

At the Right to Information Commission

**A D Wijesinghe v Commission to Investigate Allegations of Bribery and Corruption
(CIABC)**

RTIC Appeal (In – person) 195/2018 (*Order adopted as part of a formal meeting of the Commission on 30.05.2018*)

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: 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: M. A D Wijesinghe

Notice issued to: Sunetra Jayasinghe, AAL, Deputy Director General (Designated Officer), Commission to Investigate Allegations of Bribery and Corruption

Appearance/ Represented by:

Appellant - M. A D Wijesinghe

PA - Absent

RTI Request filed on:	18.12.2017
IO responded on:	20.12.2017
First Appeal to DO filed on:	02.01.2018
DO responded on:	No response
Appeal to RTIC filed on:	05.02.2018

Brief Factual Background:

The Appellant had by request dated 18.12.2017 requested information pertaining to the complaint No BC 648/13. The Appellant further requested

1. Statements recorded from the alleged parties,
2. Independent observations or recommendations made by the inquiry officer,
3. Any documents or attachments,
4. A copy of the minutes of the Commission on record reflecting the decision to close the file, including reasons adduced for the closure and
5. The reasons as to why several letters sent under registered cover had not been replied to inquiring into the closing of the file concerned relating to the above complaint

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The IO had denied the information by a letter dated 20.12.2017 citing Section 5 (1) (h) of the RTI Act which in effect states that

the disclosure of such information would-

- (i) *cause grave prejudice to the prevention or detection of any crime or the apprehension or prosecution of offenders; or*
- (ii) *(ii) expose the identity of a confidential source of information in relation to law enforcement or national security, to be ascertained;*

and Section 17 of the Commission to Investigate Allegations of Bribery and Corruption Act No. 19 of 1994 which reads as follows;

Every member of the Commission, the Director-General and every officer or servant, appointed to assist the Commission shall, before entering upon the duties of his office, sign a declaration that he will not disclose any information received by him, or coming to his knowledge, in the exercise and the discharge of his powers and functions under this Act, except for the purposes of giving effect to the provisions of this Act.

The Appellant thereafter lodged an appeal with the DO on 02.01.2018. As the DO failed to respond within the time period stipulated under the Act, the Appellant preferred an appeal to the Commission on 05.02.2018.

Matters Arising During the Hearing

Upon being queried by the Commission, the Appellant explained the background in relation to the complaint on which the information request was based. The Appellant submitted that a complaint was made to the Securities Exchange Commission and the Colombo Stock Exchange (CSE) against a broker. The CSE being the regulator, had stated that it could not look into the matter as the broker had, in its opinion, performed his duties without fail.

The Appellant being dissatisfied with this decision of the CSE had then preferred an appeal to the Board of Appeal (Dispute Resolution Committee) which decided unanimously against the CSE, concluding that the broker had in fact acted in breach of his duties and made recommendations in line with this conclusion to remedy the situation and caution the broker.

However as these recommendations were not implemented, the Appellant complained to the Commission to Investigate Allegations of Bribery and Corruption (the PA). The PA conducted an inquiry into the matter and closed the file in an abrupt manner without adducing any reasons. The Appellant subsequently made the information request which gave rise to this appeal, which requests *inter alia*, the minutes of the PA which show on record the decision taken to close the file, including reasons for such closure.

The Appellant submitted that he had also written to the Constitutional Council regarding this complaint.

Order

Under and in terms of the RTI Act, No 12 of 2016, upon a Public Authority deciding to refuse to disclose information, the precise subsection of Section 5 of the Act must be cited in order to justify non-disclosure and the PA must also satisfactorily discharge the burden imposed on it under Section 32 (4) which states that; 'on appeal, the burden of proof shall be on the Public Authority to show that it acted in compliance with this Act when processing a request.'

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On the facts of this appeal, it is evidenced that Section 5 (1) (h) has been cursorily pleaded by the Public Authority as a basis for refusal with absence of sufficient justification in that regard and moreover, without specification if the relevant subsection which has been applied by the Public Authority therein is 5 (1) (h) (i) or 5 (1) (h) (ii) or both, as the case may be.

These distinctions are important for the reason that the file in relation to this matter has been closed as apparent from the documentation before us. Further elucidation of the matter by the Public Authority has not been possible as it is absent and without representation on this date of hearing despite being noticed. The attention of the Public Authority is drawn to Section 39 (1) (c) of the Act which provides that the failure to appear before the Commission upon being requested to do so, amounts to an offence under this Act.

It must also be noted that Section 17 of the Commission to Investigate Allegations of Bribery and Corruption Act No. 19 of 1994 must be assessed in the light of Section 4 of the RTI Act, which provides as follows;

The provisions of this Act shall have effect notwithstanding anything to the contrary in any other written law and accordingly in the event of any inconsistency or conflict between the provisions of this Act and such other written law, the provisions of this Act shall prevail.

The matter is re-fixed for hearing on 17.07.2018 at 11.00 a. m. to ascertain further steps to be need in that regard. A copy of the Record of Proceedings on this day is directed to be sent to the Public Authority.

The Appeal is adjourned.

