

Ceylon Bank Employees' Union v People's Bank

RTIC Appeal(In-Person)/58/2018 - *Record of Proceedings under Rule 28 of the Right to Information Rules of 2017 (Fees and Appeal Procedure)* – heard as part of formal meetings of the Commission on 30.01.2018, 27.03. 2018 and 22.05.2018

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: Ceylon Bank Employees' Union
Notice Issued to: Designated Officer, People's Bank/Ms. Samanthi Senanayaka, Information Officer, Assistant General Manager – Compliance Department, People's Bank

Appearance/ Represented by:

Appellant Channa Dissanayake, AAL, Senior Vice President (CBEU)
A M M S M Ruwais Assistant Secretary (CBEU)
Nalin Amarajeewa, AAL
Indula Hewage AAL

Public Authority Sandun Gamage, AAL representing the PA on 27.03. 2018)
Dusith Johndasan AAL representing the PA on 22.05.2018)
Tharanga Gamage, People's Bank
Navod Hewage, AAL
Chamindri Liyanage, AAL
Samanthi Senanayaka- Information Officer, Assistant General Manager – Compliance, People's Bank

RTI Request filed on:	29.08.2017
IO responded on:	19.09.2017
First Appeal to DO filed on:	25.09.2017
DO responded on:	No response
Appeal to RTIC filed on:	23.11.2017

Summary of Record of Proceedings and Order delivered on 17th July 2018

Brief Factual Background:

The Appellant Union by letter dated 29.08.2017 requested the following information;

- (a) A certified copy and/or extracts and/or such other documentary material of the decision taken by the People's Bank to disregard and override the legal opinion given by the Legal Consultant of the bank Mrs. Minoli Jinadasa, AAL to desist from initiating or continuing disciplinary action against three employee-members of the Appellant Union, namely, MR. S.M. A. R. Senanayaka, Mr. A. M.M.S.M. Ruwais and Mr. S. K.D. Hewapathirana.
- (b) A certified copy and/or extracts and/or such other documentary material of the decision taken by the People's Bank to retain Instructing Attorney and Counsel from the private Bar in case Nos. DSP 179/2016, 183/2016 and 184/2016 filed in the District Court of Colombo without first consulting and retaining the Hon. Attorney General for the said three cases.
- (c) A certified copy and/or extracts and/or such other documentary material of the decision taken by the People's Bank to retain Instructing Attorney and Counsel from the private Bar without first consulting and retaining the Hon. Attorney General in case Nos. WP/HCCA/COL/04/2017 as well as case Nos. WP/HCCA/COL/15/2017 (LA), WP/HCCA/COL/16/2017 (LA) and WP/HCCA/COL/17/2017 (LA) filed by the People's Bank against the said three employees, namely, Mr. S. M. A. R. Senanayake, Mr. A. M.M.S.M. Ruwais and Mr. S. K.D. Hewapathirana.
- (d) A certified copy and/or extracts and/or such other documentary material of the decision taken by the People's Bank to refer SC HCCA LA Leave to Appeal Application Nos. 316/2017, 318/2017 and 319/2017 to the Supreme Court without consulting and retaining the Hon. Attorney-General despite the High Court of Civil Appeal in case Nos. WP/HCCA/COL/15/2017 (LA), WP/HCCA/COL/16/2017 (LA) and WP/HCCA/COL/17/2017 (LA), held against the People's Bank.
- (e) A certified copy and/or extracts and/or such other documentary material of the People's Bank of the vouchers raised to make payments to date in respect of case Nos. DSP 179/2016, 183/2016 and 184/2016 filed in the District Court of Colombo and the case WP/HCCA/COL/04/2017 filed and withdrawn by the People's Bank and the case Nos. WP/HCCA/COL/15/2017 (LA), WP/HCCA/COL/16/2017 (LA) and WP/HCCA/COL/17/2017 (LA) filed by the People's Bank and dismissed by the High Court of Civil Appeal and SC HCCA LA Leave to Appeal Application Nos. 316/2017, 318/2017 and 319/2017 filed by the People's Bank.
- (f) A certified copy and/or extracts and/or such other documentary material of the decision taken by the People's Bank seeking approval and/or provisional approval from the Auditor General to authorize the payment of fees of the Instructing Attorney and the

counsel for the case Nos. DSP 179/2016, 183/2016 and 184/2016 filed in the District Court of Colombo and the case WP/HCCA/COL/04/2017 filed and withdrawn by the People's Bank and the case nos. WP/HCCA/COL/15/2017 (LA), WP/HCCA/COL/16/2017 (LA) and WP/HCCA/COL/17/2017 (LA) filed by the People's Bank and dismissed by the High Court of Civil Appeal and SC HCCA LA Leave to Appeal Application Nos. 316/2017, 318/2017 and 319/2017 filed by the People's Bank.

- (g) A certified copy and/or extracts and/or such other documentary material of the criteria adopted by the People's Bank in selecting and retaining the Instructing Attorney and the counsel for the cases referred in (f) above
- (h) A certified copy and/or extracts and/or such other documentary material of the People's Bank informing the Auditor General of the said cases referred to in (f) above for auditing purposes to reflect the same in Annual and/or quarterly audited accounts.
- (i) A certified copy and/or extracts and/or such other documentary material of the People's Bank calling for fees from other Instructing Attorneys and Counsel than those who have been retained currently
- (j) A certified copy and/or extracts and/or such other documentary material of the People's Bank deciding whether the legal fees claimed by the Instructing Attorneys and Counsel in the said cases referred to in (f) above are excessive and/or exorbitant or similar to fees customarily charges in like manner by lawyers of equal standing in the locality for similar legal services in similar circumstances
- (k) A certified copy and/or extracts and/or such other documentary material of the People's Bank to the effect that the Bank attempted to settle the said case Nos. DSP 179/2016, 183/2016 and 184/2016 filed in the in the District Court of Colombo following the dismissal by the High Court of Civil Appeal of the WP/HCCA/COL/04/2017 filed and withdrawn by the People's Bank and the case Nos. WP/HCCA/COL/15/2017 (LA), WP/HCCA/COL/16/2017 (LA) and WP/HCCA/COL/17/2017 (LA) filed by the People's Bank
- (l) A certified copy and/or extracts and/or such other documentary material of the decision of the People's Bank whether the Governor and/or Director of Banking Supervision of the Central Bank have been informed of the existence and progress of the said cases referred above.

