

**IN THE COURT OF APPEAL OF THE DEMOCRATIC
SOCIALIST REPUBLIC OF SRI LANKA**

In the matter of an appeal under and in terms of Section 34(1) of the Right to Information Act No. 12 of 2016, read with Court of Appeal (Appellate Procedure) Rules 1990 of the Constitution of the Democratic Socialist Republic of Sri Lanka.

Court of Appeal

Case No:

RTI/REV/0003/2018

The Monetary Board of the Central Bank of Sri Lanka,
Central Bank of Sri Lanka,
No. 30 Janadhipathi Mawatha,
Colombo 01

Public Authority-Petitioner

VS

1. Verite Research (Pvt) Ltd,
No. 5A, Police Park Place,
Colombo 05.

Appellant-Respondent

2. The Right to Information Commission
Room No. 203-204, BMICH,
Bauddhaloka Mawatha,
Colombo 07

Respondent

AND NOW BETWEEN

Central Bank of Sri Lanka
No. 30 Janadhipathi Mawatha
Colombo 01

**Substituted Public Authority-
Petitioner**

Vs

1. Verite Research (Pvt) Ltd,
No. 5A, Police Park Place,
Colombo 05.

Appellant-Respondent

2. The Right to Information Commission
Room No. 203-204, BMICH,
Buddhaloka Mawatha,
Colombo 07

Respondent

Before : R. Gurusinghe, J.
&
M.C.B.S. Morais, J.

Counsel : Dr. Kanag Isvaran, PC with Shivan Kanag Isvaran
instructed by Sudath Perera Associates
for the Substituted Public Authority-Petitioner

Dr. G. Gunatilleke with Oshan Fernando and
Avishka Jayaweera
for the Appellant-Respondent

Argued on : 28-01-2026

Decided on: 26-03-2026

JUDGMENT

R. Gurusinghe, J.

The Public Authority-petitioner (hereinafter referred to as “the petitioner”) is the Monetary Board of the Central Bank of Sri Lanka, incorporated under the Monetary Law Act No. 58 of 1949. During the pendency of this appeal before this Court, the Central Bank of Sri Lanka was incorporated under Act No. 16 of 2023, whereby the rights and obligations of the Monetary Board as

previously held under the Monetary Law Act are now vested in the Central Bank.

The petitioner is vested with certain powers and duties under Section 5 of the Employees' Provident Fund Act No. 15 of 1958 (EPF Act), in respect of the investment of the monies of the Fund that are not immediately required for the purpose of the Act, in such securities as the Monetary Board considers appropriate. The Employees Provident Fund (EPF) is the largest retirement savings fund in Sri Lanka, which holds assets exceeding Three Trillion rupees under its management. It administers a compulsory contributory retirement savings scheme for private and semi-government-sector employees, with an active membership of 2.8 million individuals.

In terms of the EPF Act, the general administration of the EPF is vested with the Commissioner General of Labour, while the petitioner is entrusted with custody of the monies of the said fund, and it is engaged in, *inter alia*, receiving contributions, undertaking investment activities, refunds and accounting maintenance. The EPF earns income principally from investment activities.

The appellant-respondent, Verite Research (Pvt) Ltd. (hereinafter referred to as the 1st respondent), claims, *inter alia*, that it provides services and conducts research programmes in the fields such as economics, policy, media, and law.

The 1st respondent submitted an application dated 15-05-2017 to the EPF Department of the Central Bank and another application dated 29-05-2017 to the Public Debt Department of the Central Bank of Sri Lanka, under Section 24 of the Right to Information Act No. 12 of 2016 (RTI Act), requesting to disclose several items of information from the petitioner. The application dated 29-05-2017 submitted to the Public Debt Department of the Central Bank of Sri Lanka was resolved between the petitioner and the 1st respondent before the RTI Commission.

The 1st respondent, by the aforesaid application dated 15-05-2017, requested the following information purportedly under the provisions of the RTI Act.

