

A.D.F Perera v Mobitel (Pvt) Ltd

RTIC Appeal (In-Person Hearing)/314/2018- Order adopted subsequent to the hearing held as a part of the 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 Member: Ms. Kishali Pinto-Jayawardena
Commission Member: Mr. S.G. Punchihewa
Commission Member: Dr. Selvy Thiruchandran
Commission Member: Justice Rohini Walgama

Director-General: Mr. Piyathissa Ranasinghe

Appellant: Mr. A.D.F. Perera

Notice issued to: Nalin Perera, Chief Executive Officer/ Designated Officer, Mobitel (Pvt) Ltd

Appearance/ Represented by:

Appellant – Mr. A.D.F Perera
PA - Namal Ratnayake, Legal Officer
Sanduni Wickramasinghe, Legal Officer

RTI Request filed on	20.12.2017
IO responded on	22.01.2018
First Appeal to DO filed on	30.01.2018
DO responded on	21.02.2018, 21.03.2018
Appeal to RTIC filed on	21.03.2018, 05.04.2018

Brief Factual Background:

The Appellant by letter dated 20.12.2017 requested the following information from the Information Officer (IO) of the Telecommunications Regulatory Commission of Sri Lanka (TRCSL),

1. *A copy of the application for mobitel sim connection 071 5974431 with a copy of the applicant's National Identity Card (NIC),*

2. *Call details of both incoming and outgoing for mobitel SIM connection 071 5974431 from 1st May 2017 to 31st August 2017,*
3. *Call details of both incoming and outgoing from the commencement date for one month of operations for mobitel SIM connection 071 5974431 and*
4. *Location from which calls originated from the mobitel SIM connection 071 5974431 on 12.07.2017 at 20:02:20 and 20:56:18*

The information request dated 20.12.2017 was forwarded to Mobitel (Pvt) Ltd by the TRCSL on 18.01.2018

The IO of Mobitel (Pvt) Ltd (the PA) on 22.01.2018 responded, rejecting the information request on the basis that the information *'is exempted information covered by Section 5 (a) of the Act.'* It was further stated that,

Reasons for justifying the decision to rely upon on the above mention clause/s is in view of the information relating to personnel information that according to the said request dated 20.12.2017, does not belong to the Appellant and the disclosure of which has no verifiable relationship to any public activity or interest, or which would cause unwarranted invasion of the privacy of the individual concerned.

However, in view of the Appellant's claim that a criminal action is pending in the Magistrate Court of Moratuwa bearing reference BR 1220/17 as stated in the Appellant's request, we wish to note that Mobitel will only comply with an order from Court to disclose the requisite information related to such pending criminal action.

Dissatisfied with the response of the IO the Appellant lodged an appeal with the DO (of Mobitel (Pvt.) Ltd. on 30.01.2018. The DO responded on 21.02.2018 stating that the details requested have been disclosed to the Police subsequent to an Order by the Magistrate's Court of Moratuwa and that obtaining the consent of the SIM owner will require the disclosure of details of the Appellant and the information requested. Accordingly the PA has sought the written consent of the Appellant to disclose these details to the third party (SIM) owner.

As the Appellant consented to this disclosure by letter dated 27.02.2018 the DO sought consent from the third party. However as evident by the DO's response dated 21.03.2017, the third party had responded *'disclaiming the ownership of the said connection'* and alleging that the connection was *'obtained using his/her respective NIC number without his/her knowledge or consent.'* The DO had further stated that the SIM had already been *'disconnected based on a prior request received from the same individual disclaiming the ownership of the said connection.'* The DO had thereafter denied the information on the basis that the information sought by the Appellant does not relate to the individual from whom consent was sought *'based*

on his/her claim that the connection is not owned or used by him/her.’ Accordingly the DO had stated that the PA is,

not in a position to obtain a written consent from the person to whom the personal data requested by the Appellant in accordance with the proviso to Section 5 (1) (a) of the Right to Information Act No.12 of 2016. Therefore, in the light of the foregoing, we regret to inform that the information requested is exempted by the operation of Section 5 (1) (a) of the Right to Information Act.

Dissatisfied with these responses of the DO the Appellant preferred an appeal to the Commission on 21.03.2018 and 05.04.2018 respectively.

Matters Arising During the Course of the Hearing:

At the time of the hearing, the Appellant submitted that in letter dated 21.03.2018, the DO referred to the individual registered as the customer of the connection, 071 5974431 and that the said connection was already disconnected on a prior request received from the same individual.

