) as at 31.12.2018 by M/S TUDOR V PERERA & CO.*

2. *The list of Office Bearers Meetings, Council meetings and special Council meetings held on from the date of handling over of Interim Audit Report (2018) to the AGM that was held on 23.02.2019.*
3. *The copies of the Office Bearers Minutes, Council Minutes and Special Council Minutes of the dates as specified in the item C.2 above.*

The Information Officer (IO) on 28.03.2019 responded stating that “*your request was forwarded to the Council on 27th March 2019 and the Council decision will be notified soon*” The Appellant sent notification to the IO on 01.04.2019 and the IO responded stating that “*the Present Senior Vice President (who was i-charge of the A-19 Exhibition will attend to your request*” Dissatisfied with the response of the IO the Appellant lodged an appeal with the DO on 16.04.2019. As the DO failed to respond with the time period stipulated under the Act the Appellant preferred an appeal to the Commission on 22.04.2019.

Matters Arising During the Course of the Hearing:

Upon being queried as to whether there had been any responses from the IO and the DO in relation to the information request, the Public Authority (PA) submitted that when the first RTI request was lodged a legal opinion was sought and the same was forwarded to the relevant division and there after it took a decision to disclose certain information to the Appellant. Further, the individual who represented on behalf of the PA submitted that they will submit a detailed report including the information that can be disclosed and further added that some of the information were disclosed not in the format that had been requested.

The Public Authority has made written submissions to the Commission by letter dated 21.05.2019 stating that information was provided to the appellant on 14.05.2019 by registered post and that the notice sent by the Commission on 08.05.2019 was received by the Public Authority only on 16.05.2019. Furthermore, it is stated that a copy of the letter sent to the Appellant is attached for the reference of the Commission.

“ඔබගේ අංක A 1822 පූර්ව දැනුම් දීම ලිපිය හා බැන්දේ.

ඔබ විසින් 2019 මැයි 08 වන දින ලියන ලද ලිපිය මැයි මස 16 වන දින අප වෙත ලැබී ඇත. එහි දන්වා ඇති පරිදි අභියාචක, නාලක වමන්ද ජයවීර, "සිරිල", 29, නිහාරිය, දකුණු මාවත, කලගෙඩිහේන-11875 විසින් එවන ලද ලිපියට ආදාලව ඔහු විසින් ඉල්ලුම් කර ඇති තොරතුරු අප ආයතනය විසින් මැයි මස 14 වන දින ලියාපදිංචි තැපෑලෙන් යවා ඇති බව මෙයින් සහතික කර දන්වා සිටිනු කැමැත්තෙමු.

එම ලිපියෙහි පිටපතක් ඔබ වෙත ද මේ සමග ඒවා ඇත.”

The Commission has received the statement of objections made by the Public Authority on 07.10.2019 and the written submissions made by the Appellant dated 21.10.2019 is received on 23.10.2019.

Upon being queried as to which information has already been provided and which has not been provided. The appellant submitted that almost all requested information has not been provided in the original format and that the PA has created a new set of information and has submitted certain information.

It is noted that the PA has not provided the information that the appellant has actually requested for. They are a new set of information; the e mails the PA have provided are dated very recently.

Upon being queried, the PA submitted the following,

1. Of consent the PA agreed to provide the information requested by items no. A- 1,4,5,6 and 7;
2. The information relating to items no. A-2 and A-3 can be provided after obtaining the consent from the other parties pertaining to Intellectual Property Rights;
3. Of consent the PA agreed to provide alternative information relating to information requested by item no. A-8;
4. Of consent the PA agreed to provide the information requested by items no.A-9 and A-10.
5. The PA submitted that it will revert back it stance in relation to information requested by items no. A-11,12 and 13;
6. Of Consent the PA agreed to provide the information requested by items nos. A-14 and A-15;
7. The PA submitted that it will revert back with its stance in relation to information requested by item no .B as is a pending CID inquiry into the same.
8. The PA submitted that it will revert back with a detailed response in relation to the information requested by items nos. C-1,2 and 3.

