

The Right to Information Commission

RTIC Appeal No: 580/2018

**Inter Company Employees
Union**

21, Vauxhall Street
Colombo 02

-Appellant-

Vs.

**Sri Lanka Insurance
Corporation Ltd.**

Colombo 02

-Public Authority-

Before : 1. Justice Upaly Abeyrathne (Rtd.)- Chairman - Commissioner
2. Justice Rohini Walgama (Rtd.)- Commissioner - Commissioner
3. Kishali Pinto-Jayawardena (Attorney-at-Law) - Commissioner
4. Mr. Jagath Liyana Arachchi (Attorney-at-Law) - Commissioner
5. Mr. A.M Nahiya - Commissioner

Appearance : The Appellant is present.
The Public Authority represented by Ms. Ruwani hewavithange,
Manager (Legal)

Written Submission: The Appellant on : 21.01.2020, 27.04.2021, 08.02.2022,
30.09.2022
The Public Authority on : 07.01.2019, 14.01.2020, 07.04.2021,
13.09.2021, 19.01.2022, 01.02.2022
20.09.2022

Date of Hearing : 08.01.2019, 05.03.2019, 02.07.2019, 26.11.2019, 28.01.2020,
11.02.2020, 25.02.2020, 26.05.2020, 24.11.2020, 01.12.2020,
09.02.2021, 16.03.2021, 27.04.2021, 24.09.2021, 18.01.2022,
25.08.2022, 30. 09.2022

Decided on : 08.12.2022

Decision of the Commission:

Brief Factual Background:

The Appellant Union, by letters dated 22.03.2018 and 14.05.2018, requested for the following items of information

1. *A department plan of each unit under life insurance and general insurance of the Sri Lanka Insurance Corporation Ltd.*
2. *A document consisting of benefits and monetary payments other than commissions and fringe benefits granted to the agents and internal sales officers.*
 - a. *Representing community, number of members of the community, entry qualifications, the telephone benefits given to each member, loan benefits, other benefits, foreign travels and other payments.*
 - b. *The unit or departments relating to internal sales officers, number of employees and the payment of telephone benefits to each of them, loan benefits, other benefits, foreign travels and other payments.*
3. *A document which contain a detailed salary description of the current employees of the Sri Lanka Insurance Corporation.*
 - a. *Number of employees of the corporation and the cost for them per a month.*
 - b. *Number of employees of the MSRPL and the cost for them per a month.*
 - c. *Below listed information regarding MSRPL employees.*
 - I. *Number of senior managers, minimum qualifications for the post, fringe benefits accorded, minimum basic salary and the duties conferred.*
 - II.
 - III. *Number of assistant general managers, minimum qualifications for the post, fringe benefits accorded, minimum basic salary and the duties conferred.*
 - IV.
 - V. *Number of deputy general managers, minimum qualifications for the post, fringe benefits accorded, minimum basic salary and the duties conferred.*
 - VI.
 - VII. *Number of chief officers, minimum qualifications for the post, fringe benefits accorded, minimum basic salary and the duties conferred.*
 - VIII.
 - IX. *Number of chief executive officers, minimum qualifications for the post, fringe benefits accorded, minimum basic salary and the duties conferred.*

The Information Officer (IO) on 24.05.2018 responded providing a portion of the information and requesting for further time to gather the other items of information. Dissatisfied with the response of the IO the Appellant lodged an appeal with the DO on 01.06.2018 and 04.06.2018. The DO responded on 21.06.2018 stating that a certain portion of the information had been provided and the

remainder was denied under section 5 of the RTI Act. Dissatisfied with the response of the DO, the Appellant preferred an appeal to the Commission on 25.06.2018.

During the hearing of the appeal before the Commission, the Public Authority informed of record that it has provided the Appellant with information in regard to the Organizational Structure of Sri Lanka Insurance Corporation Ltd, namely information requested by the Appellant in item 1) of the above stated request/s.

