

N. Munasinghe v. People's Bank

RTIC Appeal(In-Person) /50/2018 - 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) – heard as part of a formal meeting of the Commission on 05.06.2018

Chairperson: Mr Mahinda Gammampila
Commission Members: Ms Kishali Pinto-Jayawardena
Mr S.G. Punchihewa
Dr Selvy Thiruchandran
Justice Rohini Walgama
Present: Director-General Mr Piyathissa Ranasinghe

Appellant: Mr N Munasinghe
Notice Issued to: Designated Officer, People's Bank

Appearance/ Represented by:

Appellant - Absent
Public Authority - Mr D P M I Dissanayake, Legal Officer, People's Bank
Ms N G T Kalpani, Assistant Manager – Compliance, People's Bank

RTI Request filed on	13.08.2017
IO responded on	22.09.2017
First Appeal to DO filed on	14.09.2017
DO responded on	No response
Appeal to RTIC filed on	13.11.2017

Brief Background Facts

The Appellant had requested the following items of information, by an information request dated 13.08.2017

1. Annual turnover of the bank for the years 2014, 2015 and 2016

2. Amount of taxes paid to the government and bonus allowances paid to the employees
3. Monthly salary allowances paid to the General Manager, Assistant General Manager, Chief Auditor, Chief Legal Officer and Chief Managing Executives respectively
4. Do the above mentioned get paid on a contract basis or as permanent staff?
5. Amount spent by the bank with regard to the Hedging Contract

The Appellant received a response from the IO by a letter dated 22.09.2017, providing information for requests 1, 2 and 4. Item 3 had been denied on the basis of private information of the above named officers, and the request made under item 5 was denied reasoning an ongoing court case with regard to the particular agreement. Dissatisfied with the IO's response the Appellant appealed to the DO on 14.09.2017 with no success. Following which the Appellant preferred an appeal to the Commission on 13.11.2017

Matters Arising During the Hearing

The Appellant was not present for the hearing.

Noting that responses for request Items 1, 2 and 4 were provided to the Appellant, the PA submitted that most salary payments pertaining to item 3 are made on contract basis and these contracts include a confidentiality clause between the bank and the relevant official. The PA further submitted that these contracts of employment do not exceed a maximum of 3 years and if the relevant information was to be disclosed, the bank could be sued in court for breach of contract. In response to the Commission's question of the exemption pleaded, the PA submitted the exemption of section 5(1)(a) and 5(1)(b). The Commission stated that Regulation 20 of the Act warrants for proactive disclosure of information and the salary scales of executive officials are to be readily available for public perusal. In responding to it, the PA submitted that the scales of salaries of such officers will be made available to the Appellant by a submission made to the Commission.

The PA also submitted that the Appellant had not provided his NIC details upon requesting for information. The Commission, in response to the submission stated that submission of a NIC number is not a requirement as long as it could be ascertained that the Appellant is a citizen of Sri Lanka. In response to this, the PA prayed to the Commission to ascertain the Appellants nationality and eligibility to request for information.

Questioning on the PA's refusal to grant information requested under item 5 of the request, the Commission stated that sub judice does not warrant for an exemption in the Act and if the PA wishes to plead for the exemption under section 5(1)(j) of the Act, It must show that there is could be an infringement according to section 5(1)(j) in disclosing requested information.

Order

The PA is directed to make submissions in providing the salary scales of executive officers as requested by the Appellant. It is to be noted that, the confidentiality of the contracted salaries are to be balanced against the disclosure of expending public funds. The PA is hereby directed to submit to the Commission's perusal the employment contracts of the officers of whose information has been requested under item 3 of the request.

The PA is further directed to make submissions justifying its reason to deny the information requested under item 5 of the request. These submissions are to be made to the Commission on or before 17.07.2017.

The Appeal is adjourned.
Next date of hearing: 17.07.2018

.....

