

L.D Abeygunawardena v Central Bank of Sri Lanka(CBSL)

RTIC Appeal (In – person)/230/2018 (*Order adopted as part of a formal meeting of the Commission on 03.07.2018*)

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: Mr. Piyathissa Ranasinghe

Appellant: L.D Abeygunawardena

Notice Issued to: Dr. Indarjith Coomaraswamy, Designated Officer (DO), Governor, CBSL

Appearance/ Represented by:

Appellant - Absent

Public Authority - A.A.I.N Wickramasinghe, Acting Deputy Director

Dilini Wilathgamu (illegible), SAD/Legal

Kamal Dissanayake, SAD/SNBFL (illegible)

P.V.L. Nandasiri, Director Legal

K.G.P. Sirikumar, Addl. Director Legal Compliance

W.Ranaweera, Director/Supervisory Non-Bank Financial Institution
(illegible)

S.H. Gunawardena, Director (Communication) CBSL

RTI Request filed on:	24.11.2017
IO responded on:	29.11.2017 (acknowledgement) 13.12.2017 (response)
First Appeal to DO filed on:	21.12.2017
DO responded on:	27.12.2017 (acknowledgement)
Appeal to RTIC filed on:	20.02.2018

Brief Factual Background

The Appellant by request dated 24.11.2017 had requested the complete report (minutes) of the 40th meeting (No.40) held on 06.11.2017 by the Monetary Board and the related documents.

The IO denied the information by letter dated 13.12.2017 citing Section 5 (1) (h) of the RTI Act. Dissatisfied with the response of the IO, the Appellant made an appeal to the Designated Officer (DO) on 21.12.2017. As the DO failed to respond within the time period stipulated under the RTI Act, the Appellant preferred an appeal to the Commission on 20.02.2018.

Matters Arising During the Hearing

The Appellant was absent.

Upon being queried by the Commission, the Public Authority (PA) explained the basis on which access to the information requested has been denied by the PA. The PA responded stating that since the information requested concerned a Board meeting dated 06.11.2017 indicating a decision/ direction made to the Legal Division of the CBSL in relation to the prosecution of certain officers in connection with a failure of a company named ‘Central Investment and Finance’. The information was therefore denied under and in terms of Section 5 (1) (h) (i) of the RTI Act No.12 of 2016, which states that,

*“The disclosure of such information would-cause grave prejudice to the prevention or detection of any crime or the apprehension or **prosecution of offenders;**”*

The PA submitted that a response to the Appeal by the DO dated 19.02.2018 was sent to the said Appellant reiterating the response of the IO. The following documents were produced in proof of this submission by the PA;

1. A copy of the response dated 19.02.2018,
2. A copy of ‘Mail Register certificate’ dated 19.02.2018 of the Communication Department of the CBSL to indicate that the parcel has been accepted and
3. A copy of the ‘Registered Postal Article Receipt’

Further, the attention of the Commission was brought to the fact that the Appeal to the Commission was lodged on 20.02.2018 and that the DO had responded.

The Appellant was not present therefore, the matter was adjourned for further consideration

The matter is re-fixed for hearing on 21.08.2018.

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RTIC Appeal (In – person)/230/2018 (Order adopted as part of a formal meeting of the Commission on 21.08.2018)

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: L.D Abeygunawardena

Notice Issued to: Dr. Indarjith Coomaraswamy, Designated Officer (DO), Governor, CBSL

Appearance/ Represented by:

Appellant - L.D. Abeygunawardena
Antonia Thambyah (illegible), Treasurer, CIFL Depositors Association
Sankitha Gunerathna RTI (TISL) Counsel representing the Appellant
Lakwijaya Bandara, RTI (TISL)

Public Authority - Dilini Wilathgamuwa, Senior Assistant Director/Legal

Kamal Dissanayake, Senior Assistant Director/SNBFL

P.V.L. Nandasiri, Director Legal

K.G.P. Sirikumar, Additional. Director Legal Compliance

W.Ranaweera, Director/Supervisory Non-Bank Financial Institution

S.H. Gunawardena, Director (Communication) CBSL

Matters Arising During the Hearing

At the time of the hearing, the Appellant made the following submissions,

1. The Appeal to the DO has been sent on 21.12.2017. Thereafter an acknowledgement dated 27.12.2017 was sent to the Appellant. As such the acknowledgement was not issued under and in terms of Section 31 (2) of the RTI Act. The decision/ response of the DO has not been sent to the Appellant under and in terms of Section 31 (3) of the RTI Act,
2. While the status quo was as above the Appellant lodged an appeal to the Commission before the expiration of 2 months as stipulated under and in terms of Section 32 (1) of the RTI Act. As such, the Appellant has complied with the appeal procedure under and in terms of the Act.

3. With regard to the Appeal to the DO, the Appellant requested information/documents pertaining to CIFL Monetary Board subject to Section 6 of the RTI Act,
4. The public interest in disclosing the information outweighs the harm that would result from its disclosure on the basis that there are more than 4000 depositors. Therefore Section 5 (4) is applicable in this instance.
5. The Repayment mechanism of more than 4000 depositors has been disrupted by the said Monetary Board decision.
6. Further, the attention of the Commission was drawn to Section 38 (1) (b) (ii) of the RTI Act which states as follows;

Where...any designated officer willfully...failed without any reasonable cause to make a decision on an appeal, within the time specified under section 31(3) for making such decision, the Commission shall, bring the matter to the notice of the appropriate disciplinary authority.

