

The Right to Information Commission

Gamini Karunaratne
No.3F-1, Prime Residencies,
Parakum Mawatha, Ranala Road,
Habarakada

-Appellant-

RTIC Appeal No:- 851/2022

Vs.

Information & Communication
Technology Agency of Sri Lanka
(ICTA),
No.490, R A De Mel Mawatha,
Colombo-03.

-Public Authority-

Before : 1. Justice Upaly Abeyrathne (Rtd.) - Chairman
2. Justice Rohini Walgama (Rtd.) - Commissioner
3. Ms. Kishali Pinto-Jayawardena (Attorney-at-Law)- Commissioner
4. Mr. Jagath Liyana Arachchi (Attorney-at-Law) - Commissioner
5. Mr. A.M Nahiya - Commissioner

Appearance : The Appellant is present

The Public Authority is represented by Mr. Lochan Wijeratne,
Manager Project Reporting

Written Submission: Appellant : 26.11.2022
Public Authority: 03.11.2022 & 06.12.2022

Date of Hearing : 16.11.2022 & 18.01.2023

Decided on : 27.04.2023

Decision of the Commission

Factual Background

By Information Request dated 03.07.2021, the Appellant requested the below information;

- “i) Total number of staff of ICTA as at 2019.06.30 with their names, date of joining, designations, basic salary, allowances*
- ii) Total number of staff of ICTA as at 2019.07.01 with their names, designations, basic salary, allowances*
- iii) Total number of staff of ICTA as at 2020.01.01 with their names, date of joining, designations, basic salary, allowances*
- iv) Total number of staff of ICTA as at 2021.01.01 with their names, date of joining, designations, basic salary and allowances*
- v) Total number of staff of ICTA as at 2021.07.03 with their names, designations, date of joining, basic salary, allowances*
- vi) Current organizational chart as at 2021.07.03 related to Human Resources*
- vii) Names of consultants engaged by ICTA who are currently in service as at 2021.07.03, their remuneration and allowances.”*

As the Information Officer (IO) failed to respond within the time period stipulated in the Act, the Appellant preferred an appeal to the Designated Officer (DO) on 03.08.2021. The Appellant pleaded that, a response giving a website link for the said information was belatedly received from the IO on that same date (ie; 03.08.2021) by electronic mail but that response was ‘incomplete, misleading and false’ (vide appeal to the RTI Commission dated 06.06.2022 as hereinafter stated).

As the DO too failed to respond within the time period stipulated in the Act, the Appellant preferred the present Appeal to the Commission on 06.06.2022 on the basis that the IO and the DO ‘did not adhere to the terms and conditions of the RTI Act and seems to ignore them’ (vide appeal to the RTI Commission dated 06.06.2022).

In response to the Notice issued by the Commission, the Public Authority (PA) submitted a statement of Objections dated 03.11.2022 to the Commission, *stating inter alia*, that,

- *The Appellant is a former employee of the PA and has concomitantly filed a case in the Labour Tribunal (LT/IADD/56/2019) seeking relief in relation to the discontinuation of his employment at the PA.*
- *On 3rd August 2021, the IO responded to the aforesaid information request via email and stated that the ‘documents related to salary details of ICTA staff’ can be found on the PA’s website, which includes designations of staff and subsequent salary slabs. The said information can be found at <https://www.icta.lk/icta-assets/uploads/2021/07/imgals-1.jpg>.*

- *the Appellant failed to comply with the provisions of section 32(1) of the Act and has sought to resubmit his appeal to the DO at a later point in time (approximately nine months later) in an attempt to circumvent the provisions of the Act.*
- *The PA is bound by a statutory obligation under Section 5(1)(a) of the Act to deny the information request insofar as it relates to the personal information of employees of the PA.*
- *The information requested, particularly in terms of the timeframes specified in the request, has a direct bearing on the aforesaid case No.LT/IADD/56/2019. The disclosure of such information can potentially prejudice the proceedings before the Labour Tribunal and the evidence currently being led before the Tribunal.*
- *In this context, the PA is of the view that apportions of the information requested (i.e., the information on names, date of joining, designation, basic salary, and allowances of the staff employed by ICTA) potentially falls within the exception found in section 5(1)(j) of the Act, which exempts information the disclosure of which may be prejudicial to the maintenance of the authority and impartiality of the judiciary.*
- *..... upon receiving legal advice on the matter, the PA is prepared, in terms of Section 6 of the Act, to release information on salaries and allowances pertaining to all staff categories in a manner that does not disclose the names of employees, thereby avoiding an unwarranted invasion of the privacy of any individual employee.*
- *The PA is also prepared to release the information requested with respect to the names of consultants and the organizational charts of the PA and is currently preparing such information to be released to the Appellant.*