RTIC Appeal(In-Person) /50/2018 - 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) – heard as part of a formal meeting of the Commission on 17.07.2018

Chairperson: Mr Mahinda Gammampila
Commission Members: Ms Kishali Pinto-Jayawardena
Dr Selvy Thiruchandran
Justice Rohini Walgama
Present: Director-General Mr Piyathissa Ranasinghe

Appearance/ Represented by:

Appellant (for) - Sankhitha Gunaratne, Attorney-at-Law – TISL
Public Authority - W M D S Nisansala, Assistant Legal Officer, People's Bank
N G T Kalpani, Assistant Manager – Compliance, People's Bank
W T I Ambepitiya, Legal Officer, People's Bank

Matters Arising During the Hearing

The PA informed the Commission of its intention to appeal the previous order (dated 05.06.2018) of the Commission. The Commission noted that the previous order was an interim order following submissions made by counsel appearing for the Public Authority during the course of which counsel agreed to provide the salary scales and the relevant employment contracts for the Commission's perusal following discussion with the Public Authority.

Order

The Appeal is adjourned in order to enable counsel for the Public Authority to appear at the next hearing.

Next date of hearing: 28.08.2018

.....

RTIC Appeal(In-Person) /50/2018 - *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)* – heard as part of a formal meeting of the Commission on 28.08.2018

Chairperson: Mr Mahinda Gammampila

Commission Members: Ms Kishali Pinto-Jayawardena

Mr S.G. Punchihewa

Dr Selvy Thiruchandran

Justice Rohini Walgama

Director-General: Piyathissa Ranasinghe

Appearance/ Represented by:

Appellant (for) - Sankhitha Gunaratne, Attorney-at-Law – TISL

Lakwijaya Bandara, Legal Officer, TISL

Public Authority - Mr D P M I Dissanayake, Legal Officer, People's Bank

N G T Kalpani, Assistant Manager – Compliance, People's Bank

Matters Arising During the Hearing

Counsel for the PA submitted that the salary scales, as requested by the Appellant had been sent to the Appellant via post on 13.08.2018. The PA, citing Section 5(1)(a) of the Act, affirmed its position that the requested information with regard to the contractual payments could not be disclosed.

The PA reiterated its submission made on 05.06.2018 with regard to the ascertainment of the citizenship of the Appellant, as the PA had reasonable doubt of the status of the citizenship of the Appellant given that she was at present in Australia and receiving medical treatment. The Counsel for the PA further submitted that unless the Appellant was a citizen of Australia or is in possession of a comprehensive medical insurance receiving medication would be nearly impossible. In response to the submission, the representative for the Appellant submitted that the requester is a citizen of Sri Lanka and that proof of citizenship should only be requested in exceptional circumstances. The requirement to provide proof of citizenship in any other instance could create a dangerous precedent for future information requests before the Commission.

Order

A requester of information under the RTI Act, will ordinarily be required to aver citizenship at the point of requesting information. However, this too is not essential when the requester is an individual. Proof with regard to citizenship of an individual will only be required in exceptional circumstances. This position of the Commission was more fully discussed in the case of *TISL v. Prime Minister's Office/Presidential Secretariat (RTICAppeal/05/2017 & RTICAppeal/06/2017)* decided on 23.02.2018, in which it states the follows;

"It is granted that the formulation of Rules and the collaboration by this Commission with the nodal agency on the framing of Regulations gazetted by the Minister (viz; Gazette No 2004/66, 2017.02.03). were undertaken with the primary purpose of lessening burdens on information requesters given the unequal weightage of power and resources vested in the State as opposed to citizens=individuals and keeping in mind the underlying ethos of the Act being the principle of maximum disclosure as evidenced in its preamble which emphasizes the importance of the right of information in the promotion of democracy and participation in civic life."

However, it is apparent that the PA insists of the citizenship of the Appellant to be ascertained as the PA submits to having a reasonable doubt with regard to the status of citizenship of the Appellant.

The Counsel for the Appellant is directed provide proof of citizenship of the Appellant on or before 23.10.2018.

The Appeal is adjourned.
Next date of hearing: 23.10.2018



RTIC Appeal(In-Person) /50/2018 - 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) – heard as part of a formal meeting of the Commission on 23.10.2018

Chairperson: Mr Mahinda Gammampila
Commission Members: Ms Kishali Pinto-Jayawardena
Mr S.G. Punchihewa
Dr Selvy Thiruchandran
Justice Rohini Walgama
Director-General: Piyathissa Ranasinghe

Appearance/ Represented by:

Appellant (for) - Lakwijaya Bandara, Legal Officer, TISL
Public Authority - Absent

Matters Arising During the Hearing

The Representative for the Appellant was present.

