

Ceylon Bank Employees Union v People's Bank

RTIC Appeal(In-Person)/139/2018 - *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. 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: Ceylon Bank Employees Union (CBEU)

Notice Issued to: Ms. Samantha Senanayaka, Designated Officer, Assistant General Manager-Compliance, People's Bank

Appearance/ Represented by:

Appellant -
Public Authority -

RTI Request filed on:	07.09.2017
IO responded on:	26.09.2017
First Appeal to DO filed on:	02.10.2017
DO responded on:	No response
Appeal to RTIC filed on:	19.12.2017

Brief Factual Background:

The Appellant by request dated 07.09.2017 had requested the following,

- a) A certified copy and/or extracts and/or such other documentary material of the decision taken by the People's Bank to lease and/or take on rent the "Self Banking Units" each unit consisting of either the three machines, namely, Automatic Teller Machine (ATM), Cash Deposit Machine (CDM) and Bill Payment Machine (KIOSK) or any one or two of the said three machines,
- b) A certified copy and/or extracts of the Agreement executed by the People's Bank to lease and/or take on rent the said "Self Banking Units" each unit consisting of either the three machines, namely, Automatic Teller Machine (ATM), Cash Deposit

Machine (CDM) and Bill Payment Machine (KIOSK) or any one or two of the said three machines,

- c) A copy and/or extracts of the Report compiled and/or such other documentary material for the People's Bank to arrive at a decision that leasing and/or taking on rent the said "Self Banking Units" each unit consisting of either the three machines, namely, Automatic Teller Machine (ATM), Cash Deposit Machine (CDM) and Bill Payment Machine (KIOSK) or any one or two of the said three machines, is more beneficial than purchasing the same when those machines are not acquired as the assets of the Bank and such lease or taking on rent is financially disadvantageous to the long term viability and prosperity of the Bank and
- d) A copy of the publication of notices calling for tenders by the People's Bank to lease and /or take on rent the said "Self Banking Units" each unit consisting of either the three machines, namely, Automatic Teller Machine (ATM), Cash Deposit Machine (CDM) and Bill Payment Machine (KIOSK) or any one or two of the said three machines.

By response dated 26.09.2017, the Information Officer (IO) has informed the Appellant that the information requested under (a), (b) and (c) is denied under and in terms of Section 5 of the Right to Information Act No.12 of 2016 and further informed the Tender notice on outsourcing "Self Banking Units" was published in Daily News of 7th September 2015. Upon being dissatisfied with the response of the IO, the Appellant has made an appeal to the Designated Officer (DO) on 02.10.2017. As the DO too failed to respond within 21 days, the Appellant preferred an appeal to the Commission on 19.12.2012.

Matters Arising During the Hearing

As the Public Authority was absent the Appeal hearing was postponed to 05.06.2018.

The next date of hearing: 05.06.2018.

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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: Ceylon Bank Employees Union

Notice Issued to: Ms. Samanthi Senanayaka, Designated Officer, Assistant General Manager-Compliance, People's Bank

Appearance/ Represented by:

Appellant -Nalin Amarajeewa, Attorney-at-law on behalf of the Appellant
Indula Hewage, Attorney-at-Law on behalf of the Appellant
Channa Dissanayke, Senior Vice President, Ceylon Bank Employees

Union (CBEU)

A.M.M.S.M Ruwan, Senior Assistant Secretary, CBEU

Public Authority - D.M.P.S Dissanayake (illegible), Legal Officer, People's Bank
N.G.T. Kalpani, Assistant Manager Compliance Department,
People's Bank

Matters Arising During the Hearing

The Public Authority (PA) submitted that the information requested by item (d) was made available to the Appellant by response dated 26.09.2017 and items (a), (b) and (c) were denied under and in terms of Section 5 of the Right to Information Act, No.12 of 2016.