The Public Authority also submitted a Written Submission to the Commission on 03.11.2022 stating *inter alia* that the public interest will not be served by the disclosure of such personal information of all employees of the Public Authority. The PA further submitted that the requested information concerns personal information and it is incumbent on the Appellant to establish a bona fide case that the disclosure of the information would serve the ‘public interest’ (vide *Girish Ramchandra Deshpande vs. Central Information Commissioner & Ors.*, (2013) 1 SCC 212) which the Appellant has failed to establish.

By their Written Submissions, The Public Authority reiterated their position taken up in the statement of objection, that a portion of the information requested (i.e., the information on names, date of joining, designation, basic salary, and allowances of the staff employed by ICTA) potentially falls within the exception found in section 5(1)(j) of the Act.

At the hearing on 16.11.2022, the Public Authority raised preliminary objections on the basis that the Appellant has not preferred this appeal within the prescribed time period under Section 32 of the Act. The Appellant moved for a date to file his written submissions.

Accordingly, the Appellant filed his submissions via email dated 26.11.2022 stating that RTI 02 was submitted to the IO of ICTA on 2021.07.04 by email and an acknowledgment was received from ICTA on his request on 2021.07.08 assigning Registration No: ICTA/RTI/July/2021/58 for the request. He further stated that about 29 days after the request, he received an email from the Information Officer of ICTA instructing him to refer to the ICTA website for the information requested by him without providing the information requested under the RTI Act. However, the Appellant contended that such information was not available for him to access on ICTA Website and also that the information requested was not available in the email dated 11.08.2021 sent by the Information Officer of ICTA.

He further contends that he sent another appeal to the DO of the ICTA on 2022.05.30 by email but no response was received from the DO of the ICTA and he has been waiting for a long period of time to obtain the information requested from ICTA under RTI Act since there was Covid 19 pandemic and other stressful circumstances beyond the control of citizens and officials, he waited for a long time hoping he would receive the requested information. Therefore, he stated that the ICTA is also grossly at fault for non-adherence to the RTI Act.

In response to the submissions made by the appellant, the Public Authority has filed its further submissions on 26.11.2022 stating that they were not aware of any issues with respect to accessing the above-mentioned webpage and the email dated 11.08.2021 sent by the Information Officer was with respect to other information requests by the Appellant and does not pertain to the present Appeal.

Further to the above the PA has contended its position regarding the submissions made by the Appellant as follows:

- In the submission of the Appellant, he has not referred to his appeal to the Designated Officer of the Public Authority dated 03.08.2021. The said appeal is in fact referenced in his appeal to the Commission.
- The Designated Officer at the time does not appear to have responded to the said appeal. In his appeal, however, the Appellant has referred to a decision by the Designated Officer dated 11.08.2021. The Public Authority has no record of such a decision and, in good faith, maintains that it may be presumed that the Designated Officer failed to respond to the Appellant.
- The Appellant filed a purported appeal dated 30.05.2022 and in his submission, he refers to the facts that the said purported appeal is submitting 'on his lawyer's advice', and admits that the said appeal is another appeal.

Accordingly, the Public Authority reiterated its position that the Appellant failed to act in conformity with Section 32 (1) (b) of the RTI Act, and the Appellant has delayed by more than seven months in filing the present Appeal and has not provided reasons that explain the reason for such delay or how such reasons, if any, were beyond his control.

Consideration

The Appellant's initial information request dated 03.07. 2021 was responded to by the IO of the Public Authority on 03. 08. 2021, furnishing a website link in answer thereof; <https://www.icta.lk/icta-assets/uploads/2021/07/imgals-1.jpg>

Scrutiny of the information provided on this link containing the upload of information (which was in response to the decision of this Commission in a previous unconnected appeal, *W. K. W. Deshapriya v Information and Communication Technology Agency (ICTA) RTIC Appeal 169/2021*, the decision of 02.03.2021) indicates that though a portion of the Appellant's information request is responded to thereby, a significant part of that request is not satisfied thereto.

