

Right to Information Act, No. 12 of 2016

The Annual Report prepared in accordance with Section 37 (1) of the Right to Information Act, No. 12 of 2016.

1. Incorporation.

The right to information was secured as a Fundamental Right by the 19th Amendment of the Constitution adopted in 2015. Thereafter, the Right to Information Act No. 12 of 2016 was passed in Parliament on 04th day of August 2016.

According to Section 11 of the Act, the Right to Information Commission was established on 01st October 2016. In terms of the provisions of this Act, this Commission is a body corporate with perpetual succession and a common seal.

The Right to Information Commission acts as the central authority to give effect and enforce the Act. The Commission has power to hear and determine the complaints made by citizens on right to Information; to declare rules, regulations and instructions relevant to the right to information process; to recommend disciplinary actions; and power to take legal actions against the persons violating the provisions of the Act.

The Right to Information Commission consists of a Chairperson and four Commissioners appointed by the President upon the recommendations of the Constitutional Council. In making such recommendation the Constitutional Council selects one person nominated each by the Bar Association of Sri Lanka; organizations of publishers; editors and media persons; and other civil society organizations.

The persons who are being thus recommended should have distinguished themselves in public life with proven knowledge, experience and eminence in the fields of Law, governance, public administration, social services, journalism, science and technology or management and they are not connected with any political party and do not hold any public, judicial or any other office and not engaged in any business or profession

Accordingly, in compliance with Section 12 of the Act and upon the recommendations of the Constitutional Council, the President appointed the following persons to the Commission:

Chairperson:

Mr. Don Mahinda Gammanpila – Retired Officer of the Sri Lanka Administrative Service

Members of the Commission:

Ms. Kishali Pinto Jayawardana – Senior Attorney-at-Law;

Mr. S.G. Punchihewa – Senior Attorney-at-Law;

Justice A.W.A.Salaam; and

Dr.(Mrs) Selvy Thiruchandran-Senior Researcher

Justice A.W.A.Salaam resigned on 15.09.2017 to accept a position in the Diplomatic Service and Justice Rohini Walgama, a former President of the Court of Appeal was appointed for the vacancy.

2. The duties, functions and the powers of the Commission.

- I.** The duties and function of the Commission are as follows:
 - i.** Monitor the performance and ensure the due compliance by public authorities, of the duties cast on them under the Right to Information Act, No 12 of 2016;
 - ii.** Make general recommendation for reform and review and recommendations specially referred to any public authority;
 - iii.** Issue guidelines for determining fees to be levied by public authorities for the release of any information under this Act;
 - iv.** Prescribe the circumstances in which information may be provided by an information officer, without the payment of a fee;
 - v.** Prescribe the fee schedule based on the principle of proactive disclosure;
 - vi.** Co-operate with or undertake training activities for public officials on the effective implementation of the provision of this Act;
 - vii.** Publicise the requirements of this Act and the rights of individuals under the Act; and
 - viii.** Issue guidelines for the proper record management for public authorities.

II. The Commission is entrusted with the following detailed activities under the duties and functions:

- i.** to provide advice requested with regard to an issue connected with the grant of access to any information which is exempted from being disclosed to the information officers (Section 5 (5) of the Act.);
- ii.** to declare the directions to be observed in discharging its obligations for management of records by public authorities. (Section 7 (2) of the Act.);
- iii.** to determine the format with regard to preparation of bi-annual reports to be published by the Ministers (Section 8 (1) of the Act);
- iv.** to issue guidelines to be observed by the Ministers with regard to communicating proactively the information relating to the decided projects to the public generally and to any particular persons who are likely to be affected by such projects (Section 9 (1) of the Act.);
- v.** to make rules concerning the format of the annual report which every public authority should be submitted annually to the Commission and displayed to the public in its office and on its web site;
- vi.** to appoint employee as it considers necessary to the Commission (Section 13 of the Act.);
- vii.** to maintain the fund of the Commission and its accounts;
- viii.** to publish the procedural requirements for the submission of appeals according to section 32 of the Act (Section 22 of the Act.);
- ix.** to direct the public authority to disclose such information supplied by a third party to the public authority where the release of the information concerned outweighs the private interest (Section 22 (2) (c) of the Act.)
- x.** to institute prosecutions with regard to offences committed by information officers / designated officers (Section 39 (4) of the Act.).