The Information Officer on 19.09.2017 responded to the Appellant Union refusing the provision of the information on the basis that the information comes within Section 5 of the Right to Information Act without however specifying the precise sub section of Section 5 relied on and stating merely that the requested information pertained to 'several cases that were pending in court.'

Thereafter, by appeal dated 25.09.2017, the Appellant Union submitted an appeal to the Designated Officer. Upon the failure of the Designated Officer to respond to the said appeal dated 23.11.2017 was submitted to the Right to Information Commission.

Matters arising during the course of the hearing

The Appellant's primary contention is that the information request essentially pertained to expenses incurred by the PA on legal actions which could have been avoided had the PA acted on the primary legal opinion sought (Vide; paragraph 3 of the Written Submissions of the Appellant, dated 14. 02.2018) .

In paragraph 4 of the said WS, the Appellant has submitted that the decision to refuse access to the information is ex-facie illegal, nullity and void *ab initio* in terms of the RTI Act No.12 of 2016 [hereinafter referred to as the "Act"]. Specifically since the PA has failed to rely on a particular exemption/ ground under section 5 of the Act, this has been argued to violate Section 25 (1) and 28 of the Act. Further it is the contention of the Appellant that the refusal of the PA to grant access to information on grounds of pending litigation is unfounded as the Act does not provide for such an exemption under Section 5.

The Appellant further submitted, in paragraph 5 of the aforesaid WS that the appeal preferred to the Designated Officer under section 31 (1) of the Act in accordance with Form RTI 10 set out in the Gazette- Extraordinary No. 2004 / 66 dated 03-02-2017 was not replied to. The Appellant has claimed that the PA willfully neglected to comply with a legal requirement.

In paragraph 6 of the said WS, the Appellant has stressed the public importance in the information sought. Specifically addressing the question of the public interest/purpose in the release of the information, the Appellant submitted that it has a membership of over 30,000 members out of which 6500 are employees of the PA who significantly contribute to and are involved in the banking sector and as such, is a key stakeholder in the banking sector playing a significant role in the protection of that sector. Further the information request relates to the legal expenses incurred by the PA in respect of legal actions involving three employees of the PA.

It is the contention of the Appellant that, had the PA acted in accordance with the legal opinion given by Ms. Minoli Jinadasa, Legal Consultant to the PA, the ensuing expenses could have been avoided. The Appellant has also submitted that the Chairman, Chief Executive Officer and Board of Directors had initiated disciplinary proceedings against employees (which has been stayed by the District Court and affirmed by the Civil Appellate High Court), notwithstanding the aforesaid opinion, in order to seek revenge against the employees. The said employees had exposed a massive financial fraud involving irregularities in digital banking which have also been observed upon by the Auditor General. The Appellant has also stated that public money has been spent on legal actions purely because the Chairman and CEO wished to punish whistle-blowers.

The PA in its written submissions to the Commission dated 07.03.2018, submitted in paragraph 5 that the Designated Officer had not submitted a response due to inadvertent faux pas and administrative oversight. In paragraph 6 it is submitted that the principle of *sub judice* prevented disclosure of information requested.

The PA has contended that the employees had published and distributed an internal bulletin numbered PB 9/2016 which was *inter alia*, grossly scurrilous and violated clause 5.8 of the Disciplinary Code which holds that employees are not permitted to display / circulate pamphlets, posters or other publication without prior permission of the Head of Department or the General Manager. The contravention led to the PA initiating disciplinary proceedings against the said employees.

It has been elaborated by the PA in paragraphs 8- 13 that the information requested has no relationship to any public activity or interest and this constituted a pivotal platform of the exceptions in section 5 (1) of the Act. Further, the Act is meant to be used for *bona fide* purposes in good faith and not for destructive purposes.

In paragraphs 14 - 20 it has been submitted by the PA that applications pertaining to the employees are still pending in court and disclosure of requested information would undermine and subvert judicial authority. This has further been explained by the PA by relying on the exemption under section 5 (1) (j) of the Act. The PA has also submitted with emphasis that disclosure of the requested information would create a bad precedent and encourage other litigants to use such dilatory tactics against authorities to prejudice their respective pending cases.

The PA submitted in paragraphs 21 & 22 that as under Section 5 (1) (j) of the Act ‘the disclosure of such information would be in contempt of court or prejudicial to the maintenance of the authority and impartiality of the judiciary;’ is applicable in relation to all items of the information request and at the very least is applicable to item a) of the request (emphasis ours).

The PA further submitted, in paragraph 23, that in relation to the items b), c), d), g) and k) of the information request, the exemption set out in Section 5 (1) (g) of the Act which reads ‘the information is required to be kept confidential by reason of the existence of a fiduciary relationship’ applies. The PA further substantiated their position by citing *Weerasuriya v Fuard* 56 NLR 12 where the Court recognized the existence of a fiduciary duty between a proctor and a client. The PA submitted that ‘all material relating to the decision to retain the services of the Instructing Attorneys and Counsel from the private Bar are required to be kept confidential and therefore, will necessarily come within the scope and ambit’ of Section 5(1) (g).

In paragraph 24, relating to items e), i), and j) of the information request, the PA has claimed that the information falls within Section 5 (1) (f) of the Act.

Section 5 (1) (f) reads as follows;

the information consists of any communication, between a professional and a public authority to whom such professional provides services, which is not permitted to be disclosed under any written law, including any communication between the Attorney General or any officer assisting the Attorney General in the performance of his duties and a public authority;

Relying on *Kapugeekiyane v Hettiarachchi and Others* (1984) 2 Sri. LR 153 to the effect that ‘communications between Counsel and client are privileged and no person has a right to pry into them), the PA has also submitted that ‘not only opinions *per se*, but all vouchers, memos setting out the fees of the Attorneys are privileged communications on the basis that this said Section applies to “any communication” between a professional and a Public Authority.’

The PA has further claimed that information (i.e. items e), i), and j)) fall within Section 5 (1) (a) of the Act as payment vouchers of instructing attorneys and their counsel are personal information.

Section 5 (1) (a) reads;

the information relates to personal information the disclosure of which has no relationship to any public activity or interest, or which would cause unwarranted invasion of the privacy of the individual unless the larger public interest justifies the disclosure of such information or the person concerned has consented in writing to such disclosure.

The PA further reiterated that where a fiduciary relationship exists, the information must be kept confidential and that the exemption in Section 5(1)(g) is directly in issue

The PA further substantiated their position based on Regulation 20 Clause 01 (vi) of the RTI Commission Regulations published in Extraordinary Gazette bearing No. 2004/66 published on 03.02.2017 which requires proactive disclosure only in relation to ‘salary scales pertaining to the emoluments and related allowances of officers’ and that it ‘does not in any manner require, payments/fees paid to an independent professional by a PA, in respect of professional services provided, be disclosed.’