The PA, by their letter dated 15.10.2018 informed the Commission of their inability to attend the hearing today. The letter stated, inter alia;

“the counsel appearing on behalf of the Public Authority are in a personal difficulty to appeal before the Right to Information Commission on 23.10.2018 due to unavoidable circumstances.

Please be kindly refix the below mentioned matters for hearing on 13.11.2018 if it may please the Right to Information Commission”

The Appeal is adjourned.
Next date of hearing: 13.11.2018

.....
RTIC Appeal(In-Person) /50/2018 - 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) – heard as part of a formal meeting of the Commission on 13.11.2018

Chairperson: Mr Mahinda Gammampila
Commission Members: Ms Kishali Pinto-Jayawardena

Mr S.G. Punchihewa
Dr Selvy Thiruchandran
Justice Rohini Walgama
Director-General: Piyathissa Ranasinghe

Appearance/ Represented by:

Appellant (for) - Sankitha Gunaratne, Legal Officer, TISL
Public Authority - D P I M Dissanayake, Legal Officer, People's Bank

Matters Arising During the Hearing

In responding to the preliminary objection raised by the PA, with regard to the requester's status of citizenship, the Counsel for the Appellant provided relevant documents to the Commission with a copy of the same to the PA. Upon perusal of the said documents, the Commission observed that satisfactory evidence had been adduced to prove the citizenship of the Appellant.

Referring to the substantive matter in question, the Commission queried the PA as to its justification in refusing to provide requested information under item 3 of the request; *Monthly salary allowances paid to the General Manager, Assistant General Manager, Chief Auditor, Chief Legal Officer and Chief Managing Executives respectively*, more specifically information pertaining salary paid to the General Manager. The Counsel for the Appellant submitted that the PA was directed to provide the employment contracts of individuals concerned to the perusal of the Commission, to enable the Commission to make a determination thereof.

The PA submitted its justification by way of written submissions further substantiating its position with regard to the refusal to provide the said information in relation to the General Manager of the PA. Noting that the parties nor the Commission is bound by previous decisions made by the Commission, the PA urged the Commission to make a determination in the instant Appeal based on the facts in issue, stating that the provision for proactive disclosure is to be interpreted in line of section 5 of the RTI Act.

The PA relied on 3 exceptions in refusing to provide requested information with regard to salary details of the General Manager;

1. Privacy of the Individual

Section 5(1)(a) of the RTI Act reads 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;"

In this regard, the PA submitted that the disclosure of this information has no relation to any public activity or interest, and would most definitely cause the unwarranted invasion of privacy of the General Manager

“... if the actual information sought in analysed, it becomes patently clear that the information purportedly now sought, constitutes “information, the disclosure of which has no relationship to any public activity or interest” which constitutes the pivotal platform of the exemptions postulated in section 5(1) of the said Act. It doesn’t even seek even by a contrivance, to portray an optic image of the same, and is therefore, distracting and deflective of the real aspect of public interest”

2. Commercial Confidence

Section 5(1)(d) of the RTI Act reads as follows;

“information, including commercial confidence, trade secrets or intellectual property, protected under the Intellectual Property Act, No. 36 of 2003, the disclosure of which would harm the competitive position of a third party, unless the public authority is satisfied that larger public interest warrants the disclosure of such information”

The PA submitted in terms of the People’s Bank Act No. 29 Of 1961 (as amended), the policy in respect of terms and conditions of employment, including inter alia, the remuneration [policy of its employees, are decided by the Board of Directors. And where collective agreements governing salaries have been entered into, salaries and allowances are paid in conformity with the said policies and the specific terms and conditions of such collective agreements, as approved by the board, and as are applicable. This same principle applies in respect of the contract and the terms and conditions thereof, between the General Manager of the Bank, who is charged with the overall management of the Bank.

“It is unique that in terms of the Statute, i.e. the Peoples Bank Act No. 29 of 1961, the General Manager is constituted by a statutory provision as the “bank’s Chief Executive Officer” and is also considered thereafter, by statutory provisions, as the person “who shall conduct the business of the bank, under the general supervision and control of the Board (section 31(1))””

The PA further submitted, given the nature of the job description of the General Manager, sensitive information regarding contract details of the General Manager in the wrong hands could lead to other competitors offering the General Manager more lucrative offers and the bank could well result in losing its star employee.