Resisting release of information detailed in items 2) and 3), the Public Authority submitted that it is a profit-making organization which engages in a competitive marketplace and that as the organization is dependent upon the sales force, disclosing information on benefits and monetary payments granted to the agents and internal sales officers would be detrimental to the organization as such information could be used by rival organizations. It was contended that Management Services Rakshana Private Limited (MSRPL) is a private limited company with 100% shares fully owned by the Sri Lankan Insurance Corporation and as per the interpretation provided in the Right to information Act, the MSRPL does not come under the purview of the Act. In regard to the substantive content of the information asked for, Section 5 (1) (d) was relied upon to resist the provision of the information in items 2) and 3).

Further, its reliance on Section 5(1) (d) of the RTI Act was justified as follows, (Vide Written Submissions dated 14.01.2020);

- That the information requested constitutes commercial confidence falling within Section 5(1) (d) of the RTI Act.
- That the Public Authority is engaged in commercial operations and is considered to be a market leader in terms of the financial strength due to its commercial success.
- That due to its commercial success, information such as remuneration packages for specific positions and overall costs for employee groups is sensitive information. Release of such information would allow for employee poaching by competitors.
- That the Appellant-Union, despite consisting of employees of the Public Authority, is unaware of the requested information, due to the confidential nature of the same.
- That when information requests are made by its employees as aforesaid, there is an inference that the information is not being sought in the public interest but in the personal interest

Elaborating on its position that MSRPL falls outside the scope of the RTI Act, it was stated that, (Vide Written Submissions dated 14.01.2020)

- The term 'Public Authority' has been defined in the Section 43(e) of the RTI Act.
- In terms of Section 43 (e), MSRPL being a 100% owned subsidiary of the PA would constitute a "Public Authority" only if the PA falls within the meaning of a 'Public Corporation' as contemplated under the RTIC Act.
- The RTI Act does not contain an interpretation for the term 'Public Corporation' and therefore, the definition of the term 'Public Corporation' set out in Article 170 of the Constitution is relevant in ascertaining the reasonable meaning that may be attributed thereto.

“Public Corporation’ means any corporation, board or other body which was or is established by or under any written law other than the Companies Ordinance, with funds or capital wholly or partly provided by the Government by way of grant, loan or otherwise.”

- The Sri Lanka Insurance Corporation (PA) is a company incorporated under the Companies Act, No.07 of 2007 and as such is covered by Section 43 (e) of the RTI Act but does not fall within the aforesaid meaning a ‘Public Corporation’ in Section 43 (d) of the RTI Act as read in context of the term ‘Public Corporation’ in Article 170 of the Constitution.
- In the aforesaid circumstances, the Sri Lanka Insurance Corporation Limited cannot reasonably be regarded as a ‘Public Corporation’ within the meaning attributed thereto under the RTI Act. Accordingly, the said MSRPL, wherein the said the Sri Lanka Insurance Corporation Limited holds 100% of the shares, does not constitute a ‘Public Authority’ within the meaning of the RTI Act.

The Appellant reiterated the averments detailed in paragraph 13 of the Written Submissions dated 21.01.2020 which contended that the information requested under item no.02 did not constitute commercial confidence and trade secrets as this amounted to information pertaining to benefits, monetary payments and salaries which should be of general knowledge within the Public Authority. In relation to information requested in item No 3 a), it was submitted that this constitutes information that should be proactively disclosed under Regulation 20 of Gazette No 2004/66, 03.02.2017. Further, upon being queried by the Commission as to the difference between agents and internal sales officers referred to in item no.02, the Appellant stated that, the agents are officers who do not receive EPF but commissions for their performances and that the internal sales officers are permanent employees of the Public Authority with an EPF number.