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RTIC Appeal (In – person) 195/2018 (*Order adopted as part of a formal meeting of the Commission on 17.07.2018*)

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: Mr. Mahinda Gammampila

Commission Members: Ms Kishali Pinto-Jayawardena

Mr. S.G. Punchihewa

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Justice Rohini Walgama

Present: Director-General Mr. Piyathissa Ranasinghe

Appellant: M.A D Wijesinghe

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Appearance/ Represented by:

Appellant - M. A D Wijesinghe

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PA - Sunetra Jayasinghe, AAL, Deputy Director General (Designated Officer),
Commission to Investigate Allegations of Bribery and Corruption

Matters Arising During the Hearing

The Commission queried from the Public Authority (PA) the relevant subsection of Section 5 (1) (h) which has been applied by the Information Officer.

The PA submitted that it denies the information under Section 5 (1) (h) (ii) of the Act where information can be denied on the basis that *'the disclosure of such information would... expose the identity of a confidential source of information in relation to law enforcement or national security, to be ascertained.'*

The PA further submitted that under and in terms of Section 17 of the Commission to Investigate Allegations of Bribery and Corruption Act No. 19 of 1994 (CIABOC) it cannot disclose or release the information requested.

Section 17, CIABOC Act read as follows;

"Every member of the Commission, the Director-General and every officer or servant, appointed to assist the Commission shall, before entering upon the duties of his office, sign a declaration that he will not disclose any information received by him, or coming to his knowledge, in the exercise and the discharge of his powers and functions under this Act, except for the purposes of giving effect to the provisions of this Act."

The attention of the PA was drawn to the fact that Section 17 of the CIABOC Act must be read in the light of the priority clause in Section 4 of the Right to Information Act No.12 of 2016 and therefore Section 17 of CIABOC Act cannot be the only basis on which access to information can be denied to the Appellant unless an exemption is pleaded under and in terms of the RTI Act.

The PA contested that under the secrecy clause that is set out in Section 17 of the CIABOC Act it cannot disclose *'confidential source of information in relation to law enforcement'* and if it divulges information contravening this Section, it will amount to an infringement of the same followed by legal consequences.

The PA submitted that in relation to the complaint made by the Appellant a preliminary investigation was conducted and since no facts were revealed to substantiate the commencement of a formal inquiry under and in terms of Section 70 of the CIABOC Act, it closed the file. Nonetheless, the Appellant submitted that being the complainant, he had a right to know the grounds on which this decision was based. . It was the Appellant's contention that he should have at least been informed of the fact that the file has been closed and that no further investigation was conducted.

In response, the PA produced a letter dated 01.08.2014 addressed to the Appellant demonstrating that it had in fact informed the Appellant that the file had been closed. The letter stated as follows;

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“After the consideration of the facts revealed at the preliminary investigation, the Commission decided to close the file”.

The attention of the PA was brought to the fact that informing an Appellant of the basis on which the PA (Bribery Commission) decided not to proceed with a formal inquiry in relation to a complaint does not necessarily come within the ambit of Section 17 of the CIABOC Act which would apply in relation to evidence given during the preliminary investigation and formal inquiry. Therefore the disclosure of why action was not taken in terms of Section 70 of the CIABOC Act need not necessarily be encompassed within the ambit of Section 17.

The Appellant emphasized that the matter is of public interest since the complaint by the Appellant, which the PA decided to not proceed with, was against the Colombo Stock Exchange (CSE). The PA contended that this is a private matter to which the Appellant was also party and as such there was no public interest in the disclosure.

Order

Section 35 of the RTI Act stipulates as follows;

Every officer in any public authority giving a decision which affects any person in any way, shall be required on request made in that behalf by the person concerned, to disclose to that person in writing the reasons for arriving at such decision.

The nature of that legal obligation calls for a fair explanation for decisions made by Public Authorities when such is called for.

In this instance, it is evident that the Appellant had attempted on many occasions to obtain the reasons on which this inquiry based on a complaint that he had submitted, had been concluded without further action.

He had only been informed that the Public Authority had decided to ‘close the file.’ (viz; letter of 01.08.2014). It was during this hearing that it transpired that the matter had been ‘closed’ since no facts had been revealed during the preliminary investigation to substantiate the commencement of a formal inquiry under and in terms of Section 70 of the CIABOC Act

While we are cognizant of the nature and character of investigations engaged in by the Commission to Investigate Allegations of Bribery and Corruption (CIABOC) and of the need to preserve secrecy in respect of aspects of the same, it is also evident that substantiation of the legal grounds on which a particular decision is made by CIABOC does not, of and by itself, infringe either Section 17 or Section 70 of the Commission to Investigate Allegations of Bribery and Corruption Act No. 19 of 1994 (CIABOC)

The PA is directed to submit the legal basis on which it decided to close the file confidentially for the Commission’s perusal on 09.09.2018 in order also to assess if there is a public interest element in this appeal, as the Appellant has contended that this relates to maintaining transparency of the functioning of the Colombo Stock Exchange (CSE). If so required, the PA may file any other documentation to substantiate its position that there is no public interest in the disclosure of the information requested.

The Appellant is directed to submit the recommendations of the Board of Appeal (Dispute Resolution Committee) within two weeks time.

The Appeal is adjourned.

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The next hearing date: 09.10.2018.