Regulation 20 Clause 01 (vi) reads;

20 In accordance with the power to direct a Public Authority to provide information in a particular form under Section 15(d) of the Act and in keeping with the overriding principle of Proactive Disclosure, all Public Authorities shall routinely disseminate, at a minimum, the following key Information including through a digital or electronic format...

(vi) Budget information: Projected budget, actual income and expenditure (including salary scales pertaining to the emoluments and related allowances of officers and

employees of executive rank and above,) and other financial information and audit reports.

In relation to items f), j) and l) the PA also pleaded that the information falls within Section 5 (1) (g) ('fiduciary relationship') of the Act.

By Order dated 27th March 2018, this Commission examined the objection raised by the PA that the items of information asked for could not be given due to 'pending cases in court' (vide refusal by the Information Officer of the Public Authority dated 19.09.2018).

It was observed that the Act seeks to promote a culture of transparency and accountability and has been legislatively intended to prevail over any other written law in the event of a conflict (Section 4) of the Act. Accordingly, as the appellate body established under the Act, the Commission is obliged to 'affirm, vary or reverse' the decision of the Public Authority appealed against in terms of Section 32(1) of the Act with the key underlining purpose of ensuring the promotion of accountability and transparency in the utilization of public funds, for whatever purpose, by a PA.

In response to the ground of sub judice raised by the Public Authority, it was emphasized that information may only be refused strictly within the four corners of Section 5(1), which refusal is finally subject to the public interest override in Section 5 (4) in terms of which, information cannot be declined 'where the public interest in disclosing the information outweighs the harm that would result from such disclosure.'

In pursuance of the statutory duty in the Commission to strictly uphold the principle of transparency and accountability underlying the RTI Act, it was pointed out that the concept of *sub judice* has long been interpreted not to preempt and prevent discussions of established public interest, merely on the basis that there are in existence, contemporaneous legal proceedings (vide; *Maxwell v Pressdram Ltd* (1987) 1 All ER 656).

The established principle is that there must be a "real risk" (emphasis ours), as opposed to a remote possibility, that interference or prejudice would be caused to the due administration of justice. In particular, the reasoning in *The Sunday Times v. United Kingdom*, (26 April 1979, Series A No. 30, 14 EHRR 229) was approved of, where it was cautioned that what was in issue was not a choice between two conflicting principles or "balancing" the public interest in freedom of expression and the public interest in the fair administration of justice. Rather, the correct test was to apply a principle of freedom of expression that is subject to a number of exceptions which must be narrowly interpreted.

As was stated in that Order, that distinction is important in the first instance for the purposes of assessing the relevance of the exemption set out in Section 5(1)(j) of the Act which the PA heavily relies on in this appeal. This Commission is called upon to apply the primary principle of the Right to Information on the basis of the test of maximum public disclosure that the Act is

premised on in the intention of its drafters, against the exceptions set out in Section 5(1) of the Act which, as excellently cautioned in *The Sunday Times v. United Kingdom (supra)* in a different but comparable context, must be narrowly interpreted.

By that same Order, the Commission directed the PA to provide the legal opinion submitted by the consultant to the PA, to 'desist from initiating or continuing disciplinary action against three employee-members of the Appellant Union-, namely, MR. S.M. A. R. Senanayaka, Mr. A. M.M.S.M. Ruwais and Mr. S. K.D. Hewapathirana' in order to enable the Commission to assess the public interest element in this Appeal. Accordingly, the same was provided to the Commission by fax dated 23rd May 2018.

Lack of response by the Designated Officer and duty of diligence on the Public Authority

All Public Authorities covered by the RTI Act are required, in terms of the Act, to carry out their statutory obligations with due regard to the mandates of legislation passed by Parliament and with due diligence thereto.

An appeal arises before this Commission in terms of Section 32 of the Act against a decision arrived at by a Designated Officer of the Public Authority made in terms of Section 31 of the Act. Designated Officers of Public Authorities, if not appearing in person, have a statutory duty to direct competent representatives to appear on their behalf before this Commission in order to satisfactorily discharge the burden of proof imposed on Public Authorities to show that they acted in compliance with the Act in terms of Section 32(4) of the Act.

The fact that the appeal preferred to the DO under Section 31 of the Act has not been responded to by the DO of the PA cannot be excused on the ground of mere advertence. This amounts to bypassing a statutory duty on the part of the DO as detailed in Sections 31 (2) and (3) of the Act. It is unfortunate that a state banking institution such as the PA, as named in this appeal, has treated mandatory duties imposed by legislation in such an indifferent manner. This stands in sharp contrast to the manner in which other PAs, including key banking institutions, have carried out their obligations in terms of the Act.

ORDER

Where the merits of the matter before us are concerned, it must be stated at the outset that the primary issue in this Appeal concerns the expenditure of public funds by a Public Authority which brings duties of transparency and accountability into play.

We note that, in the Written Submissions filed by the Appellant on 14 February 2018, the initial information request has been modified and it is the contention of the Appellant that it has been done “for the purpose of convenience.” The Commission will however deal with these items in pursuance of the Appeal rising before us on the basis of the original information request.

INFORMATION REQUEST A

‘(a) A certified copy and/or extracts and/or such other documentary material of the decision taken by the People’s Bank to disregard and override the legal opinion given by the Legal Consultant of the bank Mrs. Minoli Jinadasa, AAL to desist from initiating or continuing disciplinary action against three employee-members of the Appellant Union, namely, MR. S.M. A. R. Senanayaka, Mr. A. M.M.S.M. Ruwais and Mr. S. K.D. Hewapathirana.’

The PA has sought to deny this request under section 5 (1) (j) of the Act.

Assessing the same in the context of the principles articulated above in regard to a ‘real risk’ that prejudice will be caused to ‘the maintenance of the authority and impartiality of the judiciary’, we observe that the requested information is directly in issue in the pending litigation referred to by the Public Authority and forms in fact, the very basis on which that litigation appears to have been initiated in the first instance.

We consequently uphold the decision of the Public Authority to decline the release of the material in terms of Section 5(1)“(j) of the Act, more specifically on the basis that release of the same would be ‘...prejudicial to the maintenance of the authority and impartiality of the judiciary.’”