Since the PA had not cited the specific exemption under Section 5 of the RTI Act, the Commission queried from the PA the exact subsection under which it was denying access to the information requested by items (a), (b) and (c). The PA responded by referring to its written submissions dated 05.06.2018 through which the specific exemptions i.e. Sections 5 (1) (a) and (d) were claimed.

In relation to the information requested by item (b), namely the extracts of the Agreement executed by the PA to lease and/or rent the "Self Banking Units", the Attorney-at-Law on behalf of the PA reiterating the written submissions submitted that the "Self-Banking Units" relate to the running computer system of the Bank (PA) which has a direct connection with the information system that is operated by the units. Such networks and databases involved in the system are covered by the said agreement. Therefore, in that context the requested information includes the information about the network and the databases to which particular databases have access on contractual entitlement. For that reason the lease and/or rent agreement which is allegedly entered into by the PA and the service provider is personal information the disclosure of which amounts to an invasion of privacy. The PA submitted that therefore where there is no public interest concerned the bank is at its discretion to refuse to release the information

The Commission further queried as to the basis on which access to information requested by item (a), namely the other documents material for the decision taken by the PA were denied. The Attorney-at-Law on behalf of the PA responded by stating that the PA being a formal bank follows a specific procedure when calling for tenders and accordingly it has separate officers to evaluate such tenders. Further, all decisions taken by the PA are subject to a

procurement procedure as the PA is answerable to the public in its transactions made at the expense of such PA.

Further, the Commission queried as to why the PA envisages difficulty in releasing the information relating to the particular process it has followed in coming into the decision concerning the “Self-Banking Units” to the general public. The PA contested stating that the relevant information request was cleverly engineered by the competitive banks as Mr. T.G.W Gunawardana who made the initial request and Mr. Channa Dissanayake are employees of the Bank of Ceylon. Further, CBEU is a trade Union which has granted membership to a large number of bank employees both State owned and otherwise, such as Commercial Bank, Seylan Bank and People’s Bank etc. In such circumstance by disclosing the same to a trade union which consists of almost all the competing banks would amount to disclosing a trade secret. Therefore the information requested consists of a commercial transaction by a State owned leading bank with the prospect of maintaining a competitive edge amongst the other competitive banks. For that reason it refused the information requested by item (a) under and in terms of Section 5 (1) (d) which states 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”

Nonetheless, the Attorney-at-Law on behalf of the PA submitted that in the absence and the failure to furnish the approval/decision of the CBEU to make such information request under and in terms of the RTI Act it is quite evident that some officers of the CBEU are striving to achieve an ulterior motive of obtaining trade secrets. Alternatively, the Appellant contested that the Union has given authority to the senior office bearers, inclusive of the officer who signed the information request and thus the information request was made with the authority of the CBEU.

Order

The attention of the PA is drawn to the fact that in relation to the exemptions under the RTI Act the Commission is required to take cognizance of the public interest when deciding whether to release the information. Although an exemption applies prima facie it will not automatically enable the PA to deny the information should the public interest in disclosure outweigh the harm that would result from the disclosure. Section 5 (4) of the Act states that,

“Notwithstanding the provisions of subsection (1), a request for information shall not be refused where the public interest in disclosing the information outweighs the harm that would result from its disclosure”

For that reason mentioning that the information requested purportedly constitutes ‘information which has no relationship to any public activity or interest’ does not stand as mentioned in the written submission of the PA, as it has failed to clearly demonstrate how the information falls within Section 5 (1) (a) and (d) in the first instance.

The PA is directed to file written submissions as to how exactly this particular information would be subject to the exemptions under Section 5 (1) (a) and (d) on or before 17.07.2018.

The PA is directed to handover the documents in relation to items (a) and (b) for the Commission's perusal on 17.07.2018.

Further, the Commission directed the Appellant to produce the approval or the decision allowing the Appellant to file an information request under and in terms of the RTI Act No.12 of 2016, by the CBEU.

The Appeal is hereby adjourned.

The next date of hearing: 17.07.2018.
