

**L. N. Dissanayake v. The Institute of Chartered Accountants Sri Lanka (ICASL)**

RTICAppeal(In-Person)/189/2018 - 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 30.05.2018

**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:** Mr. L.N. Dissanayake  
**Notice Issued to:** Mr. M. A. L. A. Alwis, ICASL

**Appearance/ Represented by:**  
Appellant - Mr. L.N. Dissanayake  
Public Authority - Absent

<b>RTI Request filed on</b>	16.11.2017
<b>IO responded on</b>	No response
<b>First Appeal to DO filed on</b>	18.01.2018
<b>DO responded on</b>	13.02.2018
<b>Appeal to RTIC filed on</b>	18.02.2018

**Brief Factual Background**

The Appellant by request dated 16.11.2017 had requested the

1. The relevant report of the Ethics Sub-committee
2. The report of the recommendation to the Council by the ethics Committee based on the report of the Ethics Sub-committee referred to in 1

Both reports arose out of a complaint filed by the Appellant against one Mr. L. L. S. Wickremesinghe, alleging professional misconduct on the part of the said Mr. Wickramasinghe and calling for a disciplinary inquiry on the matter. As the IO failed to respond within the time frame stipulated under the Act, the Appellant lodged an appeal with the DO on 18.01.2018.

The DO responded on 13.02.2018 refusing the information citing Section 5 (1) (a) of the Act. Dissatisfied with this response, the Appellant preferred an appeal to the Commission on 18.02.2018 stating as reasons for appeal, the fact that there is nothing personal or private in the information requested and the acts of the PA will enable further engagement in corrupt and fraudulent activity.

**Matters Arising During the Hearing:**

The PA was absent for the hearing.

In the written submissions of the PA dated 25.05.2018 it submits that the information was further denied due to ongoing litigation against the Applicant currently pending in the District Court of Colombo. The PA alleged that the applicant had circulated false derogatory e-mails against the PA and the case for defamation is currently at the pre-trial stage.

The PA had further submitted that confidential information of any member and its inquiries are as a practice not released to the general public unless a complaint is concluded at the Disciplinary Committee stage and is of public interest.

The Appellant submitted that the information that he had asked for related to allegations of professional misconduct alleged in respect of Mr. Lasantha Wickramasinghe. The Appellant submitted that the said Mr. Wickramasinghe attempted to bribe/ bribed persons including the Appellant directing them to send emails in an attempt to persuade persons from voting for persons contesting for the posts of President and Vice-President of the Council ( i.e. Council of the Institute of Chartered Accountants of Sri Lanka/ the PA) against the said Mr. Wickramasinghe. The Appellant submitted that at the Annual General Meeting of the PA, he had handed over items which he alleged were used to bribe him, as a complaint was lodged against the Appellant himself.

The Appellant further submitted that once the complaint was lodged against the said Mr. Wickramasinghe, an inquiry was conducted by a subcommittee of the ethics committee which forwarded the proceedings to the Ethics subcommittee which submitted its report to the Council based on which the Council of the PA made its decision. The Appellant submitted that he was then informed of the decision on 16.05.2017 and that the PA had decided that there was no *prima facie* case made out, concluding the matter.

The Appellant submitted that he is requesting the preliminary inquiry proceedings in relation to the complaint made against Mr. Wickramasinghe and the subsequent reports submitted to the Ethics Committee and by the Ethics Committee to the Council of the PA.

The Appellant also drew the attention of the Commission to the fact that the response of the PA to his appeal, on 13.02.2018 was not in conformity with the provisions of Section 31 (2) and (3) of the RTI Act.

**Order:**

It is noted as of record that the request for a postponement by the PA had been received by this Commission two days before the hearing of this appeal (viz, 28.05.2018) despite notices having reached the PA on 08.05.2018 and without any notification being sent to the Appellant by the PA. Compliance of the PA with Section 23 (1) (a) and Section 31 (2) and (3) of the Right to Information Act No. 12 of 2016 when dealing with this appeal remains to be established.

Further hearing of the appeal is fixed for 12.06.2018 at 1.00 p.m. The PA is directed to be present on that date under and in terms of Section 15 (a) of the RTI Act.

The Appeal is adjourned.

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RTICAppeal(In-Person)/189/2018 - *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:** Mr. L.N. Dissanayake  
**Notice Issued to:** Mr. M. A. L. A. Alwis, ICASL

**Appearance/ Represented by:**

Appellant - Mr. L.N. Dissanayake  
Public Authority - Absent

**Matters Arising During the Hearing:**

The Appellant submitted his Written Submissions in the Appeal.

**Order:**

This date was fixed for the hearing of this appeal at the request of the Public Authority. However, its Designated Officer and/or Information Officer and/or any authorised representative is absent.

It is directed that the Public Authority is apprised of the fact that it is an offence under and in terms of Section 39 (1) (c) to ‘fail or refuse to appear before the Commission’ when noticed to do so.

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).

Further hearing adjourned for 31.07.2018.

