

# The Right to Information Commission

G. Balachandran  
No. 72, 5<sup>th</sup> Lane,  
Colombo 03

**-Appellant-**

**RTIC App/No : 1174/2022**

Vs.

Ministry of Justice  
PO Box 555  
No.19 Sri Sangaraja Mawatha,  
Colombo 10

**-Public Authority-**

**Before** : 1. Ms. Kishali Pinto-Jayawardena (Attorney-at-Law) - Commissioner  
2. Mr. Jagath Liyana Arachchi (Attorney-at-Law) - Commissioner  
3. Mr. A.M Nahiya - Commissioner

**Appearance** : The Appellant is present and represented by Mr. Suren D. Perera, AAL and Ms. Manushika Cooray, AAL  
  
The Public Authority represented by Mrs. M.M Alif, Senior Asst. Secretary (Admin) – via Zoom Technology.

**Written Submission** : Appellant - not submitted  
  
Public Authority - not submitted

**Date of Hearing** : 16.02.2023

**Decided on** : 16.02.2023

## Decision of the Commission

### **Factual Background**

By Information Request dated 12.08.2022, the Appellant requested the below information;

1. *Certified copy of the report on the investigations of the former state Minister Lohan Ratwatte's visit to the Anuradhapura prison and alleged ill treatment of prisoners, led by Commissioner general of Prisons (Supplies) Sunil Kodithuwakku.*

On 26.08.2022, the Information Officer responded as follows,

උක්ත කරුණු සම්බන්ධව මා වෙත යොමුකරන ලද 2022.08.12 දිනැති ඔබේ තොරතුරු ඉල්ලීම හා බැඳේ.

02. ඔබ විසින් විමසා ඇති තොරතුරු සම්බන්ධයෙන් නීති අංශයෙන් විමසන ලදී. ඒ අනුව ඔබ විසින් ඉල්ලා ඇති විමර්ශන වාර්තාව සකස් කිරීම අමාත්‍ය මන්ඩලයේ තීරණයක් අනුව සකස් කරන ලද වාර්තාවක් වන හෙයින්, එකී වාර්තාව පිළිබඳ මෙම අමාත්‍යාංශය විසින් 2021.12.07 වන දිනැති අමාත්‍ය මන්ඩල සටහනක් යටතේ අමාත්‍ය මණ්ඩලය දැනුවත් කිරීමට කටයුතු කර ඇතත් මේ දක්වා ඒ සම්බන්ධයෙන් අමාත්‍ය මණ්ඩල තීරණයක් පිළිබඳ මෙම අමාත්‍යාංශය දැනුවත් කොට නොමැත.

කරුණු එසේ හෙයින් 2016 අංක 12 දරන තොරතුරු දැන ගැනීමේ අයිතිවාසිකම පිළිබඳ පනතේ 5(1)(ක) වගන්තිය ප්‍රකාරව එකී ඉල්ලීමේ දක්වා ඇති තොරතුරු ලබා දීමට නොහැකි බව කාරුණිකව දන්වමි.

Dissatisfied, the Appellant lodge an appeal with the Designated Officer on 20.09.2022. The designated officer on 30.09.2022, responded as follows,

උක්ත කරුණු සම්බන්ධව මා වෙත යොමුකරන ලද 2022.09.20 දිනැති ඔබේ තොරතුරු ලබාගැනීමේ අභියාචනය හා බැඳේ.

02. ඔබ විසින් විමසා ඇති තොරතුරු සම්බන්ධයෙන් නීති අංශයෙන් විමසන ලදී. ඒ අනුව ඔබ විසින් ඉල්ලා ඇති විමර්ශන වාර්තාව සකස් කිරීම අමාත්‍ය මන්ඩලයේ තීරණයක් අනුව සකස් කරන ලද වාර්තාවක් වන හෙයින්, එකී වාර්තාව පිළිබඳ මෙම අමාත්‍යාංශය විසින් 2021.12.07 වන දිනැති අමාත්‍ය මන්ඩල සටහනක් යටතේ අමාත්‍ය මණ්ඩලය දැනුවත් කිරීමට කටයුතු කර ඇති වුවද මේ දක්වා ඒ සම්බන්ධයෙන් අමාත්‍ය මණ්ඩල තීරණයක් පිළිබඳ මෙම අමාත්‍යාංශය දැනුවත් කොට නොමැති බව නීති අංශය මගින් දන්වා ඇත.