III. Powers of the Commission:

- i.** to hold inquiries and require any person to appear before it;
- ii.** to examine such persons and require such person to produce information which is in that person's possession;
- iii.** to inspect any information kept under a public authority;

- iv. to direct a public authority to provide information, in a particular form;
- v. to direct a public authority to publish information withheld by a public authority;
- vi. to hear and determine any appeals made to it by any aggrieved person under section 32.
- vii. to direct to reimburse fees charged from a citizen due to any information requested for not been provided in time.
- viii. To submit recommendations for regulations to be made by the Minister in-charge of Mass Media under Section 41 of the Act; and
- ix. To make rules concerning the matters stated in Section 42 of the Act;

3. Performance of the Commission.

I. Meetings of the Commission:

- i. The inaugural meeting of the Commission was held on 05.10.2016
The Commission held – 08 plenary sessions during the year 2016, and 45 plenary session during the year 2017
- ii. 10 Sub-Committee meetings consisting of three members were held during the year 2017. The sub-committee heard documentary-based appeals under Rule 19 of the Rules on Fees and Appeal Procedures of the Commission (Gazette No. 2004/66, 03.02.2017) and submitted recommendations to the Commission for adoption thereof.

4. Hearing of appeals.

Under Section 1(3) of the Right to Information Act, it came into operation with effect from 3rd February 2017 as prescribed by the Minister in-charge of Mass Media by Order published in the Gazette No. 2002/42 dated 20.01.2017. Accordingly the access of citizens to the right to information process commenced. According to the provisions of the Act, any citizen who is aggrieved by the response given by the information officer and designated officer to a request made for information shall appeal to the Commission after expiry of the prescribed period. Accordingly, the first appeal was received at the Commission on 22.03.2017 and it was taken for hearing in April 2017.

Formal appeals received during the year 2017 are as follows:

Month	No. of formal appeals received
March	03
April	11
May	32
June	26
July	41
August	53
September	32
October	52
November	50
December	60
	360

80% of the appeals received during 2017, i.e. 276 were received during the latter 6 months of the year. The Commission held 45 Plenary Sessions and 10 Sub-Committee Sessions which were attended by only three members as follows, for hearing of appeals and to take administrative and legal decisions. As the number of hearing appeals received from January to the end of June gradually increased and with a large amount of appeals being received after the month of July, the Commission increased the

numbers of appeals being taken for determination. IN respect of some appeals, the Sub-Committee of the Commission directed the said appeals to the Commission to take final decision

Monthly Sessions of the Commission during the year 2017:

Month	Plenary Sessions	Sub-Committee Sessions
January	5	-
February	3	-
March	3	-
April	4	-
May	4	-
June	5	-
July	5	-
August	4	1
September	2	1
October	4	-
November	4	4
December	2	4
	45	10

The appeals, were examined in the following manner; calling upon Appellants to specify clearly the information requested, giving detailed reasons for ordering the issuance of information or declining to direct the release of information, legally examining whether the appeals and the responses comply with the Act, examination of the written and verbal statements and documents by both parties. Section 32(1)(a) of the Act No. 12 of 2016 states that the decision of an appeal heard before the Commission shall be conveyed within one month, which condition was sought to be complied with in the most expeditious manner possible and in a large number of appeals, information was released in stages with the final release of the remaining information taking place at the final hearing.

The following chart shows the number of appeals taken for hearing for the first time, the number final orders made and number of appeals adjourned.

Month	Appeals heard by the Full-Commission	Appeals heard by the Sub-Committee	Appeals adjourned	Final Orders made
April	03	-	-	03
May	03	-	02	01
June	06	-	04	02
July	16	-	15	01
August	16	03	09	10
September	10	11	13	08
October	18	-	10	08
November	31	37	51	17
December	12	41	43	07
	115	92	147	57

According to the above table, 207 out of a total number of 355 formal appeals received up to 31.12.2017 were taken for hearing. Final orders were made for 57 appeals. At the initial stage during the year 2017, the delay in hearing of appeals was due to lack of office facilities and personal and uncertainty of office procedures caused thereby. The appointment of a Director General to the Commission was delayed till August due to the bureaucratic process involved and the office duties of this officer were performed with the help of three temporary Management Assistants.

