

T.D.H. Karunarathna v Urban Development Authority (UDA)

RTIC Appeal (In – person)/289/2018 (*Order adopted as part of a formal meeting of the Commission on 24.07.2018*)

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: T.D.H. Karunarathna

Notice issued to: Senani Somasekara, Designated Officer (DO), UDA

Appearance/ Represented by:

Appellant - T.D.H. Karunarthna

S.Senanayake

Raja Gunasekara

PA - S.H.K Semasinghe

Pramodi Senarathna

M.K.G Munasinghe

RTI Request filed on:	27.12.2017
IO responded on:	24.01.2018 (Acknowledgement)
First Appeal to DO filed on:	30.01.2018
DO responded on:	No response
Appeal to RTIC filed on:	16.03.2018

Brief Factual Background:

The Appellant had by request dated 27.12.2017 requested certified copies of the following information, pertaining to a construction of a housing project by the Global Leasing and Real Estate Pvt.Ltd, No.481 Shanthi Place, Koswatte, Battaramulla,

1. Approved building plan,
2. Approval of Condominium Authority,
3. Approval of Water Supply and Drainage Board,
4. Approval of Electricity Board,
5. Disposal of Garbage System/Waste Water and Rain Water,
6. Approval of Kaduwela Municipal Council,
7. Approval of Central Environmental Authority and
8. Approval of Road Development Authority.

As the information officer (IO) failed to respond, the Appellant lodged an appeal with the DO on 30.01.2018. As the DO too failed to respond within the time frame stipulated under the Act, the Appellant preferred an appeal to the Commission on 16.03.2018.

Matters Arising During the Hearing

Upon being queried by the Commission, the Appellant explained the background to the Appeal, which was in relation to a housing project. The Appellant submitted that by letter dated 11.07.2018 the Public Authority (PA) released a certified copy of the Development Permit, and stated the relevant approvals and conditions based on which such Development Permit was issued. The PA had further directed the Appellant to request these approvals from the relevant Public Authorities.

The PA submitted that the Urban Development Authority (UDA) had arranged a meeting dated 16.11.2017 between the relevant Developer and the Appellant to ascertain the matters in relation to the housing project. The Developer agreed to consider the grievances of the Appellant, to release the information requested and to conduct a meeting every two weeks to update the Appellant of the status or the development of the matters in issue.

Alternatively, the Appellant contested the above mentioned arrangement as these types of arrangements were never complied with as agreed despite several reminders to the UDA.

In view of the fact that the Public Authority had not cited any of the grounds of exemption under and in terms of Section 5 of the RTI Act for the refusal of the information, the Commission queried the basis on which access to the information requested had been denied by the Public Authority. The PA responded stating that its Legal Division had advised the PA, in writing to release a certified copy of the Development Permit and to inform the Appellant to request the other approvals from the issuing authorities.

In this context the Commission noted that the RTI Act does not allow denial of information based on *the advice of the Legal Division of the PA*. If the PA wishes to refuse information it must do so under and in terms of the Act which is by citing an exemption provided under the Act. Further as the PA is required to provide information within its possession, custody or control it was queried as to what information was within its possession, custody or control. The PA responded stating as follows,

- With regard to the 'Building Plan', namely the item no.01 in the information request it was generally approved by the PA. Further it became evident that Building Plans were generally approved once other approvals (such as those required from the Electricity

Board, Approval of the Water Supply and Drainage Board etc.) are received by the UDA. For that reason, it was inferred that approvals in that sense were provided to and in the possession of the PA. The PA accepted that the information requested by items no. 3 and 4, namely, approval of the Water Supply and Drainage Board and approval of the Electricity Board was in effect in its possession.

- With regard to item no.02, the PA submitted that the Development Permit was issued in adherence to the conditions of the Condominium Authority as it is not the responsibility of the Developer to request an approval or a letter from the Condominium Authority before such permit is issued. For that reason, the information requested by item no.02 was not in the possession of the PA and such approval should be obtained after the construction of the housing project.
- Further, the PA submitted that the Central Environmental Authority had delegated its power to the UDA and in effect an Environmental Consultative Committee was established. For that reason, the information requested by items no. 5 and 7 namely, disposal of garbage system/waste water and rain water and approval of Central Environmental Authority were issued as an Environmental Consultative Committee Clearance and was in effect in the possession of the PA.
- With regard to item no.6, the PA submitted that there was no reason to have the approval of the Kaduwela Municipal Council after obtaining the approval of the UDA. Therefore item No. 6 was not in existence.
- With regard to item no.08, namely the approval of the Road Development Authority was covered under the Traffic Impact Assessment (TIA) issued by the UDA and for that reason the information was in effect in the possession of the PA.

The Appellant emphasized that the matter is of public interest since the Appellant, was a member of the Organization of Environmental Protection (පාරිසරික සම්පත් සුරැකීමේ සංවිධානය) in regard to the proposed construction for the housing project in the area.

Order

It is noted that the Urban Development Authority is a Public Authority that comes within the purview of the Right to Information Act, No.12 of 2016 and therefore has a statutory duty to abide by its provisions.

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

Accordingly, 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. In the instant matter, although the PA had issued a Development Permit after the receipt of the other relevant approvals, the Commission notes that is the other approvals are still ‘*in the possession*’ of the PA.

At the Right to Information Commission of Sri Lanka

Section 25(1) of the RTI Act reads as follows:

“An information officer shall.....make a decision either to provide the information requested or to reject the request on any one or more of the grounds referred to in section 5 of this Act, and shall forthwith communicate such decision to the citizen who made the request”

Consequently, the access to information of a citizen could only be denied by a Public Authority, which is *in the possession, custody or control* of the information requested, by citing any one or more of the grounds referred to in Section 5 (1) of the RTI Act.

In the foregoing circumstances, the Public Authority is directed to more fully substantiate its position regarding the provision of the information requested under and in terms of the provisions of the RTI Act, with a comprehensive response and to be present before the Commission on the next date of hearing.

The Appeal is hereby adjourned.

Next date of hearing: 11.09.2018

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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