INFORMATION REQUESTS B AND C

‘(b) A certified copy and/or extracts and/or such other documentary material of the decision taken by the People’s Bank to retain Instructing Attorney and Counsel from the private Bar in case Nos. DSP 179/2016, 183/2016 and 184/2016 filed in the District Court of Colombo without first consulting and retaining the Hon. Attorney General for the said three cases.

(c) A certified copy and/or extracts and/or such other documentary material of the decision taken by the People’s Bank to retain Instructing Attorney and Counsel from the private Bar without first consulting and retaining the Hon. Attorney General in case Nos. WP/HCCA/COL/04/2017 as well as case Nos. WP/HCCA/COL/15/2017 (LA),

WP/HCCA/COL/16/2017 (LA) and WP/HCCA/COL/17/2017 (LA) filed by the People's Bank against the said three employees, namely, Mr. S. M. A. R. Senanayake, Mr. A. M.M.S.M. Ruwais and Mr. S. K.D. Hewapathirana.'

Information requests (b) and (c) are in connection with disclosure of material to support decision to retain instructing attorneys and counsels from the private bar without consultation of the Attorney General.

The PA has sought to deny this request under section 5 (1) (g) & (j) of the Act.

As emphasized in our Order of 27th March 2018, the Public Authority is undoubtedly within its discretion to arrive at decisions to retain private counsel in litigation. In that regard, it must be emphasized that the submission of attorneys-at-law for the Public Authority during hearings in this Appeal that to release information regarding the same would amount to dictating to the Public Authority as to who it should retain as counsel is flawed in its very basic premise.

What is in issue here relates to internal decisions taken by the Public Authority in pursuance of which private counsel was retained and public funds expended. Consequently it cannot be maintained that there is no public interest in this matter as the Public Authority is effectively utilizing public funds in regard to which transparency and accountability of the highest standard must be reflected.

The Commission is not convinced that this disclosure would prejudice the pending cases, thus attracting Section 5 (1)(j). In our Order of 27th March 2018 in this Appeal (*supra*), it was specifically stated (Vide page 9) that if the 'real risk' of prejudice to the 'authority and impartiality of the judiciary' is not established, as differentiated from mere citation of pending or contemporaneous proceedings, the RTI Act would be frustrated in fundamental respects as a filing of any case in any court, argued as relevant thereto, would immediately thwart the application of its provisions, which surely must not have been the intention of Parliament in passing the RTI Act, which is prioritized 'notwithstanding anything to the contrary in any other written law' (Section 4 of the Act).

We are fortified by the fact that this is the same approach taken in comparative jurisdictions in the region, even conceding a variation in the statutory language which, for the purposes of assessing the applicability of the concept of *sub judice* in the relevant RTI statutes, amounts to a distinction without a difference, (vide *In Sh. PD Bansal v Food Corporation of India* (Case No. CIC/LS/A/2009/000937) where the relevant provision for consideration was Section 8(1)(b) of the RTI Act which exempts from disclosure, that information that has been expressly forbidden to be published by any court of Law or Tribunal or the disclosure of which may constitute contempt of court').

We are also not in agreement that the requested information is encompassed within the ambit of a fiduciary relationship as contemplated by Section 5(1)(g). It is an accepted principle that lawyers and their clients share a fiduciary relationship. In the Indian case of *Reserve Bank of India vs Jayantilal N Mistry* (2016) 3 SCC 526, the contours of what constitutes a fiduciary relationship was laid out. First, when one person places trust in the faithful integrity of another, who as a result gains superiority or influence over the first. Secondly; when one person assumes control and responsibility over another. Thirdly; when one person has a duty to act or give advice to another on matters falling within the scope of the relationship. Finally, and most importantly, when there is a specific relationship that has traditionally been recognized as involving fiduciary duties, as with a lawyer and a client or a stockbroker and a customer.

However, the decision to engage private attorneys in the cases in issue may be regarded as an institutional decision of the PA. Disclosure of the grounds on which that decision was based has no connection, in our view, with a specific relationship between a particular lawyer/lawyers and the client (the Public Authority), bringing the same within the scope of a ‘fiduciary relationship.’ On previous instances, this Commission has ordered disclosure of similar such institutional decisions by Public Authorities which have been complied with, as was the case in *Dushyanthi Suriyapperuma v. Sri Lanka Medical Council* (RTIC Appeal (In person) / 36/2017).

We rule that the internal discussion on the basis of which the decision to engage private attorneys was arrived at by the Public Authority would not come within the purview of the exemptions under section 5 (1) (g) or (j) of the Act and order disclosure subject to redaction of the personal names/details of private attorneys so engaged. The decision of the Designated Officer is reversed in that regard.

INFORMATION REQUEST D

‘(d) A certified copy and/or extracts and/or such other documentary material of the decision taken by the People’s Bank to refer SC HCCA LA Leave to Appeal Application Nos. 316/2017, 318/2017 and 319/2017 to the Supreme Court without consulting and retaining the Hon. Attorney-General despite the High Court of Civil Appeal in case Nos. WP/HCCA/COL/15/2017 (LA), WP/HCCA/COL/16/2017 (LA) and WP/HCCA/COL/17/2017 (LA), held against the People’s Bank.’

The PA has sought to deny this request under section 5 (1) (g) & (j).

On the same reasoning as specified in relation to the ordering of disclosure in relation to information requests B and C above, we determine that application of the exemption of fiduciary

relationship, under Section 5 (1) (g) would be inapplicable given that the information request pertains to an internal institutional decision of the PA.

On that same basis, the Commission is also not convinced that this disclosure would prejudice the pending cases and that consequently, Section 5 (1) (j) is attracted, on the reasoning more fully set out in our response to information items B and C above. We rule that the internal discussion on the basis of which the decision taken by the People's Bank not to retain the Hon. Attorney-General to appear on its behalf in regard to the above stated litigation would not come within the purview of the exemptions under section 5 (1) (g) or (j) of the Act and reverse the decision of the Designated Officer in that regard.

INFORMATION REQUEST E

'(e) A certified copy and/or extracts and/or such other documentary material of the People's Bank of the vouchers raised to make payments to date in respect of case Nos. DSP 179/2016, 183/2016 and 184/2016 filed in the District Court of Colombo and the case WP/HCCA/COL/04/2017 filed and withdrawn by the People's Bank and the case Nos. WP/HCCA/COL/15/2017 (LA), WP/HCCA/COL/16/2017 (LA) and WP/HCCA/COL/17/2017 (LA) filed by the People's Bank and dismissed by the High Court o Civil Appeal and SC HCCA LA Leave to Appeal Application Nos. 316/2017, 318/2017 and 319/2017 filed by the People's Bank.'