3. Existence of a Fiduciary Relationship

Section 5(1)(g) of the RTI Act reads as follows;

“the information is required to be kept confidential by reason of the existence of a fiduciary relationship;”

In this regard, the PA submitted that the salary details of these employees are captured in their employment contracts signed with the Bank, and are also clearly subject to the confidentiality provisions therein. The employment contracts are dealt with in strict confidence by the Bank owing to its fiduciary duties to the employees concerned by the maintenance of confidentiality, and even in the Annual report to the Auditor General, the salaries of the employees of the bank are provided as a total amount.

The PA drew the Commission's attention to the case of *Girish Ramachandra Deshpande v Cen. Information Commissioner and Others* (Special Leave Petition (Civil) No. 27734 of 2012, decided on 03.10.2012) where the Supreme Court of India affirmed the Central Information Commissioner's decision to refuse access to inter alia, the salary details of an officer, on the basis that such details have been exempted by section 8(1)(j) of the RTI Act in India. It is also noted that the section 8(1)(j) of the Indian Act is substantially similar to that of section 5(1)(a) of the Sri Lankan Act.

The PA further submitted that there is a cause for genuine apprehension as the bona fides underlying the requests made. There appears to be a campaign of maligning and vilification that has been mobilized against the PA, which is of particularly virulent proportions and there is very strong and reasonable cause to believe that the above request made, is an integral part of strategies put in place.

The Commission then queried the PA as to the distinction they could draw between the employment contracts and the public fund expended, in releasing information of the latter, as the information requests were regard to the salaries paid and there is a substantive distinction between the two.

Order

Upon satisfactory evidence being adduced with regard to the citizenship of the Appellant, the PA's preliminary objection in this regard is hereby dismissed.

Taking cognizance of the fact that the Commission is not bound by its own decisions, the PA's attention is drawn to the RTIC Order of *Airline Pilots Guild of Sri Lanka v. Sri Lankan Airlines Ltd.* (RTIC Appeal (in-person)99/2017, Heard as part of formal meetings of the Commission on 13.11.2017, 08.01.2018, 06.02.2018, 23.03.2018, 24.04.2018 and 09.05.2018) in which the distinction between the disclosure of money paid /expending public funds and privacy of employment contracts have been dealt with in great detail.

In this regard, the PA's attention is also drawn to Regulation 20 of the Act that warrants for proactive disclosure of information, and the requirement salary scales of executive officials to be readily available for public perusal.

Regulation 20(1)(iv) reads as follows;

“01. In accordance with the power to direct a Public Authority to provide information in a particular form under Section 15(d) of the Act and in keeping with the overriding principle of Proactive Disclosure, all Public Authorities shall routinely disseminate, at a minimum, the following key Information including through a digital or electronic format;

vi. Budget information: Projected budget, actual income and expenditure (including salary scales pertaining to the emoluments and related allowances of officers and employees of executive rank and above,) and other financial information and audit reports.”

The Counsel for the Appellant, if she wishes to do so, is granted a period of two weeks to handover counter written submissions with regard to matters transpired in this appeal hearing.

The Appeal is hereby adjourned.
Next date of hearing: 11.12.2018

RTIC Appeal(In-Person) /50/2018 - 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) – heard as part of a formal meeting of the Commission on 11.12.2018

Chairperson: Mr Mahinda Gammampila
Commission Members: Ms Kishali Pinto-Jayawardena
Mr S.G. Punchihewa
Dr Selvy Thiruchandran
Justice Rohini Walgama
Director-General: Piyathissa Ranasinghe

Appearance/ Represented by:

Appellant (for) - Sankitha Gunaratne, Legal Officer, TISL
Public Authority - D P I M Dissanayake, Legal Officer, People’s Bank
N G T Kalpani, Assistant Manager – Compliance, People’s Bank

Matters Arising During the Hearing

Counsel for the Appellant stated that there was a miscommunication with regard to rescheduling of the appeal hearing, and stated that the Appellant will be filing written submissions in response to the matters that transpired at the previous hearing.

Further, Counsel for the Appellant requested that the Commission grant additional time in order to enable her to file written submissions.

The Appeal is adjourned.

Next date of hearing: 05.03.2019