It was further submitted that the person to whom the SIM was registered, after disclaiming ownership, had requested the PA to disconnect it. The Appellant contended that since the registered owner had not applied for the connection the PA was not legally correct in disconnecting the SIM bearing No. 0715974431.

The Appellant also contended that the act of the PA in writing to the third-party to obtain consent to release the information requested and the disconnection of the SIM on the request by the third party alleging that the SIM had been obtained fraudulently under his/her NIC were contradictory. It was further contended that in the view of the above acts of the PA, the third party who according to the records of the PA was the registered owner until disconnection was ordered is the only third party from whom consent can be sought under and in terms of the law since the person who purported to act under the hand of the third party is unknown and untraceable.

The Appellant submitted that the information requested is necessary to safe guard the life and the liberty of the Appellant as the requested information will enable the identification of the persons behind the threatening telephone calls received by the Appellant.

The PA reiterated that despite the above said individual having agreed to disclose the information requested by the Appellant, the information sought by the Appellant does not relate to the said individual based on his/her claim that the connection is not owned or used by him/her. Therefore, in the given situation the PA was not in a position to obtain written consent from the person whom in fact obtained said SIM connection to whom the personal data requested by the

Appellant related, and the information requested is exempted by the operation of Section 5 (1) (a) of the Right to Information Act.

Reiterating the written submission dated 03.08.2018, the PA submitted as follows,

1. The information sought by the Appellant included sensitive personal data including NIC number, name and address of a third party. In addition, the request for call records are personal and confidential in nature and related to the personal correspondence of the registered owner of the connection. Furthermore, as the PA, it has to ensure the internal policies and procedures are designed to safeguard the privacy and security of the subscribers.
2. The Appellant in his appeal did not establish that the said personal data of the registered owner of the connection contributes or stirs the public activity or interest.
3. The information of the said connection, including the identification details and call records during the period from 12.07.2017- 29.07.2017 has been disclosed to the Police pursuant to a Court order in account of the pending case bearing no. B1220/17. Given that the Appellant claims to be a party to that ongoing litigation, it is submitted that no manifested public interest is served by the disclosure of additional personal information pertaining to the said SIM connection when part of the information is *sub judice*.
4. However, the individual registered as the owner of the said connection disputed the ownership. Therefore, the information sought by the Appellant invariably becomes information related to a complete stranger that is neither the Appellant nor the above said individual.
5. The actual identity of the connection owner has become a matter to be decided in the said on going case thereby rendering the issue *sub judice*.

Further, The PA submitted that it is refusing the information as there is a pending court case bearing no. B1220/17 under and in terms of Section 5 (1) (j) of the RTI Act.

Order:

The attention of the PA is drawn to the fact that the mere existence of a court case does not exempt information under and in terms of Section 5 (1) (j). Section 5 (1) (j) exempts ‘the disclosure of such information’ that ‘would be in contempt of court or prejudicial to the maintenance of the authority and impartiality of the judiciary.’ Therefore, unless the disclosure of the information requested is prejudicial to the maintenance of the authority and impartiality of the judiciary or the ongoing investigation, it must be disclosed.

The attention of the PA was also drawn to the fact that as the service provider, the PA has a duty to safeguard not only the sensitive personal data including NIC number, name and address of subscribers but also to take actions or to carry out an investigation to identify and locate the real

owner of the SIM connection as in this given instance the registered owner has denied the application for and ownership of the connection.

Given the peculiar circumstances and limited to this instance, the PA is directed to hand over the information requested by item no. 01., namely, *A copy of the application for mobitel SIM connection 071 5974431 with a copy of the applicant's National identity Card (NIC)* to the Appellant since the purported registered owner even though he has disclaimed the ownership has consented to release of the said information under and in terms of Section 29 (1) of the RTI Act. Accordingly, it is directed that the information be provided by the next date of the hearing.

In the foregoing circumstances, the PA submitted that under and in terms of Section 5 (1) (g), the PA as the operator has a fiduciary duty cast upon it when it generates the database with the details of the subscriber's name, address and National Identity Card No. (NIC).

In the foregoing circumstances, the Public Authority is directed to examine the information requested in items no 2,3 and 4, namely the call records and apprise the Commission of the details of the call records and to be present on the next date of hearing with a comprehensive response.

The PA is also directed to ascertain the status or the progress of the preliminary investigation from the relevant Police Station in relation to the matter in question and to apprise the Commission on the next date.

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 hereby adjourned.

Next date of hearing: 21.11.2018