- 1) *Decision-making process for investment of EPF funds, including all committees and bodies involved approval process and structures, and any guidelines and rules to be followed. (If any of the formal structures and processes do not exist, give details of all alternative structures and process by which EPF funds are managed);*

- 2) *Any guidelines and rules that governs Investment Committee;*
- 3) *Names and designations of members of the Investment Committee;*
- 4) *Annual Report of the EPF Department from the years 2014, 2015 and 2016;*
- 5) *A list of the following assets held by EPF as at 30th April 2017*
 - (a) All government securities categorized by maturity period and yield to maturity.*
 - (b) All listed and unlisted equities (mentioning the name of the company, purchase cost and current market value)*
 - (c) All Rupee loans*
 - (d) All corporate debentures*
- 6) *A list of all government securities market transactions of the EPF from January 2015 to 30th April 2017, the list should include the following market activities;*
 - (a) Primary market transactions held through auctions;*
 - (b) Primary market transactions held through direct placement*
 - (c) Secondary market transactions*

Details of the transactions specified above should include the following information

- (a) Date of Purchase*
- (b) Date of bill/ bond issue (if different from the date of purchase)*
- (c) ISIN number of the bill/ bond*
- (d) Coupon rate of the bill/ bond*
- (e) The yield to maturity (net of taxes) of the bill/ bond*
- (f) Face value of the Bill/ Bond*
- (g) Purchase cost of the bill/ bond*
- (h) The price of each bill/ bond*
- (i) Counterparty (party with whom the transaction was held)*

In response to the said application, by letter dated 30-06-2017, the Deputy Governor, in his capacity as the Information Officer of the petitioner, decided to provide the 1st respondent with the information requested under items Nos. 1, 2 and 3 of the aforesaid and declined the grant of the requested information under the other items on the basis *inter alia*;

a) *Item No. 4 relates to the annual report of the EPF department from the years 2014, 2015 and 2016 and as at the date of the said letter, the progress of the annual reports is as follows:*

2014

The annual report has been printed and sent to the Commissioner General of Labour on 02-12-2016, for submission to Parliament. Once the Annual Report is submitted to Parliament, the EPF department will upload the same to the EPF website.

2015

The Annual Report has been finalised, and now it is in the printing process. It is expected to complete the printing and submit to the Commissioner General of Labour within one month's time.

2016

External Audit on financial statements of 2016 is being conducted by the Auditor General's Department. The Annual Report could be finalized only after receiving the external audit report 2016.

The petitioner, in response to the information requested under Item No. 5, stated that it could only provide the list of investments held by EPF as at 31-12-2016, as the investments as at 30-04-2017 were not available for disclosure, as they are provisional in nature and subject to audit.

The petitioner declined to disclose the information requested under Item No. 6, as such information falls within the exempted categories stipulated in section 5(1) of the RTI Act.

Thereafter, the 1st respondent made an appeal to the Designated Officer of the petitioner, - the Governor of the Central Bank of Sri Lanka, under and in terms of Section 31 of the RTI Act. By letter dated 07-09-2017, the Assistant Governor for and on behalf of the said Designated Officer, refused to provide the requested information and set out the reason for such refusal. A copy of the said letter is produced, marked P4.

Thereafter, the 1st respondent preferred an appeal to the Right to Information Commission under Section 32 of the RTI Act by a petition dated 23-11-2017. The said appeal was heard before the RTI Commission on several dates. The written submissions and the clarifications filed by the petitioner are produced marked P6 (A), P6 (B) and P6 (C). The written

submissions filed by the 1st respondent are produced marked P7 (A), P7 (B) and P7 (C).

The RTI Commission delivered the order on 27-11-2018, holding that Section 5(1)(a), 5(1)(d), 5(1)(h) and 5(1)(i) of the RTI Act had no relevance to the application and directed the disclosure of details relating to A, B, C, D, E, F and G of item 6 so far, as the said information pertains to the year 2015 and 2016. The said order of the RTI Commission is marked P8.

Accordingly, the petitioner was obliged to disclose the following information.

A list of all government securities market transactions of the EPF from January 2015 to 30th April 2017 should include the following market activities;

- Primary market transactions held through auctions;
- Primary market transactions held through direct placement
- Secondary market transactions

Details of the transactions specified above should include the following information

- A. Date of Purchase
- B. Date of bill/bond issue (if different from the date of purchase)
- C. ISIN number of the bill/bond
- D. Coupon rate of the bill/bond
- E. The yield to maturity (net of taxes) of the bill/bond
- F. Face value of the Bill/Bond
- G. Purchase cost of the bill/bond
- H. The Price of each bill/bond
- I. Counterparty (party with whom the transaction was held)

On behalf of the petitioner, it was submitted that the above-mentioned information in question constitutes commercial confidence. It was further submitted that divulging information pertaining to each and every transaction related to the EPF Fund would principally place the EPF Fund in a vulnerable position and would subject it to unfair treatment compared to other market competitors who do not disclose their investments to third parties. Such disclosure will materially harm the EPF's competitive position in the market as an active participant.

