

**Sri Lanka Red Cross Society v Ministry of Home Affairs**

RTICAppeal(In-Person)/113/2018 - 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 20.04.2018

**Chairperson:** Mr. MahindaGammampila

**Commission Members:** Ms.Kishali Pinto-Jayawardena

Mr. S.G. Punchihewa

Dr. SelvyThiruchandran

Justice RohiniWalgama

**Present:** Director-General Mr. PiyathissaRanasinghe

**Appellant:** Sri Lanka Red Cross Society

**Notice Issued to:** Neil de Alwis, Secretary, Ministry of Home Affairs

**Appearance/ Represented by:**

Appellant - Mr. HemalWaravita

Mr. PalithaYaggahawita Attorney-at-Law

Public Authority - D. R. B. N. B. Karunathilaka– Information Officer

<b>RTI Request filed on</b>	15.06.2017 and 07.07.2017 (reminder)
<b>IO responded on</b>	04.08.2017
<b>First Appeal to DO filed on</b>	14.08.2017
<b>DO responded on</b>	08.12.2017
<b>Appeal to RTIC filed on</b>	28.12.2017

**Brief Background Facts:**

The Appellant Society had by informationrequest dated15.06.2017 requestedthe inquiry report in relation to an inquiry conducted subsequent to a complaint made by the Appellant Society on 15.08.2016 and the recording of evidence at length on 11.01.2017(the complaint was in relation

to the alleged fraudulent transfer of the land on which the Appellant Society's Gas Station is located, by certain officers).

The IO responding on 04.08.2017 denied the information on the basis that the report submitted by the inquiry division contained statements by the relevant parties which would result in an invasion of privacy if provided and on the basis that the recommendations of the said inquiry have not been carried out. Dissatisfied with this response, the Appellant lodged an appeal with the DO on 14.08.2017. The DO responded on 08.12.2017 reiterating the response of the IO. The Appellant Society thereafter preferred an appeal to the Commission on 28.12.2017.

**Matters Arising During the Course of the Hearing:**

As the Appellant Society had not averred citizenship, it was notified that it needs to, as of record aver citizenship to the effect that its membership falls within the definition of a citizen as defined in Section 43 of the RTI Act.

The Appellant Society reiterated the information request and the background to it seeking the said inquiry report. The DO, in his written submission to the Commission, reiterated the response to the appeal made to him.

As the PA relied on the privacy exemption, the Commission queried from the PA as to the manner in which the said exemption was contended to apply in the circumstances of the case and as to who had given evidence at the said inquiry, to which question, the PA responded stating that officers of the PA as well as those of the Appellant Society had given evidence at the said inquiry.

**Order:**

Therefusal of the IO/DO to disclose the information requested on the ground that the recommendations of the inquiry report have not been carried out, is unacceptable under and in terms of the RTI Act. Further the PA has failed to demonstrate the manner in which the statements affect the privacy of the parties giving statements in evidence as it is an inquiry conducted by the PA in its official capacity.

The attention of the PA is drawn to Section 32 (4) of the Act which states that ‘On appeal, the burden of proof shall be on the public authority to show that it acted in compliance with this Act in processing a request.’ The rationale provided by the PA in refusing the information is clearly not in accordance with the Act. The PA is directed to file written submissions specifying the precise manner in which the privacy exemption applies in the circumstances of the case.

Further hearing of the appeal is fixed for 5<sup>th</sup> June 2018.

\*\*\*\*\*

RTICAppeal(In-Person)/113/2018 - *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. MahindaGammampila

**Commission Members:** Ms.Kishali Pinto-Jayawardena

Mr. S.G. Punchihewa

Dr. SelvyThiruchandran

Justice RohiniWalgama

**Present:** Director-General Mr. PiyathissaRanasinghe

**Appearance/ Represented by:**

Appellant - Mr. HemalWaravita, Internal Auditor, SLRC

Mr. PalithaYaggahawita Attorney-at-Law

Public Authority - D. R. B. N. B. Karunathilaka– Information Officer

**Matters Arising During the Course of the Hearing:**

The Commission questioned the PA with regard to its position on submitting the requested report and its findings. The PA submitted that the particular investigation concluded on 31.05.2017 and the report had been submitted to the Authority on 01.06.2017. The PA further submitted that the report was handed over to the Additional Secretary of the Ministry and it presently is in the custody of the subject Minister. In explaining its position with regard to the refusal to submit the

requested information, the PA stated that though the investigation had concluded no action had been taken with regard to the matter to date and hence, the report cannot be submitted.

