

Devarajan Gajan v Central Bank of Sri Lanka (CBSL)

RTIC Appeal (In-Person Hearing)/640/2018- Order adopted subsequent to the hearing of the Commission on 22.01.2019

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: Devarajan Gajan

Notice issued to: Designated Officer, CBSL

Appearance/ Represented by:
Appellant - Devarajan Gajan
Niranjan Arulpragasam, AAL
PA - D M Roopasinghe
W J S J Keerthirathne

RTI Request filed on	23.05.2018
IO responded on	23.05.2018 Acknowledgement; No response
First Appeal to DO filed on	18.02.2018
DO responded on	No response
Appeal to RTIC filed on	04.09.2018

Brief Factual Background:

The Appellant, by a request dated 23.05.2018 requested the following items of information

“The banks of Perpetual Treasuries Limited, namely, Pan Asia Bank, Nations Trust Bank and Bank of Ceylon have frozen and/or restricted the bank accounts of Perpetual Treaties Limited.

Upon inquiry the said banks have informed that the accounts Perpetual Treasuries Limited have been frozen and/or restricted on directives issued by the Central Bank.

- Is there a directive issued by the Central Bank to the aforementioned banks to freeze and/or restrict the bank accounts of Perpetual Treasures Limited?*
- What is the date of the said directive issued by the Central Bank (if any)?*
- Is there a Court Order obtained by or in possession of the Central Bank or the any other Unit of the Central Bank to freeze and/or restrict the bank accounts of Perpetual Treasures Limited?*
- If any such Court Order is in operation what is the case number and the date of the Order?"*

As the IO failed to respond within the time period stipulated under the Act the Appellant on 18.02.2018 lodged an appeal with the DO. As the DO too failed to respond with the time period stipulated under the Act the Appellant preferred an appeal to the Commission on 04.09.2018

Matters Arising During the Course of the Hearing:

Counsel for the Appellant submitted that the Appellant is a dealer and an employee of Perpetual Treasuries Limited (PTL). The employer has had no access to its bank accounts since January of 2018, and as such, the employees have not been paid. Furthermore statutory payments such as EPF and ETF had not been made and the company has ceased to function. Counsel further submitted that salaries had not been paid to the Appellant since February 2018, and when he inquired from his employer as to why he had not been paid, PTL had stated that payments cannot be made due to its bank accounts having been frozen/ restricted. This grievance led the Appellant to file an RTI request with CBSL.

In its response, the PA submitted that the Appellant had filed a request for information addressed to the CBSL, and not the Financial Intelligence Unit (FIU) of the CBSL which operates as a separate entity although the two institutions are administratively linked. The FIU is an independent authority established by the Financial Transactions Reporting Act No. 6 of 2006. The PA further submitted that, while initially this caused a delay in its response, the FIU has subsequently responded to the request. This response had been returned to the FIU due to an incorrect address provided by the Appellant. The Appellant denying the provision of an incorrect address, stated that he never received such communication.

Counsel for the Appellant further submitted that he was not aware of the PA having two branches providing information independent of each other, given that the initial acknowledgement dated 23.05.2018 was on a CBSL letterhead.

In response, the FIU stated, at the time of filing the request, the FIU didn't have an independent RTI Unit set up as it does now, and the existing unit was shared between both entities. However, the FIU submitted that the request was forwarded to it by the CBSL when it was determined that the relevant PA for this request was in fact the FIU.

Upon the Commission's query with regard to the FIU's position in relation to the provision of the information, the FIU submitted that it denies the provision of information under section 5(1)(h) of the RTI Act.

Order:

Prior to addressing the substantial issue contained in the information request of the Appellant, it is important that the FIU establish its functioning independent of the CBSL, which is the PA against whom this Appeal has been lodged.

The PA is therefore directed to file written submissions within two weeks of today addressing the above issue clarifying its authority and position with regard to the ability to be represented as the PA in this appeal. The Appellant may respond on or before the lapse of two weeks thereafter if he so wishes.

Based on the fact that on the date the information request was filed, both the CBSL and FIU operated as one PA that representatives of the CBSL are directed to be present at the next hearing.

The Appeal is hereby adjourned.

Next date of hearing: 02.04.2019

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RTIC Appeal (In-Person Hearing)/640/2018- Order adopted subsequent to the hearing of the Commission on 02.04.2019

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
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Appearance/ Represented by:
Appellant - Devarajan Gajan

PA Niranjan Arulpragasam, AAL
 - D M Roopasinghe – FIU
 S Jayawardena
 Dr. Subhani Keerthiratne – FIU
 H P A I Ariyasinghe – FIU
 Ashadii Edirisinghe – CBSL
 Dilini Wilathgamuwa – CBSL
 H A KARunaratne – Deputy Governor, CBSL
 M M Thasneem
 N D L Hemachandra – FIU

Matters Arising During the Course of the Hearing:

Written Submissions of the PA dated 06.03.2019, and Written Submissions of the Appellant dated 29.03.2019 are accepted of record.

CBSL in its submission stated that it was merely representing CBSL and the FIU and it is separate Public Authorities for all intents and purposes of the RTI Act. The CBSL further submitted that the FIU was not a Public Authority at the time of the request even though it had separate mandates. The CBSL, although administratively linked to the FIU, does not control or possess the information of the FIU.

The FIU in its written submissions stated as follows;

“In terms of the international standards, Sri Lanka has enacted the Financial Transactions Reporting Act No. 6 of 2006 (hereinafter referred to as “FTRA”), and established the FIU in 2006. The FIU has been interpreted in Section 33 of the FTRA as the government department, public corporation, statutory body, institution, or authority, or any department or unit of such department, corporation, body, institution or authority designated by the Minister by Order published in the Gazette, which shall be charged with the administration of the provisions of the Act. The provisions of Section 15 thereof vest the F I U with powers and functions to serve as an independent authority to collect data relating to suspicious financial transactions to prevent, detect, investigate and prosecute of the offences of money laundering and the financing of terrorism, respectively. Although, the FIU is in housed at the Central Bank of Sri Lanka (hereinafter referred to as “CBSL”), the FIU functions as an independent autonomous body and relies on CBSL only for logistical and administrative purposes.”

The FIU further stated that it has and IO and DO appointed independently of the CBSL.

The Appellant in its submissions stated that the internal functioning of the two institutions is irrelevant as, at the time of making the request, CBSL was the only Public Authority and due request for information had been made.

Order:

The FIU has adduced sufficient material to establish the fact that the FIU is a Public Authority independent from the CBSL in view of the RTI Act. However, it is also evident by

the submissions made by both the FIU and CBSL that the FIU was not a Public Authority in terms of the RTI Act at the time the request was made. The FIU had assumed the role of being a Public Authority in respect of the information request and responded to the Appellant, when in fact the request was directed to the CBSL. CBSL is the Public Authority for all intents and purposes in respect of this Appeal to the Commission.

It is also made evident by submissions of both the FIU and the CBSL that the latter has no possession, custody and control over the information in terms of Section 3 of the RTI Act of the information requested. Hence, the substance of the information request need not be addressed in respect of this Appeal.

The Submission of the CBSL that it has no possession, custody or control over the requested information is noted of record and accepted by the Commission. The Appeal is hereby concluded.

This Order does not bar the Appellant from invoking the jurisdiction of the RTI Act in respect of the same matter/ information requested with regard to the FIU.

Order is 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).