The PA has relied on Sections 5(1)(a), (f) (g) and (j) of the Act.

Considering this aspect of the information request, the core question is as to whether the public funds spent on retention of private counsel by the PA in litigation becomes information that may legitimately be requested by an information requester under and in terms of the Act.

It is a matter for regret that oral submissions made by attorneys-at-law retained by the Public Authority to represent the Designated Officer (DO) on both hearing dates in this Appeal before us had the effect of confusing rather than clarifying the matters in issue. The regulation of lawyers' fees is not before the Commission for deliberations. Indeed, it is not for this Commission to assess the regulation of lawyers' fees or call upon the Public Authority to justify such fees or not, as the case may be. That is entirely outside the remit of this Commission. The determining of fees is the exclusive prerogative of legal counsel whom the Public Authority wishes to retain in the first instance.

The question here is whether information relating to the quantum of fees paid to lawyers, out of public funds (the client being the PA) falls within the ambit of information that may be disclosed

under the Act in the interests of transparency and accountability as stressed in the preamble to the Act.

The contention by attorneys-at-law representing the DO of the PA, that a lawyer has the privilege to determine his or her fee, is therefore irrelevant to the matter for determination. It must also be borne in mind that, under and in terms of the RTI Act, an applicant does not need to have a purpose nor does s/he have to submit reasons for requesting information. Further the PA cannot require a citizen to disclose reasons for requesting the information. Section 24 (5) (d) of the Act makes that very clear as follows;

A citizen making a request for information shall... not be required to give any reason for requesting the information or any other personal details except those that may be necessary for contacting him or her.

Application of exemption under section 5 (1) (a) of the Act – “privacy”

This is a ground that has been most strenuously raised by the Public Authority (vide paragraph 24 (vi)). For the purpose of assessing the validity of the application of this exemption, it is necessary to consider the full import of Section 5(1) (a) which reads as follows;

Section 5 (1) (a) the information relates to personal information the disclosure of which has no relationship to any public activity or interest, or which would cause unwarranted invasion of the privacy of the individual unless the larger public interest justifies the disclosure of such information or the person concerned has consented in writing to such disclosure;

The questions that arise here are central to the determination of this Appeal. Does the information requested have any ‘*relationship to any public activity or interest*’? Is the information requested linked to the ‘*larger public interest*’? Does the information requested result in the ‘*unwarranted invasion of the privacy of the individual*’?

One important distinguishing factor in this Appeal is the involvement of a public agency and the use of public funds, which invokes the public interest. Public interest has a large role to play when dealing with national banks. This Commission has, time and again, placed a stringent obligation on the PA to justify the citation of exemptions in instances where information is requested that involves expenses from the public purse. Observations made to this effect in *Pilots Guild v Sri Lankan Airlines (RTIC Appeal (in Person)/99/17)* are relevant in this regard:

'...where the public purse is concerned, and the alleged financial irregularities of a particular Public Authority are under scrutiny in an Appeal before us, this Commission will be particularly watchful of the public interest.'

In *Independent Employees Union v. Ceylon Fisheries Harbour Corporation* (RTIC Appeal/112/2018), disclosure of 'information in relation to the public funds expended towards retaining legal counsel' by the Public Authority was ordered and the Order complied with. The Commission observed "*In such instances, what is relevant under and in terms of the RTI Act is not the names of the counsel but the moneys expended as aforesaid.*"

Comparative illustrations in the region may also be of some use. In *Sh. PD Bansal v Food Corporation of India* (supra) the appellant requested a copy of the legal opinion submitted to the court and requested the total legal expenses incurred in the case. In so far as legal fees is concerned the same was ordered to be disclosed on the basis that "*the cost on a particular case is incurred from the Public exchequer hence, the Respondents are hereby directed to inform the Appellant about the total cost incurred on the concerned case, after proper calculation.*"

In *C P Gupta vs Ministry Of Civil Aviation* (Minutes of the Central Information Commission, 15 May 2010) the Appellant sought information about the total expenditure incurred towards legal expenses by the Air India, in connection with a Consumer Court Case, which had been appealed to the Supreme Court and where the appeal of Air India had been dismissed by the apex court. The Appellant also sought to know total expenses incurred by Air India in the litigation towards transportation expenses TA/DA expenses and the men hours lost by Air India etc.

The Public Authority in this matter responded by informing the Appellant that lawyers' expenses could not be furnished since the same was of personal nature, not having any relation to any public activity or interest. The Appellant was further informed that no separate case-wise record had been maintained for transportation expenses paid to staff and no payments had been made to the officials, as the case had been heard only in Delhi. It was also informed that there is no system to keep track of man-hours spent dealing with any particular case.

Examining the appeal, the Central Information Commission decided that legal expenses incurred by the Respondent Public Authority in any particular litigation are not exempted under any of the provisions of the RTI Act. 2005. It was also held that expense incurred by a Public Authority in court cases is a public activity and there cannot be any invasion of privacy of any individual in respect of the same. The Commission ruled against the finding of a fiduciary relationship in respect of lawyers' fees. In fact, as was affirmed in that matter, the disclosure of such information would be in the interest of the transparency of functioning of the Public Authority. Consequently that information was directed to be furnished to the Appellant. However, the CIC upheld the Respondent's decision regarding the man-hours lost by Air India staff, expenses towards transportation and TA/DA of concerned officials in dealing with the litigation.

As a matter of interest in regard to the standards stipulated to be followed by the public service in these matters, as noted in our Order of 27th March, where public officers retain private counsel in court proceedings, standards of financial probity are stringently mandated through Sri Lanka's Establishments Code (XXX111, para 6.4). It is undisputed that the Establishments Code although not mandatory on the Public Authority, is representative of best practices of transparency and accountability.

We are of the opinion that the information requested in this segment has a direct relationship to a 'public activity or interest' and that it is linked to the 'larger public interest'?

Where the question as to whether the information requested results in the 'unwarranted invasion of the privacy of the individual' as urged by the Public Authority, we reiterate the observation of this Commission in *Independent Employees Union v. Ceylon Fisheries Harbour Corporation* (supra) that 'what is relevant under and in terms of the RTI Act is not the names of the counsel but the moneys expended as aforesaid.'

