

K. U. Pushapakumara v Human Rights Commission of Sri Lanka

RTIC Appeal (In – person)/170/2018 (*Order adopted as part of a formal meeting of the Commission on 14.08.2018*)

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)

Chairperson: Mahinda Gammampila

Commission Members: Kishali Pinto-Jayawardena

S.G. Punchihewa

Dr. Selvy Thiruchandran

Justice Rohini Walgama

Director-General: Piyathissa Ranasinghe

Appellant: Mr. K.U. Pushapakumara

Notice issued to: Designated Officer (DO), Human Rights Commission of Sri Lanka Municipal Council, Galle

Appearance/ Represented by:

Appellant - K.U. Pushapakumara, RTD Banker

PA - W.A.U.S Wijesooriya, Information Officer (IO), Human Rights Commission of Sri Lanka

K.K. Villavarajan, IO, Human Rights Commission of Sri Lanka

RTI Request filed on:	16.10.2017
IO responded on:	No response
First Appeal to DO filed on:	21.12.2017
DO responded on:	No response
Appeal to RTIC filed on:	23.01.2018

Brief Factual Background:

The Appellant had by request dated 16.10.2017 requested following information pertaining to complainant HRC/1631/15/1-23 which was lodged with the HRCSL on 18.05.2015 and with respect to which no action had been taken although a period of over 2.5 years had lapsed,

1. If the inquiry with respect to this has been concluded, the outcome/ conclusion/ recommendations and
2. If not, reason/s for such

As the IO failed to respond within the timeframe stipulated under the Act, an appeal was lodged with the DO on 21.12.2017. As the DO too failed to respond within 21 days, the Appellant preferred an appeal to the Commission on 23.01.2018.

Matters Arising During the Hearing

Upon being queried, the Public Authority (PA) produced letter dated 24.01.2018 informing the following to the Appellant,

The Appellant does not need to make a request under the Right to Information Act No.12 of 2016 as the Appellant can obtain the same as the complainant.

Accordingly, the PA kindly directs the Appellant to the Director (Investigations and Reference). However, the final report relevant to the investigation is to be prepared.

Order

The right of the citizen to acquire information from a PA arises when the PA concerned is in the possession, custody or control of the information requested under and in terms of Section 3 (1) of the Right to Information Act, No.12 of 2016.

Section 3(1) of the Act reads as follows:

3. (1) 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

That is a statutory right which operates per se and is not denied by the fact that alternative means of obtaining information may be available to a potential appellant in particular instances.

In the instant matter, it has emerged from the facts arising before us at this inquiry that although an investigation has been conducted, the final report is yet to be prepared.

Accordingly, it is necessary to ascertain the status of the inquiry and whether a final report has been prepared at this point in time by the PA. In the foregoing circumstances, the Public Authority is directed to more fully substantiate its position regarding the information requested under and in terms of the provisions of the RTI Act.

The matter is re-fixed for hearing on 16.10.2018 to ascertain further steps to be taken in this regard.

The Appeal is adjourned.
