

**K. Wijayagunawardena v Central Bank of Sri Lanka (CBSL)**

RTIC Appeal (In – person)/245/2018 (*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  
**Director-General:** Mr.Piyathissa Ranasinghe

**Appellant:** K. Wijayagunawardena

**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 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

<b>RTI Request filed on:</b>	21.11.2017
<b>IO responded on:</b>	22.11.2017 (acknowledgement) 04.01.2018 (response)
<b>First Appeal to DO filed on:</b>	24.01.2018
<b>DO responded on:</b>	09.02.2018 (acknowledgement)
<b>Appeal to RTIC filed on:</b>	14.03.2018

**Brief Factual Background**

The Appellant by request dated 21.11.2017 had requested copies of the letters sent by the Central Bank of Sri Lanka (CBSL) to other parties for the purpose of providing assurances in

relation to the funds/ deposits presented by Chancental Works Gmbh to the CBSL and letters in response giving the bank the necessary assurance.

The IO had denied the information by a letter dated 04.01.2018 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 24.01.2018. As the DO failed to respond within the time period stipulated under the Act the Appellant preferred an appeal to the Commission on 14.03.2018.

### **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 had been denied by the PA. The PA submitted that there is a practice where certain finance companies in difficult financial situations looked for investors. When, local or international investors, invest in these companies, the PA requires certain assurances in relation to the investment, given the precarious situation of the companies concerned. In the foregoing circumstances, one investor, Chancental Works Gmbh had given an assurance of Honk Kong Dollars 500 million to be invested in the Central Investments and Finance PLC (CIFL) through an internationally recognized Bearer Bond issued by HSBC Bank PLC.

After conducting an inspection the Central Bank of Sri Lanka (the PA) had informed the relevant finance company of the ingenuity of the above assurance and had decided to institute criminal prosecution in relation to this false assurance. 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 the prevention or detection of any crime or the apprehension or prosecution of offenders.'*

### **Order**

The matter is re-fixed for hearing on 21.08.2018 as the Appellant is absent. The Public Authority may, if it so wishes, file a further response, fully substantiating the denial of the information by demonstrating the nexus between the exemption claimed and the information requested by the Appellant.

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**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:** K. Wijayagunawardena

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

**Appearance/ Represented by:**

Appellant - K. Wijayagunawardena  
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 submitted that he has requested the source/s that resulted in the Central Bank of Sri Lanka (CBSL) informing the relevant finance company of the ingenuity of the assurance given which in turn resulted in the decision by the PA to take steps towards the institution of criminal proceedings in relation to this false assurance.

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.*’

**Order**

The attention of the parties is drawn to the fact that the details of the cases concerning the prosecution of the persons will be an adequate response to the information request of the Appellant.

The Public Authority is directed submit the details of the cases consequential to the investigation before the Commission and to demonstrate how such cases will cause *grave prejudice to the prevention or detection of any crime or the apprehension or prosecution of offenders*’ under and in terms of Section 5 (1) (h) (i).

The Appeal is adjourned.

The next hearing date: 02.10.2018

RTIC Appeal (In – person)/245/2018 (*Order adopted as part of a formal meeting of the Commission on 02.10.2018*)

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**Appellant:** K. Wijayagunawardena

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**Appearance/ Represented by:**

Appellant - K. Wijayagunawardena  
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**

At the time of the hearing, reiterating the written submissions dated 01.10.2018, the PA submitted that it has inquired into the genuineness of the above Bearer Bond from the issuer, i.e. The Hongkong and Shanghai Banking Corporation Limited (HSBC) and it was revealed that the said Bearer Bond was a forged document, not issued by HSBC. For that reason, the Director General of the Department of Supervision of Non-Bank Financial Institutions on behalf of the CBSL has made a complaint to the Criminal Investigations Department (CID) requesting an investigation on this matter.

Upon being queried as to the complaint number, details and the progress of the above mentioned criminal investigation, the PA submitted that the subject matter in question was

reported to Director CID on 20.12.2017. Subsequent, to the said complaint bearing no. PA/DCI/P/199 there had been several discussions between the CID and the Director General of the Department of Supervision of Non-Bank Financial Institutions and a statement was recorded on 01.10.2018. 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 submission on the pending 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 ongoing criminal investigation*'.

### **Order**

It is noted, that the ongoing criminal investigation bearing no. PA/DCI/P/199 commenced as a result of the verification process the CBSL engaged in when inquiring in to the genuineness of the said Bearer Bond. Therefore, disclosing the source/s or the individuals whom the CBSL wrote to and obtained information in order to inform the relevant finance company of the ingenuity of the said Bearer Bond and to take steps towards the institution of criminal proceedings in relation to this forged Bearer Bond 'will cause grave prejudice' under and in terms of Section 5(1) (h) (i) to the said ongoing Criminal investigation.

The Commission affirms the decision of the Information Officer dated 04.01.2018. to deny the information requested on the basis that under and in terms of Section 5 (1) (h) (i) it '*will cause grave prejudice to the prevention or detection of any crime or the apprehension or prosecution of offenders*' in the pending criminal investigation.

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).

The Appeal is concluded.

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