Application of exemption under Section 5 (1) (f) of the Act – "professional privilege"

It is the contention of the PA that the information requested by the Appellant is exempted under section 5 (1) (f) of the Act which states as follows:

(f) the information consist of any communication, between a professional and a public authority to whom such professional provides services, which is not permitted to be disclosed under any written law, including any communication between the Attorney General or any officer assisting the Attorney General in the performance of his duties and a public authority;

The PA has relied on *Kapugeekiyana vs. Hettiarachachi* ([1984] 2 Sri. LR 153), to support its contention that "communication" includes not only legal "opinion *per se*, but all vouchers, memos setting out the fees of the Attorneys are privileged communication." This case relates to fundamental rights of illegal arrest / detention and inhuman treatment and torture and the unfettered right of an individual to be freely defended by an Attorney-at-law in the context of a respondent law enforcement officer attempting to see a written communication of the petitioner to his Counsel during the hearing of his case. The context of the above observation is completely different to that of the instant appeal and does not lend any support to the PA in this Appeal

In consideration of the submission made by the PA before us that the requested information is exempted by reason of Section 5 (1) (f) of the RTI Act, it is reiterated that this Section does not automatically apply purely for the reason that documents are communications between PA and an attorney. In accordance with earlier order by this Commission in this appeal, if the exemption

is pleaded it must be shown how the information is privileged and as to the manner in which it is ‘not permitted to be disclosed under any written law’ as expressly stipulated by that Section.

The PA has not relied on other precedents in this regard. However we deem it fit to examine the law in this regard so as to determine whether the information requests of the Appellant can be considered ‘privileged.’

For application of an exemption under section 5 (1) (f) the requested information should satisfy the various limbs of the provision such as:

- any communication
- between a professional and a public authority to whom such professional provides services,
- which is not permitted to be disclosed under any written law

‘Communication’ between a professional and a public authority to whom such professional provides services

It is pertinent to examine relevant legal principles in other jurisdictions as guidance thereof. Section 42 of the United Kingdom’s Freedom of Information Act, provides an exemption under FOIA for information protected by legal professional privilege. In *Bellamy v the Information Commissioner and the Secretary of State for Trade and Industry* (EA/2005/0023, 4 April 2006) the scope of legal professional privilege was discussed.

Here, the Information Tribunal held that legal professional privilege is ‘a set of rules or principles which are designed to protect the confidentiality of legal or legally related communications and exchanges between the client and his, her or its lawyers, as well as exchanges *which contain or refer to legal advice which might be imparted to the client, and even exchanges between the clients and [third] parties if such communications or exchanges come into being for the purposes of preparing for litigation.*’

The question of what amounts to “legal” advice for the purposes of legal advice privilege was clarified by the House of Lords in *Three Rivers No 6* [2004] UKHL 48. In this application, the claimants sought disclosure of the Bank’s lawyer/client communications relating to the way in which the Bank’s evidence was to be presented to the Bingham Inquiry. The claimants said this sort of material was merely “presentational” rather than “legal” advice and so was not protected by legal advice privilege. The Bank argued that legal advice should be interpreted widely so as to cover all advice and assistance from their solicitors or counsel relating to the evidence to be submitted and the submissions to be made to the Inquiry on behalf of the Bank. The Court of Appeal held, in summary, that legal advice privilege protects advice as to legal rights and obligations but does not include “presentational” assistance in putting relevant factual material

before an inquiry in an “orderly and attractive fashion”. In the House of Lords, Lord Scott of Foscote affirmed the position in *Minter v. Priest* [1929] 1 KB 655 that, “*all communications between a solicitor and his client relating to a transaction in which the solicitor has been instructed for the purpose of obtaining legal advice will be privileged, notwithstanding that they do not contain advice on matters of law or construction, provided that they are directly related to the performance by the solicitor of his professional duty as legal adviser of his client.*” [emphasis added]

Further Lord Scott further stated “.....including investment policy, finance policy and other business matters, the advice may lack a relevant legal context.” In marginal cases (which this was not), the judge should ask whether the advice relates to the “*rights, liabilities, obligations or remedies*” of the client under private or public law. If it did not, then there would be no relevant legal context, and so no legal advice privilege. If it did, then the question was whether the occasion on which the communication took place, and the purpose for which it took place, were such as to make it reasonable to expect the privilege to apply”

In *Property Alliance Group Limited v The Royal Bank of Scotland Plc* [2015] EWHC 3187 (Ch), it was held that legal advice privilege applies, under English law, to client-lawyer communications where such communications consist of memoranda summarising the status and coordination of regulatory investigations.

There is however a divergence of judicial view in that, some judges have held that what is privileged is only a narrow compass of what constitutes as advice as to legal rights and obligations. In *Regina v Macnchester Crown Court Ex Parte Rogers* [1999] 1 WLR 832 the Court held that the records sought are not privileged because they did not relate to legal advice or to the subject matter of legal advice. In this case, the information sought were records of attendance which were held not to be protected because they did not relate to legal advice or the subject matter of legal advice. Legal professional privilege applies only ‘to communications made for the purpose of seeking and receiving legal advice’.

In the more recent case of *SFO v ENRC* [2017] EWHC 1017}, it was affirmed that the notes from interviews are not privileged. On an assessment of the approaches followed, it is clear that “communication” as per the privileged communication between attorney’s and their clients do not necessarily involve information regarding fees and invoices.

In *Mr D L Chandhok v Telecommunications Consultants India Ltd Appeal* (No.361/ICPB/2006) decided under the RTI Act (India) the Appellant asked for ‘*the money paid to the legal advisers for each opinion obtained from them during the last ten years*’ and for ‘*the extent of the fees paid to each legal adviser/advocate in each case during the last ten years.*’ The CIC noted that the principle of legal professional privilege is important, and that a fiduciary relationships exists between the parties. However it was held that provision of information relating to the quantum of

money paid to the advocate, without mentioning the name of the advocate will not violate the same.

'Written Law'

The PA submitted (through its attorneys-at-law during oral hearing) that 'written law would include Section 126 of the Evidence Ordinance read with the Supreme Court (Conduct of and Etiquette for Attorneys-at-Law) Rules, 1988 (published in the Government gazette extraordinary of 7th December 1988) confers the status of 'privileged' upon the information requested in this Appeal.