In response, the Appellant reiterated that;

- If the above-mentioned position by the PA to be affirmed, then Litro Gas Lanka LTD will not also be constituted as a ‘Public Authority’ under the RTI Act and similarly a vast range of entities in which the state is functionally involved will be taken out of the ambit of the RTI Act.
- Sri Lanka Insurance Corporation Limited is incorporated under the Companies Act, No.07 of 2007, in which 99.97% shares is held by the Secretary to the Treasury. The Companies Act No.07 of 2007 already incorporates provisions that require information disclosure in the form of annual returns, audit report, financial statements etc.
- MSRPL was set up as a fully-owned subsidiary to provide payroll management services for Sri Lanka Corporation and MSRPL being a 100% owned subsidiary of the PA and is not involved in the provision of any services or products for the external market or external parties. Both the PA and MSRPL are governed by the same Board of Directors.
- The PA has already provided information partially which relates to requested information of item No. 3 (c); limited to the number of managers and minimum qualifications for the positions and the PA refrained from raising the objection in relation to providing that information;
- The MSRPL is subjected to the audit conducted by the Auditor General of the Government;

- The Annual Report is prepared based on the expenses and income of the PA as envisaged in the section of the 'Subsidiaries' in page no. 138 of the Annual report of the PA last year (2020).
- In page no. 136 of the same Annual Report it has mentioned that the MSRPL provides payroll management services to the Sri Lanka Insurance Corporation (PA).

The Appellant argued that the PA and MSRPL are governed by the same Board of Directors. Appellant also stated that the PA provided information to the Appellant Union regarding the Senior Management employees who work in the MSRPL, and after reviewing the information, the Appellant Union realized that all Senior Management employees are actually working in the PA, and thus the PA cannot deny providing requested information by claiming that MSRPL is not a PA.

The PA counter responded, stating that the aforesaid information which formed part of the requested information in item No 3 had been released voluntarily and that there was no concession implied therein that the said MSRPL was subjected to the RTI Act. It was further clarified that the number of employees and qualifications of the employees who are itemized in 3 (c) (i) to (iv) have been disclosed in the PA's Annual Reports. The PA submitted the Form 15 (Annual Return), Certificate of incorporation and Memorandum and Article of Association of Management Services Rakshana (Private) Limited (MSPRL). Further, the PA elaborated that MSPRL is not a recently incorporated company as it was incorporated in the year 1987 alongside the privatization of the PA and monopoly of the PA having been removed and as envisaged in the Memorandum and Articles of Association it was established specifically to enable the PA to be competitive in the relevant market.

It was also affirmed that the information which formed part of this subsidiary (MSRPL) has been incorporated in to the above-mentioned Annual report in compliance with the Provisions of the Companies Act No.07 of 2007 which in fact requires the consolidated accounts to be provided if it is a group of company. For that reason those details are brought into the same Annual Report.

In response to the Commission's inquiry, the Public Authority reiterated its position on the substantive issue stated in their written submission dated September 13, 2021. The PA contended that there is no valid legal basis for MSRPL to be considered a Public Authority under the RTI Act simply because it is a 100 percent owned subsidiary of the Public Authority, as Section 43(e) of the RTI Act relating to a Company incorporated under the Companies Act No.7 of 2007 makes no reference to subsidiaries or affiliates thereof.

Furthermore, the Appellant informed the Commission that the PA had failed to comply with the Commission's order dated 27.04.2021 by failing to comply with Regulation No. 20 of the Regulations of the Right to Information Act No. 12 of 2016 (Gazette No. 2004/66, 03.02.2017). The Appellant stated that the PA provided a web link that only contained Directive No. 1 of the order dated April 27, 2021, and did not adhere to Directives No. 2(a) and 2(b).

The PA was directed by the Commission to comply with the Commission's Order dated 27.04.2021 and include the specific details with regard to the items No. 2, 2 (a) and 2 (b) listed down in the order dated 18.18.2022 to the given web link or directly hand over to the Appellant within one week.

Complying with the direction of the Commission dated 18.01.2022; the PA provided their clarification on 19.01.2022, as follows;

“By our email dated 24th May 2021, we have submitted the said information as per the Right to Information Commission ruling on 16th May 2021 referred to in point No.1 to 3 (given reference by the first three bullet points) to the Right to Information Commission, Please find attached herewith a copy of the said email and the covering letter dated 24th May 2021 referred to as “Annexure A” and “Annexure B” respectively. With regard to bullet No. 4, please note that the requirement was to submit the information to the Right to Information Commission directly.