Expressing its concerns regarding the response of the Public Authority, the Appellant submitted that this was not sufficient justification for refusing the information under the RTI Act. The Appellant also submitted of record that it had filed its membership to establish citizenship within the meaning of Section 43 of the Act by way of document dated 05.06.2018 which stated *inter alia* that the Appellant Society was established in Sri Lanka under the Royal Charter in 1952.

**Order:**

The Public Authority is required to establish an exemption under Section 5 (1) in order to refuse the information and also required in terms of Section 32(4) to satisfy the burden of proof in regard to why the harm in disclosure is greater than the public interest.

It is evidenced that the justification for refusing to release the information as contained in the responses of the IO and the DO through letters to the Appellant respectively dated 04.08.2017 and 08.12.2017(viz; invasion of privacy presumably under Section 5 (1)(a) and on the basis that the recommendations of the said inquiry have not been carried out) have now been varied to the extent of claiming that the reason is that the file has been submitted to the subject Minister and that a directive is awaited in that regard. The attention of the PA is strictly directed to the fact that the same is not a legal basis to refuse information under and in terms of the RTI Act, No 12 of 2016.

The PA is directed to file a written response before this Commission, signed by the Designated Officer, affirming the above ground as the basis for the failure to submit requested information. The Appellant is directed to submit minutes of the ongoing case in relation to this matter before the Court of Appeal.

The Appeal is hereby adjourned. Next date of hearing: 31.07.2018

\*\*\*\*\*

RTICAppeal(In-Person)/113/2018 - *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 31.07.2018

**Chairperson:** MahindaGammampila  
**Commission Members:** Kishali Pinto-Jayawardena  
S.G. Punchihewa  
Dr. SelvyThiruchandran  
Justice RohiniWalgama

**Director-General** PiyathissaRanasinghe

**Appearance/ Represented by:**

Appellant - Mr. HemalWaravita, Internal Auditor, SLRC  
Mr. PalithaYaggahawita Attorney-at-Law  
Public Authority - D. R. B. N. B. Karunathilaka– Information Officer

**Matters Arising During the Course of the Hearing:**

At the hearing the IO submitted that the DO (the Secretary to the Ministry of Home Affairs) has requested further time to respond and produced letter dated 24.07.2018 to this effect.

In the aforesaid letter the DO states that the requested Preliminary inquiry report has been sent to the Minister of Home Affairs and although an inquiry was made into obtaining the report through the administration branch, the Minister has requested further time. Accordingly,the DO has requested a further grace period in order enable the PA to produce the report.

**Order:**

As requested by the PA, further time is given for the purposes of ascertaining the status of the matter.

The Appellant is again directed to submit minutes of the ongoing case in relation to this matter before the Court of Appeal which is of direct relevance for the issuance of an Order of the Commission in this appeal,

The Appeal is adjourned.

Next Date of Hearing: 18.09.2018

.....  
RTICAppeal(In-Person)/113/2018 - *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 18.09.2018

**Chairperson:** Mahinda Gammampila  
**Commission Members:** Kishali Pinto-Jayawardena  
S.G. Punchihewa  
Dr. SelvyThiruchandran  
Justice RohiniWalgama

**Director-General** PiyathissaRanasinghe

**Appearance/ Represented by:**

Appellant - Absent  
Public Authority - K.G.Dharmathilaka, Additional Secretary Administration

**Matters Arising During the Course of the Hearing:**

The Appellant was absent.

**Order:**

The Appeal is hereby adjourned. Next date of hearing: 31.07.2018

\*\*\*\*\*

RTICAppeal (In-Person)/113/2018 - *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 12.11.2018.

**Chairperson:** MahindaGammampila  
**Commission Members:** S.G. Punchihewa  
Dr. SelvyThiruchandran  
Justice RohiniWalgama

**Director-General** PiyathissaRanasinghe

**Appearance/ Represented by:**

Appellant - Mr. HemalWaravita, Internal Auditor, SLRC  
Mr. PalithaYaggahawita Attorney-at-Law  
Public Authority - Absent

**Matters Arising During the Course of the Hearing:**

Public Authority was absent. The Appellant submitted that the matter is in relation to a land which was leased to the Red Cross Society where a petrol shed was established and later it was transferred to another individual. Red Cross Society branch in Hamabanthota had been serving the people around the area out of the income from this Petrol Shed. The Appellant submitted that it had been providing constant income for the Society for a considerable period. However the appellant further submitted that the Branch Chairman then has attempted to lease out the said land for his personal gains whereby the Appellant had filed a Writ application against him at the Court of Appeal. The Appellant has then complained to the Public Authority to hold an inquiry. As a result of this inquiry these wrongful acts have been revealed.