Section 126 (1) of the Evidence Ordinance states that;

*'No advocate, proctor, or notary shall at any time be permitted, unless with his client' express consent, to **disclose any communication made to him in the course and for the purpose of his employment as such advocate, proctor, or notary by or on behalf of his client**, or to state the contents or conditions of any document with which he has become acquainted in the course and for the purpose of his professional employment, or to disclose any advice given by him to his client in the course of and for the purpose of such employment' (emphasis ours)*

Does the information requested amount to a communication made to an Attorney-at-Law by his client 'in the course and for the purpose of his employment as such advocate, proctor, or notary' or can the information be taken to mean 'contents or conditions of any document with which he has become acquainted in the course and for the purpose of his professional employment'? In *Regina v Manchester Crown Court Ex Parte Rogers (Legal Professional Privilege)* [1999] 1 WLR 832: the Court had to decide whether 'records of the time at which the applicant arrived at the solicitors premises on a particular date and like documents' held in the custody of the said solicitors were exempt from disclosure as those which 'attracted legal professional privilege.' The Court held that;

'Such records are not privileged because they did not relate to legal advice or the subject matter of legal advice. Records of appointments made are not protected, although extracts are not to be made from advice records. A record of an attendance at a solicitor's office by a client for an appointment, which must involve giving the name of the client, was a communication between client and solicitor, but not one that attracted legal professional privilege.'

In arriving at this decision the Court took cognizance of whether the 'communications made for the purpose of seeking and receiving legal advice' and in order to ascertain such considered 'the

function and nature of the documents’ at hand. It was further stated that ‘It is none the less true that legal professional privilege applies, and applies only, to communications made for the purpose of seeking and receiving legal advice.’ It was stated that;

“the well-established purpose of legal professional privilege, which is to enable a client to make full disclosure to his legal adviser for the purposes of seeking legal advice without apprehension that anything said by him in seeking advice or to him in giving it may thereafter be subject to disclosure against his will...”

Rule 31 of the Supreme Court Rules states as follows:

‘an Attorney-at-Law shall keep in strict confidence all information whether oral or documentary acquired by him from or on behalf of his client in any other matter in respect of and concerning the business and affairs of his client.’

This rule envisages that the ‘all information... acquired by him from or on behalf of his client’ to be privileged. It is clear that this privilege attaches to the attorney and not the client. The PA has failed to cite any provision of ‘written law’ that specifically establishes its contention that fees paid to lawyers out of public funds are encompassed within the ambit of Section 5(1)(f). It failed to establish that such information will prejudice the substantive rights of the parties in relation to ongoing cases except to urge that disclosure of such information will amount to ‘regulation of fees’ which, as aforesaid, is not a tenable argument.

Application of exemption under section 5 (1) (g) of the Act – “fiduciary relationship”

The PA has relied on *Weerasuriya v Fuard* (supra) where the Court held that fiduciary duties exist between lawyers and their clients. However, the case only deals with the duty of the fiduciary party to act in the best interest of their client and can be distinguished from the instant matter before us.

Further, the public interest factor in the expenditure of state funds in the retention of private counsel must be necessarily reiterated.

In *Reserve Bank of India v Jayantilal N Mistry* (supra) the composite elements of that relationship were detailed but it was observed by the Supreme Court of India that the public interest may trump the fiduciary relationship. In *Mralok Srivastava vs University Grants Commission* (CIC/SA/A/2015/000933) the question was as to whether details regarding the appointment of counsel and expenses could be disclosed or whether that specific information was confidential under a fiduciary relationship. In the said case the CIC had relied on a ruling from *Union of India Vs CIC & PD Khandelwal* (WPC NO.7304/2007) which stated that

information exempt under the fiduciary clause could still be disclosed if there is a larger public interest. Thus:

“If the client is an ordinary individual, asking under RTI, issue of this privilege does not arise as it will not apply to private individuals. If a client is a corporation its commercial interests be protected under this privilege. When client is a state or state's instrumentality such as a University in this case, which is run with tax payer's money and fee of the people, should the same privilege extend to the Client University or state?”

Section 5(4) of Sri Lanka's RTI Act stipulates that information that would otherwise be exempted may still be disclosed if the public interest in disclosure outweighs the harm.

Application of exemption under section 5 (1) (j) of the Act – “prejudicial to the maintenance of the authority and impartiality of the judiciary”

We do not accept the exemption relied on under section 5 (1) (j) based on the reasoning more fully set out in respect of our decision on information items B and C D above.

In light of the above, we order disclosure of the quantum of cumulative fees expended by the PA in its retention of private legal counsel in the litigation cited by the Appellant in item D of the information request, and order disclosure subject to redaction of the personal names/details of private attorneys so engaged, which effectively renders the objections of privacy, professional privilege and fiduciary relationship raised by the PA as inapplicable. It is a relevant factor that in any event, the Annual Report (page 267) of the PA in 2017 discloses the total value of litigation against the PA under “43.5. Litigation Against the Bank and Companies within the Group.” This information in respect of previous and other instances is therefore already within the realm of public information. The decision of the Designated Officer is varied in that regard.

INFORMATION REQUEST F AND H

(f) A certified copy and/or extracts and/or such other documentary material of the decision taken by the People's Bank seeking approval and/or provisional approval from the Auditor General to authorize the payment of fees of the Instructing Attorney and the counsel for the case Nos. DSP 179/2016, 183/2016 and 184/2016 filed in the District Court of Colombo and the case WP/HCCA/COL/04/2017 filed and withdrawn by the People's Bank and the case nos. WP/HCCA/COL/15/2017 (LA), WP/HCCA/COL/16/2017 (LA) and WP/HCCA/COL/17/2017 (LA) filed by the People's Bank and dismissed by the High Court o Civil Appeal and SC HCCA LA Leave to Appeal Application Nos. 316/2017, 318/2017 and 319/2017 filed by the People's Bank.

(h) *A certified copy and/or extracts and/or such other documentary material of the People's Bank informing the Auditor General of the said cases referred to in (f) above for auditing purposes to reflect the same in Annual and/or quarterly audited accounts.*

The PA has sought to deny these two items of information under section 5 (1) (g) & (j) of the Act. In summary, they pertain respectively to material to substantiate the approval / provisional approval of the Auditor-General authorising payments to the instructing attorneys and to reporting the pending cases to the Auditor-General for the purpose of inclusion in the annual report.

The PA has relied on the twin exemptions of fiduciary relationship and prejudice to the pending cases. While we do not accept the exemption relied on under section 5 (1) (j) based on the reasoning more fully set out in respect of our decision on information items B to D above, it is an interesting question as to whether the Auditor-General and PA are in a fiduciary relationship as contemplated in terms of Section 5 (1) (g). The observations of the Central Information Commission (India) in *Deppak Agarwal v. Central Public Information Officer* (Appeal No.CIC/KY/A/2016/000848) are relevant in this regard.