The Public Authority's upload specifically states the date thereof as 11.05. 2021 and contains details of the Public Authority's salary scales in relation to its job positions, the designations and the range of payments thereto, with minimum and maximum amounts indicated. In contrast, the current information request in regard to which an appeal has been filed to this Commission under Section 32 of the Right to Information Act, No 12 of 2016 (RTI Act), asks for information regarding the staff of the Public Authority in items i) to iv) relating to various dates in 2019 and as at 01.01. 2021, categorised not only by designations and by basic salary but also by names, dates of joining and allowances.

In item v), the Appellant has asked for the abovestated details as at 03.07. 2021 which is a date subsequent to the date of the aforesaid website upload by the Public Authority (viz; 11.05.2021) and hence, cannot be satisfied by the information uploaded thereby. The non-satisfactory nature of the link provided applies equally to the information requested in items vi) and vii) which pertains respectively to the organizational chart of the Public Authority as at 03.07.2021 and names of consultants, remuneration and allowances as at that same date. None of this information is disclosed in the abovestated link.

In that context, we determine that the initial response dated 03.08. 2021 of the IO of the Public Authority to the instant information request is unsatisfactory and not in conformity with the duties and obligations imposed upon IOs by the RTI Act. By not responding to the appeal filed to him on 03.08. 2021, the DO also did not act according to the mandatory duties imposed upon him/her under Section 31 of the RTI Act. Though the Public Authority has attempted to excuse this default by stating that, this was due to 'operational challenges' at the Public Authority during that time due to a 'high turnover' (vide paragraph 6 of the Written Submissions dated 03. 11.2022), this is not an explanation that can be accepted by this Commission on the spirit and the letter of the RTI Act.

In the foregoing, we are of the view that the aforesaid actions by the IO/failure to act by the DO constitutes a distinct failure of legal obligations imposed on IOs and DOs under the RTI Act by the Public Authority. We draw the attention of the Public Authority to the fact that, failures in this regard may attract the application of criminal liability in terms of Section 39 of the RTI Act, compelling the Commission to institute criminal proceedings in the Magistrate's Court against 'every person' as stated in that Section.

On the facts before us in this appeal, it is apparent that the Appellant has sent several emails and requests to the Public Authority on his grievance. The Public Authority has taken issue with the fact that, the Appellant had submitted another appeal to the DO nine months after his request and appeal to the DO which is alleged to be ‘an attempt to circumvent the provisions of the Act’ (vide paragraph 10 of the Written Submissions dated 03. 11.2022). The Appellant has stated that, this was because the DO had failed to answer to his earlier appeal, which failure, the Public Authority admits.

We are of the view that, in the circumstances of the DO’s failure to respond as aforesaid, it is not open to the Public Authority to take the high ground and seek to impugn the Appellant’s action in writing again to the DO. In the implementation of this Act, it is the bounden duty of Public Authorities to take care to follow the procedures laid down in the Act to the letter, particularly as close to seven years have now passed since its enactment. To complain of the Appellant’s actions to filing another appeal to the DO on 30.05.2022, the Public Authority must have ‘clean hands’ as may be said, which is not demonstrated on the facts of this appeal.

The Public Authority has taken pains to raise the objection that, the Appellant should have established before this Commission that, he was ‘prevented by a reason beyond his or her control’ in filing an appeal under Section 32 (vide also Further Written Submissions dated 06.12.2022).

On the sequence of events set out by the Appellant (vide electronic communication of the Appellant dated 26.11.2022), he has referred to ‘another email’ sent by the IO on 11.08. 2021 which the Public Authority has contended, relates to other information requests sent by him. It is evident that a certain degree of confusion prevails on the part of the Appellant in his communications with the Public Authority. However, given the failure of the DO to respond in the first instance, it is our view that such confusion is understandable and cannot be taken to his disadvantage. The Appellant has also pleaded the prevalence of the Covid-19 global pandemic at the time and “other stressful circumstances” as reasons for the delay.

Consequently, notwithstanding the fact that the Appellant filed this Appeal to the Commission on 06.06.2022 after the time period stipulated in Section 32 (1) had lapsed, we are of the view that the totality of facts and circumstances evidenced before us, bring the appeal within the ambit of Section 32(2). We are cognisant of the duty laid upon this Commission by the Act not to be overly technical in accepting appeals filed before us.