The Commission intends to effect new strategies from 2018 to hear the appeals more swiftly and deliver relevant orders in that regard.

Out of formal appeals submitted to the Commission, 40.8% were from the Western Province, 21.4% were from the Southern Province, 9.6% were from the Northern Province and 9.6% were from the Central Province. Only 18% of the total number of appeals was received from other five provinces. Appeals received from each Province are as follows:

Province	No. received	Percentage of the total
Western	145	40.8
Southern	76	21.4
Northern	34	9.6
Central	34	9.6
Sabaragamuwa	19	5.3
North Central	17	4.8
Eastern	16	4.5
Uva	09	2.5
North Western	05	1.4
	355	100

The above statistics reveals a need to conduct formal community awareness programs on the significance of the right to information in provinces giving prominence to provinces such as the North Western Province and Uva Province that depicts a low rate in the submission of RTI Appeals to the Commission.

355 formal appeals received by the Commission in 2017 were identified according to the fields of information requested. Thus, the following 12 fields were identified for classification and the number of appeals received under each field in shown below:

Field	No. of appeals	Percentage
Human Resources Management (appointments, promotions, transfers, disciplinary, retirement)	98	27.6
Land and property (Titles, Grants, Licences, Transfers, Acquisitions, Compensation)	68	19.2
Administrative and Service Activities (Licences and Services)	57	16.0
Financial Management and Accounts (Income, Expenditure, Taxes)	26	7.3
Infra-structure Development Projects (Roads, Buildings, Irrigation, Water)	24	6.7
Education Services (Admission of school children, School Development Societies, Administration)	19	5.4
Environmental impacts (Environment Loss, Protection)	17	4.8
Examination, Investigation Committee Reports (except disciplinary)	17	4.8

Health and Remedial services	10	2.8
Law and Order	07	1.9
Procurement (purchasing construction, Tenders)	06	1.7
Other miscellaneous requests	06	1.7
	355	100

Information relating to human resources management, establishment, land and property matters appear to be considered by Public Authorities as falling within the ambit of information not to be disclosed to the people and to be kept confidentially with the Public Authority. The Commission would be implementing strategies to rectify this condition during 2018.

Apart from the appeals received formally, the Commission received various public grievances which are informal, deficient and do not amount to legally proper requests for information. 270 such informal or deficient requests were received during the year 2017 and in regard to the period from February to December 2017, it reveals a gradual reduction. These requests fall into 4 main categories:

1. Requests sent directly to the Commission without making request for information to information officer or designated officer;
2. Requests made only to the information officer or to the designated officer and thereafter requests made to the Commission;
3. Grievances which are not relevant at all to the field of requests for information; and
4. Requests made to obtain information of organizations which are not public authorities as per the Right to Information Act No.12 of 2016. (i.e. Leasing Companies, Foreign Banks)

Having responded to all such requests the Commission sent instructions and replies. When a request for information was made again after rectifying such deficiencies, the same was included into the formal appeals and taken for hearing.

The Commission also responded to 128 requests made by public authorities for instructions under the Right to Information Act. The Commission provided instructions upon requests made by public authorities enquiring grounds for refusal of access to information under Section 5(1) of the Right to Information Act. The Commission has indicated that the Commission will provide advice only on procedural matters regarding issues connected with the grant of access as otherwise, providing advice on substantive matters before an appeal may be heard, may amount to prejudging an appeal.

Staff of the Commission

The Commission approved the relevant posts and cadre for the Commission established on 01st October 2016. Initially, 15 posts were approved to the Commission on 10.03.2017. Subsequently, 05 additional posts were approved on 16.08.2017 and 14.12.2017. The details of the total approved cadre and the permanent staff as at 31.12.2017 would be elaborated later.

Schemes of recruitment necessary for recruiting this staff to the permanent cadre were prepared separately and sent to the Department of Public Management through the Secretary to the President. Minor defects in these schemes were rectified twice, but forwarding them to the Director General of Management Services by the Secretary to the President did not result in approval of the said schemes.