Referring to the above email dated 24th May 2021 we have submitted the following documents to the Right to Information and attached herewith for your reference.

- *The Direction requiring the PA to clarify as to how and on what basis the remuneration packages are calculated of the agents and internal sales officers on the next hearing date:*
 - i. *Annexure C – Internal Sales Officers Package*
 - ii. *Annexure D –Determination 10 of Insurance Regulatory Commission of Sri Lanka*
- *The Direction for the PA to release information pertaining to entry qualifications of the agents and internal sales officers who are recruited to the PA under the minimum requirement of proactive disclosure:*
 - i. *Annexure E – Internal Sales Qualification Matrix Extract*
 - ii. *Annexure F – Agents – Entry Criteria*
- *The Direction for the Public Authority to release information pertaining to the unit or departments relating to internal sales officers, number of employees under the minimum requirement of proactive disclosure:*
 - i. *Annexure G – Internal Sales Officers Unit Wise Allocation*

Further, at the hearing held on 18th January 2022, the Commission directed to provide agency commission in detail, not high level by way of Insurance Regulatory Commission of Sri Lanka direction and as such please find attached herewith details of agency commission in detail marked as “Annexure H.”

We further wish to inform that in complying with the regulation 20 of the regulations promulgated under the Right to Information Act No. 12 of 2016 by Gazette Extraordinary No. 2004/66 dated 3rd February 2017, we have already disclosed the proactive disclosures in the SLIC official website.”

The Public Authority submitted further written submissions to the Commission on 01.02.2022, stating that;

- The information sought to be released has been treated as confidential from 1987 and accordingly constitutes undisclosed information in terms of the Intellectual Property Act, No. 36 of 2003.
- Due to the high degree of reliance between the business partners and the PA, the business partners’ competitive positions are intrinsically linked to and intertwined with that of the PA and the aforementioned position is substantiated by the fact that Rs. 3,547 million

reinsurance premium was ceded by the Public Authority (*vide* P. 39 of the Public Authority's 2020 Annual Report).

- The disclosure of any further information requested by the Appellant, apart from the information already disclosed, would cause immense harm and associated third parties and gives rise to valid grounds to deny the release of information in terms of S. 5 (1) (d).
- Proactive disclosure of a segment of the information under Regulation 20 (1) (ii) does not derogate from the confidential character of the remaining information.

In further written submission filed by the Appellant on 08.02.2022, the following was stated;

- The PA and MSRPL comes within the ambit of Section 43 of the Right to Information Act, which defines a public authority as a company incorporated under the Companies Act, No. 7 of 2007 in which the State or a public corporation or the State and a public corporation together hold twenty-five per centum or more of the shares or otherwise has a controlling interest.
- The Public Authority has already provided information partially which relates to requested information of item No. 3 (c); only Number of managers and minimum qualifications for the post (Vide paragraph 8 of the Written Submissions). Therefore the Public Authority cannot maintain the argument that the Public Authority is not subjected to the RTI Act as it has been estopped by their own actions.
- All employees in MSRPL have physically worked in senior positions of Sri Lanka Insurance Corporation.
- The information requested under items No. 3 is proactive disclosure in terms of Extra Ordinary Gazette No.2004/66 Regulation No.20 (ii). Therefore, the requested information is available with the Public Authority.
- Therefore the Appellant-Union seeks relevant information of item No. 2 and items No. 03 dated on 14.05.2018.

Complying with the directions of the Commission dated 25.08.2022, the Public Authority clarified its position on 20.09.2022 regarding the effect of Section 3(1) of the Right to Information Act in respect of the obligation of the Public Authority to disclose information relating to its subsidiary, MSRPL; stating, *inter alia*, as follows;

- *"The Public Authority's subsidiary, MSRPL, was incorporated solely for the purpose of maintaining confidentiality of its payroll structures in 1987. This incorporation was subsequent to the 1986 amendment to the Control of Insurance Act No. 25 of 1962 which ended the state monopoly on insurance and opened the market to private sector insurance companies.*
- *It is further submitted that the salaries and other details sought to be released constitute protected information in terms of the Intellectual Property Act as morefully*

submitted in the Public Authority's Final Written Submissions dated 1st February 2022.