On the substantive grounds that were put forward to resist the release of the information asked for, the Public Authority has claimed that the information have a ‘direct bearing’ on a case, LT/1ADD/56/2019 and the evidence being led before the Labour Tribunal, thus attracting the application of Section 5(1)(j).

However, the information in issue pertains to general institutional information which should, in any event, be made public by the Public Authority. As aforesaid, this was clearly stated by this Commission in a previous decision against the Public Authority, vide; *W. K. W. Deshapriya v Information and Communication Technology Agency (ICTA) RTIC Appeal 169/2021*, the decision of 02.03.2021). In *Airline Pilots Guild of Sri Lanka v. Sri Lankan Airlines Ltd* (RTIC Appeal (In-Person) /99/2017, decision dated 12th June, 2018), this

Commission ruled that information pertaining to salaries and other allowances and/or benefits of the senior executive management of the PA is not 'personal information and that the details thereof must be disclosed. We cannot accept the contention of the Public Authority that the information requested in the abovestated appeal RTIC No/99/2017 is different to the instant appeal. Both relate to the institutional details of employees of the respective Public Authorities in regard to which, secrecy should not arise.

In India, the Central Information Commission (CIC) has held that,

'The salary paid to the public servant by the public authority is sourced from the tax paid by the people in general. The scale of salary is also fixed by the Public Authority based on certain reasonable fixation in an open exercise by Pay Revision Commissions which later would be generally approved by the Government, which is the representative of the people. Thus, the information belongs to (the) public and they have a right to access it as per (the) RTI Act. It has to be disclosed under Section 4 voluntarily by the Public Authority and if a member of public seeks it, it cannot be denied.'

Jyoti Seherawat vs Home (General) Dept., GNCTD(7 January, 2014)

The line of authorities supporting this view is contra the Public Authority's citation of *Girish Ramchandra Deshpande v Central Information Commission* (Order dated 03.10.2012) in support of its refusal to release the information asked for.

Further, we are unable to comprehend as to how and in what manner such information can have a 'prejudicial impact' on the maintenance of the authority and impartiality of the judiciary in terms of Section 5(1)(j) and rule that objection to be inapplicable to the release of the information. The fact that the Appellant has been an employee of the Public Authority and has filed a case before the Labour Tribunal cannot be construed in such a manner as to deprive of his legitimate right to information under the RTI Act.

In view of the foregoing, we do not think it is necessary to examine the question of the applicability of Article 170 of the Constitution in the context of this information request as adverted to by the Public Authority, nor does this question fall within the statutory competence of this Commission.

Section 32 (4) of the RTI Act stipulates that the Public Authority must discharge the burden of proof to establish that it has acted in compliance with the Act in 'processing a request.' Section 5(1) outlines the grounds under which information may be refused. The Public Authority must also establish under Section 5(4), that it had addressed its mind to the fact that, 'a request for information shall not be refused where the public interest in disclosing the information outweighs the harm that would result from its disclosure.'

We also do not agree with the position of the Public Authority that it is incumbent upon the Appellant to demonstrate the Public Interest in asking for the information in the first instance. No such condition is prescribed by the RTI Act. This Commission cannot superimpose conditions on the provisions of the RTI Act that restrict a citizen's right of access to information in terms of Section 3(1) of the Act.

We have carefully perused the several Written Submissions and taken into account, the submissions made by both parties at oral hearings of this appeal. We cannot see these burdens being satisfied by the Public Authority on the facts of this Appeal. There is a high degree of public interest in the transparent and accountable working of entities such as the Public Authority which concern has not been addressed by the IO or the DO in their responses/ non-responses to the appeal.

Although the Public Authority has stated (vide paragraphs 24 and 25 of the Written Submissions dated 03.11.2022) that it would release a portion of the information requested in this appeal, the record does not indicate the formal release of the same.

Consequently, we decide that the Public Authority should release the said information requested by the Appellant before 24.05.2023.

The Commission further decides that, if the Public Authority fails to comply with the said decision of the Commission before the said date, the Information Officer and the Public Authority shall be prosecuted before the relevant Magistrate's Court under Section 39 of the Right to Information Act No.12 of 2016.

For the completeness of this decision, we place on record that, in terms of Rule No. 11 of Right to Information Commission Rules of 2017, the Public Authority is not entitled to charge any fee from a citizen for the release of the information upon a decision made by this Commission.

The Director General is directed to convey the decision to the Appellant, the Information Officer and the Public Authority.

Appeal Concluded.