

**J.A.D.G.A Jayakody v Department of Probation and Child Care Service**

RTIC Appeal (In – person)/20/2018 (*Order adopted as part of a formal meeting of the Commission on 03.07.2018*)

*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

Dr. Selvy Thiruchandran

Justice Rohini Walgama

**Present:** Director-General Mr. Piyathissa Ranasinghe

**Appellant:** Mr. J.A.D.G.A Jayakody

**Notice issued to:** Provincial Commissioner, Department of Probation and Child Care Services North Western Province, Kurunegala

**Appearance/ Represented by:**

Appellant - Absent

PA - D.M.R.P Dasanayaka , Probation Commissioner

<b>RTI Request filed on:</b>	10.10.2017
<b>IO responded on:</b>	No response
<b>First Appeal to DO filed on:</b>	21.10.2017
<b>DO responded on:</b>	No response
<b>Appeal to RTIC filed on:</b>	02.11.2017

**Brief Factual Background:**

The Appellant had by request dated 13.09.2017 requested information pertaining to the report of the inquiry conducted by M.S. Sanjeevani (Child Rights Development Officer-Pannala Divisional Secretariat) and by the Gramasevaka on 17.09.2008. This inquiry was conducted consequent to a complaint made by the National Child Protection Authority alleging that the Appellant has molested his elder daughter, Amali Kavitha.

As the IO failed to respond, the Appellant lodged an appeal with the DO on 21.10.2017. As the DO too failed to respond within the time frame stipulated under the Act, the Appellant preferred an appeal to the Commission on 02.11.2017.

### **Matters Arising During the Hearing**

The Appellant was absent.

Upon being queried as to the basis on which access to the information requested had been denied by the Public Authority (PA), the PA responded stating that all relevant PAs do not have a copy of the inquiry report requested as it was conducted 10 years ago. Further, the PA produced the following letters to substantiate its position,

1. The letter dated 21.12.2017 by the Information Officer, Department of Probation and Child Care Services, North Western Province, which stated that the Probation Officer in Charge (Kuliyapitiya) had informed it by letter dated 13.12.2017 that no inquiry report was available at the respective office.
2. The letter dated 25.06.2018 by the Divisional Secretariat Pannala, which stated that the Child Security Officer-Pannala had informed the Divisional Secretariat Pannala by letter dated 20.11.2017 that no inquiry report was available.

### **Order**

It is noted that, 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.

Section 3(1) of the Right to Information Act, No.12 of 2016 states 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*

In this matter, the PA has taken all the necessary steps to locate the information requested by inquiring the same from the relevant Public Authorities as mentioned above and all the relevant authorities have stated in writing that the requested report is not available.

In the foregoing circumstance, it is evident that the information requested is not in the possession of the PA. The Appeal is concluded.

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).

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