The Appellant is requesting for that particular inquiry report. However the Public Authority refuses to release the inquiry report based on the fact that the recommendations of the said inquiry report has not been implemented yet by the Ministry and further since the statements of

the parties are included in the report. The Appellant submitted that these two reasons of the Public Authority are not legally valid hence it cannot be read in par with the Act.

The Public Authority has then informed by a letter to the Commission that the procedure followed at the said inquiry is wrong and was subjected to a cancellation. Therefore the Inquiry Report cannot be released. The Appellant submitted that the aforesaid decision has affected many people. Furthermore The Appellant submitted that the Court of Appeal has stated that the Petitioner is not entitled to the said Inquiry report in law on which the Appellant refuses to agree.

**Order:**

The Commission observes that by the previous interim order the Commission has directed both parties to make their relevant further submissions. However observing the fact that the Public Authority is absent for the hearing the Commission fixed a next date for both parties to appear

The Appeal is adjourned.

Next Date of Hearing: 17<sup>th</sup> December 2018.

\*\*\*\*\*

RTICAppeal(In-Person)/113/2018 - *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 17.12.2018

**Chairperson:** Mahinda Gammampila  
**Commission Members:** S.G. Punchihewa  
Dr. SelvyThiruchandran  
Justice RohiniWalgama

**Director-General** PiyathissaRanasinghe

**Appearance/ Represented by:**



- Appellant - Mr. HemalWaravita, Internal Auditor, SLRC  
Mr. PalithaYaggahawita Attorney-at-Law
- Public Authority - K.G.Dharmathilaka, Additional Secretary Administration  
W. Ariyaratna  
D.P.K. Hewapathirana

**Matters Arising During the Course of the Hearing:**

Appeal was adjourned

**Order:**

The Appeal is hereby adjourned. Next date of hearing: 31.07.2018

\*\*\*\*\*

RTICAppeal(In-Person)/113/2018 - *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 08.04.2019

**Chairperson:** Mahinda Gammampila

**Commission Members:** S.G. Punchihewa  
Dr. SelvyThiruchandran  
Justice RohiniWalgama

**Appearance/ Represented by:**

- Appellant - Absent
- Public Authority - J.A.C. HariniJayasinghe  
D.P.K. Hewapathirana

**Matters Arising During the Course of the Hearing:**

Both parties haven't filed their written submissions even if they were ordered to do so.

**Order:**

The Appeal is hereby adjourned. Next date of hearing: 19.08.2019

\*\*\*\*

RTIC Appeal (In-Person Hearing)/113/2018- Order adopted on 19.08.2019 subsequent to the hearing at a part of the formal meetings of the Commission on 20.04.2018, 05.06.2018, 31.07.2018, 18.09.2018, 17.12.2018, 08.04.2019 and 19.08.2019

**Chairperson:** MahindaGammampila  
**Commission Members:** S.G. Punchihewa  
Dr. SelvyThiruchandran  
Justice RohiniWalgama

**Appearance/ Represented by:**

Appellant - Mr. HemalWaravita, Internal Auditor, SLRC  
Mr. PalithaYaggahawita Attorney-at-Law  
Public Authority - Mr. D.P.K. Hewapathirana, Investigation Assistant  
Mr. K.G. Dharmathilaka, Additional Secretary Administration

**Matters Arising During the Course of the Hearing:**

Public Authority submitted that they held an inquiry. However, the inquiry has then been cancelled by the Public Authority stating that inquiry report doesn't carry sufficient information that can be released to the Appellant.

**Order:**

The Commission orders a copy of the "preliminary investigation conducted with regard to the transferring of the land which belongs to the filling station to another party" to the Appellant.

The certified copy of the above document shall be released to the Appellant by the Public Authority within two weeks upon the receipt of the order.

The Appeal is concluded.

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).

**NB: Due to non-compliance by the PA with Order dated 19.08.2019, the Appellant lodged a complaint with the Commission on 04.10.2019. Accordingly the Commission sent out a Notice dated 25.10.2019 directing the PA to comply failing which a prosecution in terms of Section 39 of the Right to Information Act No 12 of 2016 may be warranted. Consequently, the Report which was the subject matter of the information request dated 15.06.2017 was released to the Appellant on 13.11.2019. Therefore the Commission deemed that a prosecution in terms of Section 39 (4) need not be instituted.**