- *It is submitted that whereas the public interest is not defined in the RTI Act, it can prima facie be distinguished from the private interest.*
- *It is respectfully submitted that the release of such information would undermine the functioning of the Public Authority which would inherently be against the public interest due to its high profitability (Vide p. 4– p.9)*
- *Further, by the admission of the Appellant Union at the last date of hearing (25th August 2022), the said information sought by the Appellant Union is intended to be released to the media and thereby would become accessible for all the Public Authority's competitors to the detriment of the Public Authority.*
- *Therefore, it is respectfully submitted that the release of the information sought would damage the carefully nurtured competitive advantage of one of the country's very few profit making state owned enterprises, therefore, allowing the said information to be denied in terms of Section 5(1)(d).*
- *It is further submitted that, in any event, the said information cannot be released in terms of Section 5(4) as such release would be against the public interest.*
- *The Public Authority submits that it can be distinguished from other Public Authorities such as Litro Gas which operates in a duopoly market and only became a profit making institution in July this year after several years of losses.*
- *The Public Authority further submits that it is a profit making entity and has achieved this by cultivating a competitive advantage by attracting high quality personnel after the privatization of the Sri Lankan insurance industry.*
- *The information regarding salaries has previously been released by previous RTI decisions; such instances have always been in relation to the utilization of public money. However, the Public Authority is funded by its own activities.*
- *The Public Authority further submits that due to the aforementioned facts and circumstances, it would not be in the public interest to release the information sought by the Appellant Union and, in any event, the release of such information would not be in the public interest due to the severe impact the functioning of the Public Authority.*
- *The Public Authority submits more fully that,*
 - *The right of access to information within the possession, custody or control of the Public Authority as set out in Section 3(1) of the RTI Act is subject to Section 5 of the RTI Act.*
 - *The Public Authority is not liable to release the said information sought by virtue of Section 5(1) (d) of the RTI Act as it constitutes confidential information; and*
 - *In any event, the Public Authority is not liable to release the said information by virtue of Section 5(4) of the RTI Act and the release of the said information would be detrimental to the public interest."*

The Commission accepted the written submission of the Appellant dated 30.09.2022 on record which reiterated the below;

- *“The Public Authority has failed to establish the fact that under which section/proviso or exception is applicable under section 5 of the RTI Act for denial of information requested by the Appellant- Union.*
- *The Public Authority has failed to demonstrate how would be prejudicial to the competitive interests of the third party falling within the scope of Section 5 (1) (d) and Section 160 of the Intellectual Property Act.*
- *There is no harm to commercial confidence of the Public Authority if the said information is released. The Public Authority has failed to prove the damage caused to them after releasing said requested information.*
- *Without any prejudice to the aforementioned submissions, it is submitted that the Public Authority has sent a letter dated 20.09.2022 to representative and member at the inquiry of the Appellant – Union asking for clarifications of tendering this Application No. 580/2018 to the Information Officer.*
- *The Public Authority time to time take (sic) different stances on their submissions. Public Authority has (sic) failed to rely on single feet and make their arguments but rely on different positions which make contradictions (sic).*
- *In the earlier submission, the main argument of the Public Authority was that the MSRPL was not a Public Authority to release information. Now it stands with different argument and rely (sic) on Section 5 (1) (d) of the RTI Act.*
- *Without any prejudice to the aforementioned submissions, the Appellant – Union respectfully states that the Public Authority has submitted information of items No. 2 (a) to Appellant – Union on 19.01.2022 as per the order of the Honorable Commission dated on 16.03.2021. The Appellant – Union further states that items 2 (b) has not (sic) submitted yet*
- *The information requested under items no.3 is proactive disclosure in terms of Extra Ordinary Gazette No. 2004/66 Regulation No. 20 (ii). Therefore the Appellant – Union (sic) thoroughly states that requested information is available with the Public Authority.”*