The RTI Commission decided that the petitioner has failed to demonstrate exactly how the disclosure of this information would adversely impact the competitiveness of the EPF in the market, or how it exactly falls within the ambit of Section 5(1)(d) of the RTI Act, and why such information would be regarded as market-sensitive.

The Primary Bond Market in Sri Lanka operates predominantly through a specialised primary dealer system, overseen by the Central Bank on behalf of the Government. The market functions by issuing Government Securities, i.e. Treasury Bonds and Treasury Bills, through a competitive bidding process. The Public Debt Department of CBSL manages the auctions, mainly allowing licensed Primary Dealers to submit bids.

Government bonds are sold through a tender basis, through primary auctions as per an issuance calendar. Currently, there are approximately twelve authorised primary dealers comprising of both licensed Commercial Banks and specialised firms. They are authorised to bid directly at primary auctions. The EPF, though not designated as a primary dealer, is permitted to bid in primary auctions. However, unlike the primary dealers, the EPF can purchase bonds or bills only on its own behalf.

According to the petitioner, the EPF is the largest fund, which accounts for approximately 50 per cent of the Government Treasury Bond market. The EPF is entitled to maintain accounts to hold Scripless Treasury Bills/Bonds to which the EPF has title and to record the interest of the EPF in the Scripless Treasury Bills/Bonds.

Exemption under Section 5 (1) d of the RTI Act

5. (1) Subject to the provisions of subsection (2), a request under this Act for access to information shall be refused, where –

(d) Information, including commercial confidence, trade secrets or intellectual property, protected under the Intellectual Property Act, No. 36 of 2003, the disclosure of which would harm the competitive position of a third party, unless the public authority is satisfied that larger public interest warrants the disclosure of such information;

The petitioner stated that, pursuant to the above said mandate, it declined to disclose details relating to A, B, C, D, E, F, G, H, and I of item 6 on the

grounds that such information constitutes commercial confidence, and its disclosure would harm the competitive position of a third party, namely the EPF.

During the course of oral submissions, the 1st respondent took up the position that the scope of Section 5(1)(d) of the RTI Act exempts only the information protected under the Intellectual Property Act. No. 36 of 2003.

Section 5 (1) (d) of the RTI Act does not state that information protected under the Intellectual Property Act No. 36 of 2003 is exempt. Instead, it specifies that “Information, the disclosure would harm the competitive position of a third party,” is exempted. The use of the term 'including' within the provision is broad and illustrative, generally expanding the scope to cover items not otherwise within its natural meaning. Therefore, information such as commercial confidence, trade secrets, and intellectual property—protected under the Intellectual Property Act No. 36 of 2003, would properly fall within the ambit of this subsection.

The argument of the 1st respondent is that Section 5(1)(d) only exempts information protected solely under the Intellectual Property Act No. 36 of 2003, which cannot be accepted as correct interpretation. *From my perspective, this sub-section exempts not only information protected under the Intellectual Property Act, but also has a broader meaning that encompasses other categories of information as well.* If the respondent’s contention is correct, Section 5(1)(d) of the Act should have read: “information protected under the Intellectual Property Act is exempted.”

It is the statutory duty and obligation of the petitioner to safeguard the competitive position of the fund, which the petitioner is empowered and statutorily bound to invest under Section 5 of the EPF Act. The Treasury Bills/Bonds are considered a more secure investment option.

Disclosing the EPF’s past bid rates, spreads, and allocation of funds for various International Securities Identification Numbers (ISINs) at primary auctions would provide crucial information to a skilled trader. This information could be used to speculate on the EPF's bidding strategy, including preferred tenors among issuances, fund allocation, ISINs, bid rates compared to prevailing market rates, and to outbid the EPF at future primary auctions. Consequently, the trader could profit by selling those treasury bonds to the EPF at a later date.