"The Commission is of the view that the CAG (Comptroller and Auditor-General of India) is a constitutional Authority, established by the Constitution under Constitution of India (Article 148-151), which audits all receipts and expenditure of the Government of India and the state governments, including those of bodies and authorities substantially financed by the government. Moreover, where information is required by mandate of law to be provided to an authority, it cannot be said that such information is being provided in a fiduciary relationship. As in the instant case, the institutions/authorities have an obligation to provide all the information (correspondence between the auditor and auditee which eventually leads to Audit Report) to the AG (Audit) and such an information shared under an obligation/ duty cannot be considered to come under the purview of being shared in fiduciary relationship."

In delivering this order heavy reliance was placed on the case of *Reserve Bank of India vs Jayantilal N Mistry* (2016) 3 SCC 526.

However what is in issue in this instance is information regarding the adherence to general reporting requirements to the Auditor General. As aforesaid, it is noted from a review of the Annual Report (page 267) filed by the PA in 2017 discloses that, the total value of litigation against the PA has been included thereunder under "43.5. Litigation Against the Bank and Companies within the Group," which establishes the fact that the PA adheres to reporting requirements though those requirements may not necessarily amount to approvals as claimed by the Appellant.

The Commission is of the view that materials to substantiate approval from the Auditor General and / or particulars for complying with reporting requirements for preparation of annual report do not have a bearing on pending legal disputes. The exemption under section 5 (1) (j) of the Act would also not be applicable based on the reasoning more fully set out in respect of our decision on information items B and C D above. We accordingly order disclosure of this and reverse the decision of the Designated Officer in that regard.

INFORMATION REQUEST G

'(g) A certified copy and/or extracts and/or such other documentary material of the criteria adopted by the People's Bank in selecting and retaining the Instructing Attorney and the counsel for the cases referred in (f) above.'

The PA has sought to deny this request under Section 5 (1) (g) & (j) of the Act

This information request pertains to the criteria adopted by the PA in selecting and retaining instructing attorneys and counsels for the pending cases. It is emphasized and reiterated that Act seeks to promote a culture of transparency and disclosure.

The exemption of fiduciary relationship is inapplicable as this request pertains to criteria adopted by the PA in selecting an attorney for the cases. This is a matter of internal consideration / contemplation and relates to an institutional decision. We reverse the decision of the Designated Officer and order disclosure subject to redaction of the personal names/details of private attorneys so engaged. We rely on the reasoning set out above in respect of information items B, C and D in respect of rejection of the exemptions cited in Section 5 (1) (g) & (j)

INFORMATION REQUEST I & J

'(i) A certified copy and/or extracts and/or such other documentary material of the People's Bank calling for fees from other Instructing Attorneys and Counsel than those who have been retained currently;

'(j) A certified copy and/or extracts and/or such other documentary material of the People's Bank deciding whether the legal fees claimed by the Instructing Attorneys and Counsel in the said cases referred to in (f) above are excessive and/or exorbitant or similar to fees customarily charges in like manner by lawyers of equal standing in the locality for similar legal services in similar circumstances'

The PA has sought to deny this request under Section 5 (1) (a), (f), (g), (j) of the Act.

The above requests pertain to material calling for information from other attorneys apart from those engaged and material to substantiate discussion as to the excessiveness of the fees charged *inter alia* by lawyers of equal standing.

The Commission finds no merit in this information request. It seeks to disclose information presumably for the purposes of comparative assessment which has no relationship to this instant Appeal. The PA has relied on the exemption under section 5(1) (a) of the Act. The disclosure of this information would necessitate disclosure of fee particulars of other lawyers of “equal standing” which is an inherently vague term. Accordingly the decision of the Designated Officer in this regard is affirmed.

INFORMATION REQUEST K

‘(k) A certified copy and/or extracts and/or such other documentary material of the People’s Bank to the effect that the Bank attempted to settle the said case Nos. DSP 179/2016, 183/2016 and 184/2016 filed in the District Court of Colombo following the dismissal by the High Court of Civil Appeal of the WP/HCCA/COL/04/2017 filed and withdrawn by the People’s Bank and the case Nos. WP/HCCA/COL/15/2017 (LA), WP/HCCA/COL/16/2017 (LA) and WP/HCCA/COL/17/2017 (LA) filed by the People’s Bank’

The PA has sought to deny this request under section 5 (1) (g) & (j) of the Act.

The Appellant has excluded this request from paragraph 3 of their Written Submissions filed on 14 February 2018. On the same reasoning set out in respect of rejecting disclosure of information in item A) above, the decision of the Designated Officer in this regard is affirmed.

INFORMATION REQUEST L

‘(L) A certified copy and/or extracts and/or such other documentary material of the decision of the People’s Bank whether the Governor and/or Director of Banking Supervision of the Central Bank have been informed of the existence and progress of the said cases referred above.’

The PA has sought to deny this request under Section 5 (1) (g) & (j) of the Act. The above information request relates to material / extracts to evidence that the Governor and /or Director of Banking Supervision of the Central Bank have been made aware of the existence and progress of the above case. In *Reserve Bank of India vs Jayantilal N Mistry* (2016) 3 SCC 526, the contention that the Reserve Bank of India (Central Bank in India) played the role of fiduciary to the other banks was rejected on grounds that;

“59. RBI is a statutory body set up by the RBI Act as India’s Central Bank. It is a statutory regulatory authority to oversee the functioning of the banks and the country’s banking sector.

60. ***RBI is supposed to uphold public interest and not the interest of individual banks.*** RBI is clearly ***not in any fiduciary relationship with any bank.*** RBI has no legal duty to maximize the benefit of any public sector or private sector bank, and thus there is no relationship of ‘trust’ between them. RBI has a ***statutory duty to uphold the interest of the public at large,*** the depositors, the country’s economy and the banking sector. Thus, RBI ought to act with transparency and not hide information that might embarrass individual banks. It is duty bound to comply with the provisions of the RTI Act and disclose the information sought by the respondents herein. ”

(Emphasis added)

On the facts of this Appeal and in relation to this information item, we are of the considered view that the above information would not fall within the exemption of fiduciary relationship in terms of Section 5 (1) (g) of the Act. We rely on our reasoning set out above in respect of information items B, C and D in respect of rejection of the exemption cited in Section 5 (1) (j).

The Appeal is concluded. Order is directed to be conveyed to both parties in terms of Rule 27 (3) of the RTI Commission's Rules on Fees and Appeal Procedures (Gazette No. 2004/66, 03.02.2017).

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Mahinda Gammampila – Chairman

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Kishali Pinto – Jayawardena – Commissioner

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S.G. Punchihewa – Commissioner

.....
Dr. Selvy Thiruchandran – Commissioner

.....
Justice R. Walgama - Commissioner