Consideration:

During the hearing of this Appeal on 25.08.2022, the Appellant acknowledged that the information in relation to item No 1) had been released but stated that the Public Authority had confined itself to disclosing a portion of the information in item No. 2(a), i.e; the number of members of the community, entry qualifications and a portion of information in item No. 2(b), i.e; the unit or departments relating to internal sales officers and the number of employees. *In re* item No. 3), the Public Authority had released information relating to the number of senior managers/assistant general managers/number of deputy general managers/chief officers/chief executive officers and their minimum qualifications for the post.

As such, we will confine the consideration of the matters in dispute to those portions of item No.2) and item No.3) respectively relating to, *inter alia*, benefits/monetary payments to agents/internal sales officers and remuneration details of MSPRL employees.

It is common ground that MSRPL is a private limited company with 100% shares fully owned by the Public Authority (Sri Lanka Insurance Corporation). The Public Authority's resistance to release of the aforesaid information is premised on firstly, the argument that, MSRPL is not a Public Authority in terms of Section 43 of the RTI Act, which defines the categories of Public Authorities. It is its position that, though it voluntarily released information in relation to *inter alia*, the functioning of

MSRPL, that does not operate as an estoppel to its plea that, MSRPL does not come within the ambit of Section 43 as aforesaid.

The position of the Public Authority is that the application of Section 43(e) which defines the context in which a company incorporated under the Companies Act, No 7 of 2007 becomes a Public Authority under the RTI Act, applies to MSRPL as a 100% owned subsidiary of the Public Authority only if the Public Authority (*viz*; the Sri Lanka Insurance Corporation) is regarded as a 'public corporation' within the meaning of that Section. Therefore, as Sri Lanka Insurance Corporation is a company incorporated under the Companies Act, No 7 of 2007, it does not fall within the meaning of a 'public corporation' and consequently, MSRPL is not a Public Authority as contemplated by that Section.

We are not inclined to accept that argument. A plain reading of Section 43(e) indicates that, the purpose of that Section is to catch up companies incorporated under the Companies Act, No 7 of 2007 together with its subsidiaries in strictly factual contexts where, 'the State or a public corporation or the State and a public corporation together hold twenty five per centum or more of the shares or otherwise has a controlling interest.'

It is our view that, this Section has to be read purposively in line with the preamble to the RTI Act, which sets out the intention of the Act as, 'fostering a culture of accountability and transparency in Public Authorities...' The fact that the legislature intended Section 43 (e) to be read purposively is indicated by the interpolation of the words, 'or otherwise has a controlling interest.' in that Section.

To hold that, 100% owned subsidiaries of companies covered by Section 43 (e) are themselves not encompassed within the ambit of that Section, which is what the argument of the Public Authority amounts to on what is purported to be a 'literal' reading of that Section, would amount to a perversion of the legislative intent thereto.

This would afford state entities a convenient way out from non-adherence to the requirements of transparency that comprises the core of the RTI Act. As evidenced on the facts in this appeal, the Public Authority and MSRPL are governed by the same Board of Directors. MSRPL was established as a fully-owned subsidiary to provide payroll management services for the Sri Lanka Corporation, the Public Authority. Indeed, MSRPL is not involved in the provision of any services or products for the external market or external parties.

On careful consideration of the aforesaid facts, we hold that, MSRPL falls within the definition of a Public Authority as detailed in Section 43 (e) of the RTI Act.

On the substantive issue of denial of the requested information in respect of Section 5(1) of the RTI, the Public Authority has pleaded commercial confidence falling within Section 5(1) (d) of the RTI Act as a ground to deny the release of the information. Specifically, it has contended that, due to the PA's commercial success, information such as remuneration packages for specific positions and

overall costs for employee groups, release of such sensitive information would permit employee poaching.

