

**V. Y. Sabaratnam v. Sri Lanka Insurance Corporation Ltd.**

**RTIC Appeal (In-Person)/117/2018 - 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 formal meetings of the Commission on 09.05.2018, 26.06.2018, 17.07.2018 and 28.08.2018**

**Date of Order - 16.10.2018**

**Chairperson:** Mr. Mahinda Gammampila  
**Commission Members:** Ms. Kishali Pinto-Jayawardena  
Dr. Selvy Thiruchandran  
Justice Rohini Walgama

**Director-General:** Mr. Piyathissa Ranasinghe

**Appellant:** Dr. V. Y. Sabaratnam  
**Notice Issued to:** Mr. Hemaka D. S. Amarasuriya, Chairman, Sri Lanka Insurance Corporation Ltd.

**Appearance/ Represented by:**

Appellant - Dr. V. Y. Sabaratnam  
Public Authority - N. R. Sivendran, PC (Counsel for PA)  
R. Hewavitharanage – Manager (Legal)  
A. D. Perera – DGM (Life)  
A. A. D. C. P. Athauda – AGM (Life)

**Written Submissions of the PA:** 03.05.2018, 19.09.2018

**Written Submissions of the Appellant:** 18.09.2018

**Order:**

The information request which is the subject matter of this appeal flows from an insurance claim lodged by the Appellant with the PA which was consequent to a policy obtained in the following context. The Appellant had applied for a loan from the Anuradhapura Branch of the Bank of Ceylon mortgaging certain properties. The Bank accordingly, in August 2016, had applied for a Mortgage Protection Assurance wherein the assured is the Appellant and consequent to which the PA issued the Policy of Life Assurance No. 9556959 (annexed to the PA's written submission dated 03.05.2018 marked R1). The Appellant in November 2017 was diagnosed with Oesophageal cancer and lodged his disability claim form under the policy on 28.11.2017. It is the position of the PA however that under and in terms of clause 78 of the Insurance Policy, which lays down the terms and conditions of the Permanent Disability Benefits, that *total and permanent disability due to sickness* had not lasted 6 months. 02 (b) of Clause 78 states as follows;

*If the Life Assured suffers from total and permanent disability due to sickness, then the disability must last for not less than 6 months in duration and it must thereafter be admitted as total and permanent disability.*

The Appellant's contention was that Clause 78 containing the aforesaid was not included in the policy at the time of sale and accordingly that he is eligible to make a claim on the Policy. The Appellant further contended that this clause was inserted fraudulently.

As it is not within the ambit of this Commission's powers to ascertain whether or not fraud has taken place inducing the Appellant to sign the insurance policy and/or whether it is in fact a valid insurance policy, it is for this Commission to decide whether or not any information available is to be provided to the Appellant unless exempted under and in terms of the Act. Accordingly we will consider the information request dated 17.12.2017 whereby he Appellant had requested the following information relating to his insurance claim;

1. The names of the persons who had made the decisions on his claim. If a medical team or a doctor was involved their names, designation and qualifications as well.
2. Certified copies of all the relevant decision-making documents

On 26.12.2017, the Information Officer responded to him denying the information sought on the panelists who decided on the claims under Section 5 (1) (f) of the RTI Act, No.12 of 2016. Dissatisfied with this response the Appellant appealed to the Designated Officer (DO), on 03.01.2018 and he received a response on 04.01.2018 that the decision to withhold the names of the panelists was based on the recommendation of the Chief Officer-Life and as decided by the Board on 28.12.2017. Therefore it was stated that the decision was not taken by the IO arbitrarily but was a collective decision of the Chief Officer-Life and the Board. It was unclear whether the response dated 04.01.2018 was a follow up to the IO's previous response or a response to the Appellant's appeal to the DO. The Appellant then preferred an appeal to this Commission on 03.01.2018.

By the responses of the IO (dated 26.12.2017) and DO (dated 04.01.2018) to the information request and Appeal to the DO respectively an inference can be drawn that there exists in the custody of the PA, information that falls within the ambit of the information requested by the Appellant. In further elucidation of this point, not only has the IO by response dated 26.12.2017, denied the information **sought on the panelists** (emphasis ours) who decided on the claims under Section 5 (1) (f) of the RTI Act, No.12 of 2016 but also the DO, has responded on 04.01.2018 stating that the decision to **withhold the names of the panelists** (emphasis ours), was based on the recommendation of the Chief Officer-Life and as decided by the Board on 28.12.2017.

