

Dr S Dharshanan v. University of Jaffna

RTIC Appeal(In-Person) /144/2018 - 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 12.06.2018

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: Dr S Dharshanan
Notice Issued to: Designated Officer, University of Jaffna

Appearance/ Represented by:

Appellant - Dr S Dharshanan
Public Authority - Mr N Rajavisahar, Deputy Registrar, University of Jaffna

RTI Request filed on	04.12.2017
IO responded on	18.12.2017
First Appeal to DO filed on	18.12.2017
DO responded on	No Response
Appeal to RTIC filed on	09.01.2018

Brief Background Facts

The Appellant had requested the following items of information, by an information request dated 04.12.2017

1. The Council of the University of Jaffna is conducting a formal inquiry against Dr. S Dharshanan as per the Charge Sheet sent by the Vice Chancellor on 27.01.2017, and as per the amendments made to it 01.07.2017. The University had appointed two lawyers as prosecution officers. What are the provisions in the Universities Establishment Code or relevant circulars/regulations relating to appointing two lawyers as prosecution officers
2. Official request letters, acceptance letters, any other official communication between the parties, Terms of Reference, if any, between the University and said prosecution officers (said two lawyers/their organization) to participate in the said inquiry against Dr. S. Dharshanan
3. With regard to the three persons tribunal is conducting the inquiry against said Dr. S. Darshanan; Section 6.1.1. of Chapter XXII of the Universities Establishments Code states eligible persons to be holding inquiry against a lecturer. Under which of the Subsection/s of the 6.1.1. are the said three inquiry officers appointed by the Council of the University of Jaffna?
4. If the said three persons tribunal (relating to item 3) is appointed under the Section 6.1.1.(iv), what were the dates of registration of said three persons at the Council of the University of Jaffna to act as inquiry officers?

The IO responded on 18.12.2017 providing information relating to items 1 and 3 of the request. Dissatisfied with the information received, the Appellant appealed to the DO on 18.12.2017. As the DO failed to respond, the Appellant preferred an appeal to the Commission on 09.01.2018

Matters Arising During the Hearing

Upon examination of the information request, the Commission inquired from the PA, the grounds on which information pertaining to item 2 was denied. The PA submitted that the provision of information was denied based on Section 5(1)(f) of the Right to Information Act No. 12 of 2016 as the requested information amounts to privileged communication between the Tribunal and the PA. In response, the Appellant submitted the above mentioned information is to be submitted to the University Council, thereby making the requested information accessible.

Upon questioning the PA on the grounds of refusal to provide information in item 4 of the request, the PA submitted that the information was denied based on Section 5(1)(f) of the Act. In response, the Appellant submitted that in accordance with Section 6.1.1. of Chapter XXII of the Universities Establishments Code, tribunal members are to be registered with the University Grants Commission or with the University of Jaffna prior to the preliminary inquiry in order to qualify to hold such an inquiry. The PA submitted it would provide the Appellant with requested information under item 4 of the request.

Order

Information requested in item 2 of the request is exempted under Section 5(1)(f) of the Right to Information Act No. 12 of 2016 as the information amounts to privileged communication between the tribunal and the PA.

Section 5(1)(f) read as;

“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”

As item 2 of the information request does, *prima facie* fall within information that can be exempted under Section 5 (1) (f), unless material to show sufficient public interest in disclosure in placed before the Commission and the Commission is satisfied of such public interest the information cannot be disclosed.

In this regard Section 5 (4) of the Act states as follows;

“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.”

The PA is directed to provide the information requested by item 4, as the Section 5 (1) (f) cannot be claimed with regard to the provision of the registration letters of the members of the Tribunal.

The Appeal is adjourned.

Next date of hearing: 31.07.2018