Order

It is noted that, if the Public Authority (PA) wishes to refuse information it must done under and in terms of the Act which is by citing an exemption provided under the RTI Act.

It is also noted that, the right of the citizen to acquire information from a PA arises when the PA concerned is in the possession, custody or control of the information requested.

Section 3(1) of the Right to Information Act, No.12 of 2016 states as follows:

- (1) *Subject to the provisions of section 5 of this Act, every citizen shall have a right of access to information which is in the possession, custody or control of a public authority*

The attention of the PA is drawn to the fact that it should adhere to adhere the timelines as provided under and in terms of the Right to Information Act No.12 of 2016. The PA is directed to produce a report on the state of the CID inquiry and to provide the information to the Appellant.

The Appeal is adjourned.

Next date – 10th March 2020

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RTIC Appeal (In-Person Hearing)/1440/2019- Order adopted as part of the formal meeting of the Commission on 10.03.2020

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: Mr. S.G. Punchedhewa

Commission Member: Dr. Selvy Thiruchandran

Commission Member: Justice Rohini Walgama

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Appellant : Nalaka Chaminda Jayaweera
Notice issued to : Designated Officer (DO), Sri Lanka Institute of Architects

Appearance/ Represented by:

Appellant - Nalaka Chaminda Jayaweera
Ashar Stanislaw, Attorney-at-law
PA - Hemantha Hulangama – General Manager

Matters Arising During the Course of the Hearing:

The Public Authority had provided further information to the Commission by its letter dated 14.02.2020. However, it was submitted by the Appellant that he had not received such information. As such the Appellant was provided a certified copy of the letter before the Commission.

Order:

It is noted that as per the direction of the Commission issued on 11.05.2019 the Public Authority has responded to by letter dated 14.02.2020. However as the Appellant has not received a copy of the letter dated 14.02.2020 prior to the hearing of the appeal and as such was unable to peruse through its contents, he is given two weeks' time to respond to the Public Authority and to revert on whether the information has been provided in line with the information request.

Both parties are directed to respond to the Commission informing regarding the state of the information provided as per the information request in the appeal before 02.09.2020, which will be the next date of consideration of this appeal.

N.B. This appeal which was to be considered on 02.06.2020, has been rescheduled for consideration on 01.09.2020, as a Documentary Proceeding in terms of the Commission's Rules on Fees and Appeal Procedures (Gazette No. 2004/66, 03.02.2017). This is in view of the prevailing health situation posed by COVID 19, to minimise interaction between persons. As such the appeals scheduled for in-person hearings in terms of Rule 20 of the RTI Commission's Rules on Fees and Appeal Procedures (Gazette No. 2004/66, 03.02.2017) will be considered as documentary proceedings under Rule 19. As such this appeal will be considered by the Commission based on the written submissions/ documentation presented at that date. This is subject to change at a later point.

The Appeal is adjourned.

Next date – 02.09.2020

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RTIC Appeal (Documentary Proceeding)/1440/2019- Order adopted as part of the formal meeting of the Commission on 08.09.2020

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. Selvy Thiruchandran
Commission Member: Justice Rohini Walgama

Director General : D.G. Hapuarachchi

Appellant : Nalaka Chaminda Jayaweera

Notice issued to : Designated Officer (DO), Sri Lanka Institute of Architects

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.

The appeal was fixed for consideration on 02.09.2020 but postponed to 08.09.2020.

Order:

It is noted that as per the direction of the Commission issued on 10.03.2020 the Appellant has responded to by written submissions dated 21.08.2020 explaining whether or not the information has been provided in line with the information request.

In the foregoing circumstances, the Public Authority is directed to file written submissions if required (with a copy to the Appellant) on or before the next hearing date containing its response to the written submission of the Appellant.

The Appeal is adjourned. This appeal is rescheduled for consideration on 22.09.2020 as a Documentary Proceeding in terms of the Commission's Rules on Fees and Appeal Procedures (Gazette No. 2004/66, 03.02.2017).

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).

Next date: 22.09.2020