Subsequent to the final hearing of the appeal by this Commission on 28.08.2018, an e-mail reminder dated 20.09.2018 was sent by the office of the Commission to the Appellant reiterating the direction of the Commission dated 17.07.2018 requiring the Appellant to file relevant documents issued from the Sri Lanka Insurance Regulatory Commission in support of

his submission. The Appellant by e-mail dated 04.10.2018 forwarded a response by the Director Legal of the Insurance Regulatory Commission of Sri Lanka which stated that

*...the Regulation of Insurance Industry Act, No. 43 of 2000 (as amended), does not mandatorily require that an insurer obtain an reinsurance cover. As such, the decision to obtain reinsurance is at the discretion of an insurer. The Insurance Regulatory Commission does, however, stipulate provisions that determine the type of reinsurer that an insurer may place a reinsurance cover with. A policyholder only has a contractual relationship with the insurer from whom he/she obtains an insurance policy, and does not have any contractual relationship with an reinsurer. This is a separate agreement, the parties to which would be the insurer and the reinsurer.*

*In the event that a policyholder lodges a claim with an insurer, and such claim is paid by the insurer, the insurer can then reimburse the said expense from the reinsurer, depending on the type of reinsurance contract entered into between the said parties.*

As this response did not comply with the direction of 17.07.2018 which was to 'submit the documentation with respect to the interview had with the Sri Lanka Insurance Regulatory Commission which will contain evidence of the fact that the Appellant's claim was assessed by medical personnel in Sri Lanka' whom the Appellant alleges are unqualified, the Commission sent a further reminder on 09.10.2018. In response the Appellant on 10.10.2018, submitted the response of the Insurance Regulatory Commission dated 06.09.2018, providing the Appellant with a recording (of 04.04.2018) which substantiates the Appellants position to the extent that at the very minimum, a decision to review the claim in six months has been made by the medical panel of the PA.

It must also be stated that In its initial responses, the PA denied information in relation to the panelists, citing Section 5 (1) (f). Further by its written submissions/ statement of objections dated 03.05.2018 subsequent to the notices of the Commission, the PA claims that the information sought '*is in respect of a pending dispute between the Appellant/Bank of Ceylon and the Respondent and in the event the event, the Appellant/ Bank of Ceylon is not satisfied with the decision of the Commission, the said matter will be referred to Courts for judicial determination and thus, any information that is now furnished by the Respondent can be used against the Respondent which will jeopardize the Respondent's defence in such a case.*

This Commission on 09.05.2018 determined that,

*The Public Authority's argument that the matter relates to a potential dispute which may go to court is not a valid exemption to deny information to an information requestor. Section 5 (1) of the RTI Act No.12 of 2016 provides for specific exemptions and sub judice or a pending court case itself is not one of these exemptions. Consequently, the likelihood of a court case arising in the future cannot be construed as a valid exemption to deny information on an information request submitted under the Act.*

With respect to the applicability of Section 5 (1) (f), the following position is clear;

Section 5(1)(f) states that the release of information may be denied if;

*the information consist of any communication, between a professional and a public authority to whom such professional provides services, which is not permitted to be disclosed under any written law, including any communication between the Attorney General or any officer assisting the Attorney General in the performance of his duties and a public authority;*

This Commission reiterated that, in accordance with its decision in RTIC Appeal 58/2018 *Ceylon Bank Employees' Union v People's Bank (Order delivered on 17.07.2018)* 'this Section does not automatically apply purely for the reason that documents are communications between a PA' and a professional. If an exemption is pleaded 'it must be shown how the information is privileged and as to the manner in which it is 'not permitted to be disclosed under any written law' as expressly stipulated by that Section.'

In this instance and as is evidenced in the initial responses of the PA to this information request as mandated by the RTI Act, particularly referencing the decision by the DO as aforesaid, the panelists involved in making whatever decision in relation to the Appellant's claim, were constituted as a panel or otherwise, functioned under the direction of the PA itself as opposed to professionals operating outside the ambit of the PA. Further it must be reiterated that is insufficient to merely plead that the exemption of professional privilege exists. Rather it must be established that the information requested is privileged under and in terms of 'written law' which burden the PA has not satisfactorily discharged.