03. එ අනුව 2016 අංක 12 දරන තොරතුරු දැන ගැනීමේ අයිතිවාසිකම පිළිබඳ පනතේ 5(1)(ක) වගන්තිය ප්‍රකාරව එකී අභියාචනයෙහි දක්වා ඇති තොරතුරු ලබා දීමට මෙම අමාත්‍යාංශයට හැකියාවක් නොමැති අතර අමාත්‍ය මණ්ඩල කාර්යාලය මගින් එම තොරතුරු ලබා ගැනීමට කටයුතු කරන ලෙස කාරුණිකව දන්වමි.

Dissatisfied with the response given by the Designated Officer, the Appellant filed the present appeal to the Commission on 13.10.2022.

**Consideration**

Examination of the facts and the information requested in this appeal, namely “Certified copy of the report on the investigations of the former state Minister Lohan Ratwatte’s visit to the Anuradhapura prison and alleged ill treatment of prisoners, led by Commissioner general of

*Prisons (Supplies) Sunil Kodithuwakku*” disclose that the information so requested is similar to the facts in issue in RTIC/Appeal/1132/2022, previously decided by this Commission on 02.02.2023.

In that appeal, the information requested on 24.06.2022 by the Center for Society and Religion was as follows;

*“As reported, the Cabinet has appointed retired High Court Judge to conduct an independent inquiry into the incidents at Anuradhapura and Welikada prisons involving state Minister Lohan Ratwatte where Minister Lohan Ratwatte has been accused of forcefully entering the two prisons under the influence of alcohol and threatening two Tamil prisoners at the Anuradhapura prison with a firearm on 12<sup>th</sup> September, 2021. Regarding the above incident the following information are requested.1. Certified copies of the investigation reports 2. Information on total expenses for the investigations”.*

Refusing the information, by letter dated 19.08.2022, the Public Authority (Ministry of Justice) relied on Section 5 (1) (m) of the RTI Act. By decision dated 02.02.2023, this Commission dismissed the objections of the Public Authority and directed to release the aforesaid report by 23.02.2023, finding that Section 5 (1) (m) of the RTI Act is strictly confined to information pertaining to “a Cabinet Memorandum in relation to which a decision has not been taken.” This finding was based on the submission of the Public Authority that the said report was not in consequence of a “Cabinet Memorandum in regard to which a decision has not been taken” but rather, a “Note to the Cabinet”.

Accordingly, this Commission held that, “a Note to the Cabinet” is not encompassed within the meaning of Section 5 (1) (m) and directed to release the report as aforesaid.

We are cognisant of the fact that the above stated reasoning applies to the information requested in this appeal in precisely the same manner. We find that Section 5 (1) (m) of the RTI Act does not operate as a justifiable exemption to deny the information asked for. The letter of the Designated Officer dated 30.09.2022 communicating the refusal to release the information to the Appellant against which this appeal is been heard under Section 32 of the RTI Act, is similar in all respects to the letter dated 27.01.2023 sent by the Public Authority to the Commission in the RTIC/Appeal/1132/2022.

As aforesaid, that reliance on Section 5 (1) (m) in refusing the information in RTIC/Appeal/1132/2022 was dismissed by this Commission on the Public Authority’s misconception that information referencing a “Note to the Cabinet” is included within Section 5 (1) (m).

We are of the view that the same rationale applies with all force in this appeal, particularly so given that there is no “pending decision” of the Cabinet in issue, thus tendering Section 5 (1) (m) inapplicable. In the foregoing, we direct that the information asked for, *“Certified copy of the report on the investigations of the former state Minister Lohan Ratwatte’s visit to the Anuradhapura prison and alleged ill treatment of prisoners, led by Commissioner general of*

*Prisons (Supplies) Sunil Kodithuwakku*” should be released before 16.03.2023, with copies to the Commission.

The Commission further decides that, if the Public Authority fails to comply with the said decision of the Commission before the said date, the Information Officer and the Public Authority shall be prosecuted before the relevant Magistrate’s Court under Section 39 of the Right to Information Act No. 12 of 2016.

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 decision to the Appellant, the Information Officer and the Public Authority.

***Appeal Concluded.***