With the assignment of financial and administrative matters relevant to the Commission to the Ministry of Mass Media by the Secretary to the President with effect from 04.09.2017, these schemes were forwarded again to the Ministry of Finance and Mass Media. Thereafter, copies of the recruitment schemes were sent on several consecutive occasions to the Ministry, but the approval of the Secretary to the Ministry of Finance and Mass Media for any of the schemes of recruitment was not given. Thus, the affairs of the Commission were seriously hampered and the work of the Commission was carried out with the help of three temporary clerks who served in a former Commission of Inquiry, a Director General recruited on contract for a period of one – year and a retired Administrative Officer recruited on contract basis. It is anticipated to effect permanent recruitment to these posts after continued efforts to rectify this status-quo within two or three months.

The details of the cadre approved and the staff at present as on 31.12.2017 are shown below:

Post	Approved cadre	Staff at present
Director General	01	01
Senior Research Officer	01	-
Research Officer	01	-
Administrative officer	01	01
Finance Officer	01	-
Translator (Tamil)	01	-
Information Technology Assistant	01	-
Development Officer	04	-
Management Assistant	04	04
Personal Assistant	01	
Driver	03	02
Office Aid	02	02
Total	21	10

In addition to this staff, the services of two external legal advisors and one legal researcher were obtained from April 2017 to the Commission on temporary and part-time basis with support provided by the World Bank. In addition, the assistance of two Law Graduates of the Universities of Colombo and Peradeniya was obtained under USA1D Programme. The Commission points out that the filling of vacancies of these posts has come to a stand still due to unreasonable delay in approving the schemes of recruitment, on the part of the responsible authorities.

Budget and Financial Control

As the Budget drafts for the year 2017 were finalised at the time of establishment of this Commission in 2016, separate financial allocations could not be provided for the Commission. Consequently, the expenditure from 01.10.2016 to 31.12.2017 was borne by the expenditure vote of the President's Secretariat

For the year 2018, finance was allocated to the Commission under a separate expenditure vote and the operations were carried out under a separate Bank Account.

In 2017, the expenditure for fuel, office equipment, stationary etc; were borne by the President's Secretariat up to 30.10.2017.

Office Facilities

At the commencement of the Commission on 01.10.2016, 3 rooms of 20' × 20' of the Bandarananayake Conference Hall were acquired on rent. The Commission had to face great difficulties in providing facilities for officers of the public authorities and the public who come for hearing of appeals; throughout the year 2017. Towards the end of the year, additional 3 rooms of 20' × 10' were acquired on rent. Even though a sum of Rs. 616,066.50 is paid as monthly rental at present, the space is highly unsatisfactory and as there are no room facilities for hearing of appeals, arrangement was sought to be made to acquire office facilities at another building but this was not successful.

Declaration of rules, regulations and guidelines

1. 75% of the Rules, Regulations and Guidelines required for effective implementation of this Act were published by Gazette No. 2044/66 dated 03.02.2017 and Gazette dated 17.02.2017. The Rules and Regulations were published with the Minister of Mass Media..

Where the Commission's Rules were concerned, the basic Rules are as follows:

- i. Fees to be charged when providing information
 - ii. Information that could be provided free of charge
 - iii. Method of paying fees
 - iv. Reimbursement of fees
 - v. Procedures in making appeals to the Commission
 - vi. Admitting and returning of appeals
 - vii. Basic rules of evaluation
 - viii. Procedures for hearing appeals on documents
 - ix. Examining in person
 - x. Representing third parties
 - xi. Decisions of the Commission
 - xii. Preservation of documents
 - xiii. Withdrawals of appeals
 - xiv. Making appeals to the Court of Appeal
2. In regard to the drafting regulation No. 2004/66 dated 03.02.2017 by the Minister in charge of the subject of Mass Media under Section 41 of the Act, the Commission participated in that process and intervened specially in drafting the Regulations relevant to the use and re-examination of information, pro-active disclosure of information and regulations regarding information officers.
 3. Provisions have been made to publish on the website of the Commission, the forms for proactive information records which should be declared by the Minister under Sections 8 and 9. The procedure for furnishing annual reports and formats by the public authorities under Section 10 of the Act has been drafted by the Commission and sent to the Minister of Mass Media for his approval to be published in the Gazette according to Section 42 of the Act.
 4. According to Section 7 of the Act, preliminary steps have been launched jointly by the Ministry of Public Administration and the Department of National Archives for drafting regulations for management of reports and documents of public authorities. Legal consultants are presently carrying out studies on existing laws and techniques on management of documents. The Commission intends to publish these guidelines before the third quarter of 2018.