In respect of the refusal to disclose the information, the exemption cited by the Public Authority was Sections 5(1) (h) (i). The attention of the PA was drawn to the fact that mere citation of this Section will not suffice as the subsection would require that ‘grave prejudice’ be caused. Therefore, it was noted that a duty is cast on the PA to demonstrate how disclosure of the information requested ‘would cause grave prejudice to the prevention or detection of any crime or the apprehension or prosecution of offenders.’ In essence the nexus between the cases concerning the prosecution of the persons and the information requested.. The PA responded stating the information requested concerned a Board meeting dated 06.11.2017 indicating a decision/ direction made to the Legal Division of the CBSL in relation to the prosecution of certain officers in connection with a failure of a company named ‘Central Investment and Finance’. For that reason, such disclosure will ‘cause grave prejudice to the prosecution of the offenders’.

Order

Although Section 5 (1) (h) (i) of the RTI Act, No.12 of 2016 exempts from disclosure information which ‘would-cause grave prejudice to the prevention or detection of any crime or the apprehension or **prosecution of offenders**’ it would be subject to the public interest override in Section 5(4) which states that ‘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’ upon which the Appellant was relying.

In the instant matter, as there are more than 4000 depositors affected in connection with this matter. Consequently, the public interest element as contemplated by Section 5 (4) clearly arises. The attention of the PA is drawn to the fact that those portions of the said Minutes/Board Papers capable of being objectively assessed by the Public Authority as needing to be excluded due to the possibility of ‘causing grave prejudice ...to the prosecution of offenders’ may be severed in terms of Section 6 of the RTI Act and the Appellant be provided with access to the remaining portions.

The Public Authority is directed to notify this Commission the details of the cases, to demonstrate the nexus between these cases and Section 5 (1) (h) (i) and the parts of the said information which are capable of being severed under and in terms of Section 6 of the Act.. The Commission will assess the legitimacy of the applicability of the exemption that is cited in the first instance, the relevance of the public interest override contained in Section 5(4) of the Act in the event that the exemption claimed does apply, and the severability of parts of the information requested.

The Appeal is adjourned.

The next hearing date: 02.10.2018

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RTIC Appeal (In – person)/230/2018 (*Order adopted as part of a formal meeting of the Commission on 02.10.2018*)

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

Director-General: Mr. Piyathissa Ranasinghe

Appellant: L. D. Abeygunawardena

Notice Issued to: Dr. Indarjith Coomaraswamy, Designated Officer (DO), Governor, CBSL

Appearance/ Represented by:

Appellant - L.D. Abeygunawardena
Lakwijaya Bandara, RTI (TISL)

Public Authority - Dilini Wilathgamuwa, Senior Assistant Director/Legal
Kamal Dissanayake, Senior Assistant Director/SNBFL
P.V.L. Nandasiri, Director Legal
K.G.P. Sirikumar, Additional. Director Legal Compliance
W.Ranaweera, Director/Supervisory Non-Bank Financial Institution
M. Ariyaratne, AD/Communications

Matters Arising During the Hearing

The Appellant reiterating the written submissions submitted that the Finance Company in question had now collapsed. Therefore, the information requested would have an impact on whether the PA would take steps to repay the money owed to such depositors (over 100,000) in full or in part. It was further submitted that the Monetary Board of the PA, as the regulator of the financial market in Sri Lanka, is a body responsible to the citizens of Sri Lanka in general and to stake holders in financial institutions in particular, and hence must act with careful consideration and accountability.

At the time of the hearing, reiterating the written submissions dated 01.10.2018, the Public Authority (PA) explained the basis on which access to the information requested has been denied by the PA. The PA responded submitting that the information requested namely the minutes of the Monetary Board meeting No.40/2017 held on 06.11.2017 and other documents in relation to the said meeting contained the background of the Finance Company named 'Central Investment and Finance' (CIFL) in question, how and when the finance business failed, the current situation of the Company as at the date of the meeting and the measures/actions to be taken by the PA to revive CIFL. However, those measures included the cancellation of the license issued to CIFL to carry on Finance Business under Section 37 (1) (b), (e), (f) and (g) of the Finance Business Act No. 42 of 2011(FBA) and other consequential steps. The PA also submitted that those consequential steps include a criminal investigation and the prosecution of certain officers in connection with the failure of this Company. The PA (CBSL) produced an affidavit of Ranaweera Weerappulige, the Director General of the Department of Supervision of Non-Bank Financial Institutions dated 28.09.2018 to substantiate its position on the criminal investigation concerning the subject matter of this appeal. On this basis, the PA submitted that it had denied the information requested under and in terms of Section 5 (1) (h) (i) of the RTI Act, which in effect exempts from disclosure information which, '*would...cause grave prejudice to ongoing criminal investigation*'.

In the foregoing circumstances, the PA agreed in accordance with the provisions of the Section 6 of the RTI Act, to sever and provide parts of the requested documents which would not affect the legal actions to be taken against certain officers of the said finance company.

Order

The information in relation to the minutes of the Monetary Board meeting No.40/2017 held on 06.11.2017 and other relevant documents, are directed to be submitted for the perusal of the Commission. The Commission will assess the legitimacy of the applicability of the exemption that is cited in the first instance, the relevance of the public interest override contained in Section 5(4) of the Act in the event that the exemption claimed does apply, and accordingly decide on whether the information be provided in full or part.

The matter is re-fixed for hearing on 21.11.2018 to determine further steps to be taken thereafter. A copy of the Record of Proceedings on this day is directed to be sent to the Public Authority.

The Appeal is adjourned.