Information regarding the EPF’s participation in primary auctions will reveal the EPF’s preferred category of Treasury Bonds (the preferred tenor) and may provide an opportunity for individuals or organisations to compare the EPF’s

bids submitted at the auction with market quotes for the same bonds published in newspapers or quoted by brokers. This can disclose vital information about the EPF's bidding patterns, in relation to yield rates published publicly or available through brokers. Therefore, such information qualifies as confidential commercial information within the meaning of Section 5 (1) (d) of the RTI Act.

In a Treasury Bond auction, each participant aims to outbid others by offering the most competitive rates while safe guarding their investment. If another market participant outbids the EPF, having analysed the EPF's bidding patterns based on the information requested by the 1st respondent, and is required to disclose this in every future auction, the EPF's bids risk being rejected, which could disqualify it from primary auctions. This would result in the EPF losing a fair playing field.

In such circumstances, the EPF would be compelled to hold the excess funds until the next primary auction date by investing in the overnight or short-term money market, thereby earning a lower return during the rollover period, to the detriment of its members.

Furthermore, the auction bidding details of the other competitive bidders are not accessible to the EPF. However, if the bidding information of the EPF were disclosed, as requested under item 6 of the Appeal of the 1st respondent, it could provide an unfair advantage to the other dealers at the expense of the members of the EPF.

Disclosing details of each and every individuals EPF transactions, would expose the EPF to vulnerability and subject it to unfair treatment compared to other market competitors, who do not reveal their investments to third parties. Such a disclosure would directly undermine the EPF's competitive position in the market.

Moreover, if the market becomes aware that the EPF has required disclosure of transaction information to third parties, whereas other participants are not subject to a similar requirement, the EPF will be placed at a distinct disadvantage. Parties may then be reluctant to engage in transactions with the EPF and might instead prefer other competitors who are not obliged to disclose their information to the EPF. This could ultimately bring an adverse impact on the fund's membership.

Compared to the harm that would be suffered by the EPF and its millions of members by revealing the information sought by the 1st respondent, one cannot reasonably argue that a greater public interest would justify such disclosure.

The decision of the Right to Information Commission was primarily based on the finding that the Petitioner failed to demonstrate how this particular information affects the competitiveness of the EPF in the market or how it falls within the ambit of Section 5(1)(d) of the RTI Act. The RTI Commission held, *inter alia*, the following:

*“having considered the submissions of both parties it appears that although the PA has repeatedly claimed that the information is market sensitive and false within the protection of Section 5 (1) (d) of the RTI Act, it has failed to demonstrate **exactly** how (**emphasis is ours**) this information impacts on the competitiveness of the EPF in the market or rather how it falls within Section 5 (1) (d) (para 5 of page 9 of the Order).*

*Analysing the responses of the PA to these questions it is evident that although the PA pleads that information disclosure will enable anyone to identify the position of the EPF, it has failed to demonstrate as to **how** (**emphasis is ours**), the identification of the position of the EPF in the market in terms of percentage holding of the security would affect its competitiveness in the market, especially when EPF is, as stated by the PA, the dominant player.”*

This Court considers that the petitioner has provided sufficient reasoning, as outlined above, to justify its refusal, under Section 5(1)(d) of the RTI Act, to disclose the information requested by the 1st respondent.

Further, the Central Bank annually prepares an investment statement for each investment, including its face value, purchase cost, market price, and market value. Section 5 (1) (h) and (i) of the EPF Act is as follows:

5 (1) The Monetary Board –

(h) shall cause to be prepared in respect of the Fund for each year, a statement of receipts and payments, a statement of assets and liabilities and a statement of income and expenditure, a statement of investment showing the face value, purchase price, and market value of each of the investment;

(i) shall transmit to the Minister a copy of each of the statements prepared under the preceding paragraph (h) for each year within three months after the 31st day of December of that year;

The above-mentioned procedure facilitates the disclosure of investment details and provides a mechanism to promote transparency regarding the

operations of EPF. It is to be emphasised that the legislature thought it fit to disclose information limited to the aforesaid and not any further.