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RTIC Appeal (In-Person) 189/2018 - *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:** Mahinda Gammampila  
**Commission Members:** Kishali Pinto-Jayawardena  
S.G. Punchihewa

**Director-General:** Dr Selvy Thiruchandran  
Justice Rohini Walgama  
Mr Piyathissa Ranasinghe

**Appellant:** L. N. Dissanayaka  
**Notice Issued to:** M. A. L. A. Alwis, ICASL

**Appearance/ Represented by:**

Appellant - Mr. L. N. Dissanayaka  
Public Authority - Mrs Karen Rubero Senanayake, Legal Officer, ICASL

<b>RTI Request filed on</b>	16.11.2017
<b>IO responded on</b>	No response
<b>First Appeal to DO filed on</b>	18.01.2018
<b>DO responded on</b>	13.02.2018
<b>Appeal to RTIC filed on</b>	18.02.2018

**Matters Arising During the Hearing**

The Public Authority informed the Commission that the notice dated 08.05.2018 for the hearing held on 30.05.2018 was received by the Public Authority on the 18.05.2018 and that it had subsequently informed the Commission of its inability to attend the hearing and requested a postponement two days before the hearing (*viz* 28.05.2018). In this regard the Commission noted that in the absence of the Public Authority notifying the Appellant regarding such postponement and given the short notice provided, the hearing was held as scheduled on 30.05.2018.

The Public Authority submitted that the Appellant lodged a formal complaint against the Past President of the Institute of Chartered Accountants of Sri Lanka, Mr. Lasantha Wickremasinghe alleging professional misconduct and in accordance with Section 17 of the Institute of Chartered Accountants of Sri Lanka Act no 23 of 1959, the Ethics Sub Committee conducted an investigation on the alleged professional misconduct. The Public Authority further affirmed that all internal inquiry proceedings are held in camera and in accordance with the principles of natural justice conforming to the requirements of impartiality and fairness.

The Public Authority further submitted that the Ethics sub-committee concluded that there exists no *prima facie* case against the said Mr. Wickremasinghe and on the instructions of the Council the Appellant was informed of the decision. The Appellant was not provided with a copy of the report of Ethics sub-committee pertaining to the said investigation against the said Mr. Wickremasinghe for the reasons that it contains information about a member of the Institute of Chartered Accountants of Sri Lanka. Given that the Appellant has a history of circulating false derogatory emails against the said Institute, it was declined to provide the requested information pursuant to the exemption under Section 5(1)(a) of the Act.

The PA further submitted that the Appellant is using the RTI Act with malicious intent, and as such, should be refused the information. It was further claimed that a justification for the decision of the Ethic Sub Committee had been conveyed to the Appellant via a telephone conversation and the Appellant's subsequent email dated 10.10.2017 is indicative of his knowledge of the said justifications for the Decision.

The Appellant submitted that once the Ethic sub-committee concluded its initial inquiry, he had been notified of the decision on 16.05.2017; however he strongly denied that any justification had been so provided to him for the said decision and reiterated that no reasoning had been advanced to support the same. The Appellant further alleged that the submission of a copy by the Public Authority of the case before the District Court of Colombo (D.C. Colombo Case No. DSP/75/2016) between the Institute of Chartered Accountant of Sri Lanka and the Appellant to the instant hearing is tantamount to Contempt of Court.

### **Order**

The absence of the Public Authority during the hearing on 30.05.2018 resulting from the delayed receipt of notices was due to reasons beyond the control of the Commission. However the Written Submission of the Institute of Chartered Accountants of Sri Lanka was taken into account in the consideration of this Appeal

It must be stated at the outset that the Right to Information Act No. 12 of 2016 is not concerned with the motives behind an information request and does not permit a PA or indeed this Commission to question an information requester as to the reasons behind an information request.

Section 24 (5) (d) of the RTI Act states that

*(5) A citizen making a request for information shall... not be required to give any reason for requesting the information or any other personal details except those that may be necessary for contacting him or her.*

Consequently, the only question before this Commission is whether the requested information may legitimately be released under the Act.

The propriety of actions taken by the Public Authority (the Institute of Chartered Accountants) *vis a vis* the RTI Act depends on the response of the Institute under the RTI Act, not on emails or other communications sent by the Appellant in different circumstances. On the facts before us, it is evidenced that the Appellant has been informed of the decision to not proceed with the disciplinary action on the bare reasoning that a *prima facie* case cannot be made out against the said Mr. Wickremasinghe. However, the Appellant has requested the relevant report of the Ethics Sub-committee as well as the report of the recommendation to the Council by the Ethics Committee based on the report of the Ethics Sub-Committee referred to.

While the Commission notes of record the concerns raised by the Public Authority in respect of disclosing personal information regarding its members which may be the case if the reports requested by the Appellant are released in full, it must be emphasized that the communication of reasons as to why the Public Authority decided not to proceed in this instance is necessary when balancing the considerations of privacy inherent in Section 5(1)(a) with the right of the Appellant to be afforded reasons for a particular decision taken by the Public Authority.

The Public Authority has not provided the Appellant with a justification for the decision reached subsequent to the said Ethics Sub-Committee investigation. The reliance on a purported conversation between the Appellant and the Public Authority and a consequent email sent by Appellant is not sufficient to discharge the obligation on the Public Authority to provide reasons for a decision in issue, as reflected also in the stipulations contained in Section 35 of the RTI Act. The PA is directed to respond to the Commission before the next date of hearing on the provision of summarized reasons as to the basis on which the decision to not proceed with the disciplinary action against Mr. Lasantha Wickramasinghe was reached by the Ethics Sub-Committee of the PA and its affirmation in its recommendation to the Council by the Ethics Committee of the PA.

The Appeal is hereby adjourned.  
Next Date of Hearing: 11.11.2018

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Mahinda Gammampila – Chairman

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Kishali Pinto – Jayawardena – Commissioner

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S.G. Punchihewa – Commissioner

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Dr. Selvy Thiruchandran – Commissioner

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Justice R. Walgama - Commissioner