Following the hearings of this appeal before us, (on 09.05.2018, 26.06.2018, 17.07.2018 and 28.08.2018), the PA's position in its written submission dated 03.05.2018 that the Appellant is not entitled to the information requested for numerous reasons set out therein was varied to the extent that it was later contended that no decision in respect of the Appellant's claim had been made and that therefore the information requested by the Appellant cannot be provided. Essentially it appeared that the PA was pleading that the information requested was not within its 'possession, custody or control' under and in terms of Section 3 of the Right to Information Act. The PA further reiterated this position in its written submissions dated 19.09.2018.

This variation of the positions taken by the PA on different occasions appears to be contradictory.

In sum and considering the cumulative effect of these matters, the issue at hand accordingly is whether or not the PA has within its custody, control and possession information as defined by Section 43 of the Act in relation to the information request of the Appellant.

Whilst Section 3 (1) states that *‘Subject to the provisions of section 5 of this Act, every citizen shall have a right of access to information which is in the possession, custody or control of a public authority,’* Section 43 defines ‘information’ as follows;

*“information” includes any material which is recorded in, in any form including records, documents, memos, emails, opinions, advices, press releases, circulars, orders, log books, contracts, reports, papers, samples, models, correspondence, memorandum, draft legislation, book, plan, map, drawing, diagram, pictorial or graphic work, photograph, film, microfilm, sound recording, video tape, machine readable record, computer records and other documentary material, regardless of its physical form or character and any copy thereof;*

As per the first limb of the information request dated 17.12.2017, the Appellant requests the names of the persons who had made the decisions on his claim, which can include decisions to deny or delay the said claim. While the PA has (later) relied on its submission that it did not make the relevant decision, it is evident by the responses of the IO and the DO and the information provided by the Insurance Regulatory Commission dated 06.09.2018 to the Appellant that a decision to review the claim in six months has been made by the medical panel of the PA.

The Commission accordingly deems that information in relation to this panel and its members thereof falls within the ambit of the information request of the Appellant. In this appeal, the names of the members constituting the panel examining the claim of the Appellant has been requested on the Appellant’s contention that his claim was not reviewed by those competent to do so (vide proceedings of this Appeal on 17.07.2018 and written submissions of the Appellant filed on 18.09.2018).

A disputed question of competency is not for this Commission to decide. However it is our considered view that disclosure of the information requested in the first limb of this appeal comes legitimately within the province of information that can be released under this Act, as this comprises an essential basis of the Appellant’s right to know as well as information vital in the public interest as it relates to the transparent and accountable functioning of the Public Authority. This is differentiated from, as an example, an information request where the names of professionals are asked to be disclosed in a context where the primary issue is entirely different, such as disclosure of the sums of money paid out of public funds by Public Authorities for professional work.

We do not find that the information so requested comes within the ambit of Section 5(1)(f) in as much as the Public Authority has failed to establish the existence of ‘written law’ that pertains to such information being kept a secret. In any event, the public interest override will apply in Section 5(4) of the Act as we find that the public interest in the transparent and accountable functioning of a Public Authority such as the Sri Lanka Insurance Corporation outweighs the likely harm that may result from the disclosure. As such the PA is directed to release information pertaining to the names of the panelists who made relevant decisions in

relation to the Appellant's claim as per the response of its DO dated on 04.01.2018 stating that the decision to ***withhold the names of the panelists*** (emphasis ours), was based on the recommendation of the Chief Officer-Life and as decided by the Board on 28.12.2017.

In regard to the information requested in the second limb of the information request, the material before us is not sufficient to establish the applicability of Section 5(1)(f) to the release of the information requested. This Commission must consider the public interest override in Section 5(4) of the RTI Act given the fact that decisions made by a PA covered by the Act and operating on public funds must be made transparently and accountably. Further, these decisions amount to institutional decisions taken by Public Authorities which must be revealed (vide *CBEU v Peoples Bank*, RTIC Minutes, 17.07.2018)

Accordingly it is further directed that certified copies of relevant decision-making documents in this regard be submitted to the Commission to assess their contents in order to arrive at a determination regarding release of the same to the Appellant.

The decision of the Designated Officer is reversed.

The Appeal is concluded.

Order is directed to be 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).

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