Furthermore, in respect of sections 5 and 6 of the EPF Act, EPF activities are subject to scrutiny by the Auditor General and Parliament. Section 6 of the EPF Act reads as follows:

6. (1) The accounts of the Fund in respect of each year shall be audited by the Auditor General, and the cost of the audit shall be paid to him out of the Fund. All payments made to him under this subsection shall be credited to the Consolidated Fund.
- (2) The Auditor-General or any officer of his department authorised by him to audit the accounts of the Fund shall have access to all such books and documents as the Auditor-General or such officer may consider necessary for the purposes of the audit of such accounts, and shall be furnished by the Monetary Board and the Commissioner with such information within their knowledge or ascertainable by them as may be required for such purposes.
- (3) The Auditor-General shall examine the accounts of the Fund and submit to the Minister annually a report
 - (a) stating whether he has or has not obtained all the information required by him,
 - (b) stating whether the accounts referred to in the report are properly drawn up so as to exhibit a true and fair view of the affairs of the Fund, and
 - (c) drawing attention to any item in such accounts which in his opinion may be of interest to Parliament in any examination of such accounts.

Such report shall not disclose the name of any member of the Fund.

- (4) The Minister shall lay before Parliament a copy of the Auditor-General's report submitted to the Minister under subsection (3) of this section and copies of the statements transmitted to the Minister by the Monetary Board under paragraph (i) of section 5(1).

Disclosing any material with regard to each individual transaction during a particular period of time to any third party would amount to a violation of the petitioner's fiduciary obligation owing to the members of the EPF, as well as the investors and would cause harm to the competitive position of the EPF in the market.

On behalf of the 1st respondent, it was argued that disclosing the total aggregate value of the investments would be of limited use in assessing the suitability of the investment decision. It was further submitted that interpreting section 5(1)(h) of the EPF Act as suggested by the Public Authority would negate the object and purpose of the section. According to Section 5(1)(h) of the EPF Act, there is no obligation on the petitioner to provide details of every individual transaction. The statutory language refers to 'each of the investments' and not 'each of the transactions'. It must be noted that an investment may comprise several transactions. The RTI Commission observed in their order in this regard as follows:

*“In that regard, commission notes the salutary disclosure requirement as contained in Section 5 (1) (h) of the EPF Act, where no clear mandates preparation in respect of the Fund for each year, a statement of receipts and payments, a statement of income and expenditure, a statement of assets and liabilities, and a statement of investments showing the face value, purchase price, and market value of **each of the investments** (emphasis is ours). This we take to mean each investment in security.*

The disclosure provisions of the EPF Act suggest disclosure of information of EPF activities are in the large public interest.

We note that, section 32 (4) of the RTI Act states that ‘on appeal, the burden of proof shall be on the Public Authority to show that it acted in compliance with this Act in processing a request.’ This duty is even more onerous where Section 5 (1) (d) of the Act is claimed as an exemption to release information (as the Public Authority has done) as public interest test is contained inherently in those exemptions itself as well as in the general override in Section 5 (1)(4). (Vide Order dated 16-03-2018). We do not find this burden has been satisfied.”

As we noted previously, the scope of disclosure of investment details to promote transparency regarding the EPF is limited to Section 5(1)(h) of the EPF Act. The 1st respondent argued that information should not be withheld where the public interest in its disclosure outweighs the potential harm from releasing it. However, the 1st respondent has not demonstrated that the

public interest in disclosure surpasses the interest of the members of the EPF Fund. Therefore, this Court cannot accept that there is an overriding public interest in disclosing the requested information.

Section 15 (e) of the Right to Information Act is as follows:

15. “For the purpose of performing its duty and discharging its functions under this Act, commission shall power –

e) To direct the public Authority to publish any information withheld by a public Authority from the public, subject to the provisions of section 5;”

The RTI Commission has the authority to direct the Public Authority to publish any information subject to the provisions of Section 5 of the RTI Act. In this case, the information sought by the 1st respondent, as previously explained, falls under Section 5(1)(d) of the RTI Act. Therefore, the RTI Commission does not have the power to direct the Public Authority to disclose such information.

For the reasons outlined in this judgment, this court decides that the RTI Commission has exceeded the scope of its powers under the RTI Act and has overridden the statutory exemption of Section 5(1)(d) of the RTI Act. The RTI Commission erred in determining that the public interest in disclosing the information outweighs the harm that would result from its disclosure.

Therefore, we set aside the Order delivered by the Right to Information Commission dated 27-11-2018 marked P8 and allow the appeal.

Judge of the Court of Appeal.

M.C.B.S. Morais, J.

I agree.

Judge of the Court of Appeal.