This submission is however controverted by the fact that, the Public Authority has already released similar information in relation to remuneration details of its own employees in conformity with the requirements of the RTI Act. As such, the argument that, in the case of MSRPL, the release of such information would have a highly detrimental impact on the market is not tenable.

In several appeals brought by citizens against Public Authorities resistant to release salary details of its employees, this Commission has held that the information in issue does not constitute commercially confidential information as encompassed by Section 5(1)(d) of the RTI Act.

In *Airline Pilots Guild of Sri Lanka v. Sri Lankan Airlines Ltd* (RTIC Appeal (In-Person) /99/2017, decision dated 12th June, 2018), this Commission ruled that information pertaining to salaries and other allowances and/or benefits of the senior executive management of the PA is not ‘personal information and that the details thereof must be disclosed -

‘...for the reason that this is, by its very definition, information that directly relates to the financial accountability and transparency of the Public Authority in the expenditure of public funds. This is all the more so by virtue of the pre-eminent position that it holds as the country’s national air carrier and in the context of widespread public concerns in regard to financial management of the Public Authority, which this Commission is duty bound to take cognizance of. This is quite apart from the fact that, the information in Request No 1 is anyway encompassed within the ambit of Regulation 20 (1) (ii) on proactive disclosure (Gazette No. 2004/66, 03.02.2017).’

In this Appeal, Counsel for the Public Authority strenuously contended that, the Public Authority is a profit making entity, has provided revenue to the Government, does not operate on ‘public funds’ and is funded by its own activities (vide; paragraphs 16b and 21, Written Submissions of 15.09.2022). As such it has distinguished itself from, ‘other Public Authorities such as Litro Gas which operates in a duopoly market and only became a profit making institution in July this year after several years of losses’ (vide; paragraph 19, Written Submissions of 15.09.2022).

While that may be the case, the Public Authority and its fully owned subsidiaries such as MSRPL are not exempt from essential duties of transparency that constitute a fundamental obligation under the RTI Act, the foremost of which is to disclose remuneration details of employees as underscored by Regulation No.20 (ii) (Gazette No.2004/66, 03.02.2017).

Holding otherwise, may open the floodgates in relation to allowing a ‘privileged’ category of state entities and their officers to escape the reach of the RTI Act. As the appellate body established under the RTI Act to, ‘monitor the performance and ensure the due compliance by public authorities, of the duties cast on them under this Act’ [vide; Section 14 (a)], this Commission cannot condone the same. We fail to see how any measure of secrecy may justifiably apply to such information or to information in regard to *inter alia*, monetary and other benefits to agents and internal sales officers of the Public Authority which comprises part of the information asked for by the Appellant in item No 2) of the aforesaid information request/s. We do not find that Section 5 (1) (d) operates as a bar to deny release of the information.

In any event, we note that, the release of the said information is of significant public interest both as an essential component of Section 5(1)(d) as well as in terms of Section 5(4) in that, ‘the public interest in disclosing the information outweighs the harm that may result from such disclosure.’

We are also not in agreement with the argument of the Public Authority that, the Appellant comprising of employees of the Public Authority, are barred from seeking information under and in terms of the RTI Act purely as a result of being employees thereof. We are cognizant of the fact that there is no such prohibition set out in the RTI Act. To hold with this argument would be to fetter the citizen’s right to ask for information from Public Authorities as detailed in Section 3(1) of the Act.

Accordingly, we direct the Public Authority to release the remaining information asked for by the Appellant in items 2) and 3) of the information request/s before 22.12.2022.

The Commission further decides that the failure to release the said information on or before the said date would lead to prosecution before the relevant Magistrate’s Court under Section 39 of the said Act.

For the completeness of this decision, we place on record that, in terms of rule no. 11 of Right to Information Commission Rules of 2017, the Public Authority is not entitled to charge any fee from a citizen for the release of the information upon a decision made by this Commission.

The Director General is directed to convey the Order to the Appellant, the Information Officer and the Public Authority.

Appeal concluded.