Combined Strategic Planning

The Commission prepared the Strategic Action Plan 2017-2019 with the assistance of World Bank Advisors to be implemented in collaboration with the Ministry of Finance and Mass Media and various authorities in the Public Sector. 80% of identified activities with regard to 2017 have been accomplished. Preliminary work on remaining activities is being planned. The Action Plan for 2018-2022 including anticipated programmes to be implemented under World Bank Aid has been prepared. It is expected to utilize an investment of One Million Dollars approximately for these.

Public awareness

- 1) The website of the Commission was established in June this year and reporting of information, data and progress to the public is being carried out continuously. The details of the Commission, its activities, the Act, Rules and Guidelines and other details can be downloaded and viewed from its website - <http://www.rticommission.lk/>
- 2) In order to provide public awareness on right to information, media supplements were published in daily newspapers in three languages during the month of February. Regular electronic updates were sent to the media, informing of important decisions on appeal delivered by the Commission.
- 3) The Commission issued 3 media notices including information on examining of appeals and public awareness on the process of examining appeals which were published in trilingual media.
The members of the Commission and the Director General provided active contribution towards the issuing of press releases, participating in interviews and a number of awareness programmes conducted by electronic media.
- 4) The first International Right to Information Day after the establishment of the Commission occurred on 20th September 2017. On that occasion a National Seminar was held jointly with the Ministry of Finance and Mass media at Global Tower, Wellawatta.
- 5) It is a very vital matter to promote activities of the Commission after studying international experiences on right to information. Among the countries where private sector information has been brought under the Act, South Africa is a country which has implemented the same successfully. The members of the Commission and the Director General participated in a study tour to South Africa from 2nd to 9th September 2017 to gain expertise and knowledge on the practise of South Africa on the right to information that was sponsored by the US AID. A number of effective discussions and workshops were held there with the participation of South Africa Right to information Commission, several non-governmental organisations, Ministries and Departmental authorities.
- 6) The Conference on Exchanging Experiences on Right to Information among Asian countries organised by the Asian Regional Centre of the World Bank was held in Bangkok, Thailand on 3rd and 4th day of October 2017. The Right to Information Commission of Sri Lanka was represented at this Conference as well. On the invitation of the World Bank, Commissioner Ms. Kishali Pinto Jayawardene and the Director General represented the Commission at this Conference. At this two-day

workshop attended by a number of South Asian and East Asian countries, it was possible to gain much experience on RTI practices, uses and rules and regulations of those countries.

- 7)** During the last year, the Commission has prepared policy papers in the following fields.
- i.** Personal Data and Right to Information,
 - ii.** Principles of Commercial Secrets as an Exemption to Right to Information,
 - iii.** The manner in which Non-governmental and Private sector authorities come under Section 43 of the Act;
 - iv.** Influence of Parliamentary Privileges on Right to Information,
 - v.** Nature of power entrusted with the Commission to prosecute offenders,
 - vi.** Right of access to information being limited to the citizens – Interpretation of Section 3 and 43
 - vii.** Limits of professional privileges when right to information is involved.
- 8)** The Commission had to face several challenges and problems during the period of past twelve months since the establishment of this Commission. When a new Law is implemented, it is natural to come across various problems.
- Office space, facilities and equipment,
 - Recruitment of staff,
 - Awareness and training programmes for staff
- 9)** The Commission believes that further development should be carried out in the following fields in order to fulfil the objects and purposes of this Act:
- I.** To create a formal and quantitatively developed culture for carrying out information search in this country by promoting awareness of this Act,
 - II.** To promote a culture for reporting information, regular monitoring of them and disclosing information within all employees including public authorities, specially the executives of the public authorities in the Public sector and decision makers.
 - III.** To implement policies, plans and programmes effectively for disclosing proactively the information which are in the possession of or in trust or under control of the public authorities.
 - IV.** To foster a culture of transparency and taking responsibilities of the public authorities and thereby to implement strategies necessary to create a society which could enable the citizens of Sri Lanka to actively participate for good governance.

Finally, it is worthwhile to mentioned that the Commission is determined to implement every step needed for achieving these objectives.

