The Right to Information Commission

Erandin Jayasooriya,
No. 217,
Akuregoda Road,
Palawatta,
Battaramulla.

-Appellant-

RTIC/Appeal/882/2023

Vs.

Presidential Secretariat,
Galle Face,
Colombo 01.

-Public Authority-

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

Appearance **:** The Appellant participated via Zoom Technology

The Public Authority represented by Mr. L.G Hector, Legal Officer

Written Submissions : The Appellant - Not submitted

The Public Authority- Not submitted

Date of Hearing **:** 07.12.2023, 31.01.2024, 16.02.2024

Decided on **:** 01.08.2024

Decision of the Commission

Brief Factual Background

The Appellant had by request dated 21.02.2023 requested the following information;

"...I write to you to request some information regarding the historical exercise of the presidential pardon power under Article 34 of the Constitution. I wish this email to formally be acknowledged as a separate Right to Information request under Section 3 and 24 of the

Right to Information Act No.12 of 2016. I hereby request ***a full list*** *of pardons/ substitution/ remissions/ respites/ 'special pardons'/ 'amnesties' granted by all Sri Lanka Presidents since the 7th of September 1978, and until the 6th of February 2023, with the following details presented in tabular form:*

- *Name (full or with initials) of the recipient of the grant*
- *Offence or offences for which conviction was secured (whether its common name or the specific offence in a statute/ the Constitution)*
- *Date/ Year of conviction*
- *Date/ Year of Grant*
- *Type of the grant*
    - *Constitution- Article 34 (1) (a) 'pardon' OR (b) 'respite' OR (c) 'substitution' OR (d) 'remission'*
    - *'Special pardon' OR 'amnesty'*
- *Whether any conditions were attached to the grant, and if so, what they were*
- *Whether grant has been revoked, and if so, reason(s) why*

The table may resemble the following example (the cases I have used are ***fictitious****) :*

Name of Recipient	*Offence(s)*	*Year of Conviction*	*Year of Grant*	*Type of grant*	*Any Conditions*	*Revoked (yes/No)+ reason*
Jeewantha Suresh Jayasooriya	*Contempt of Court (or Art.105 (3) of the Constitution of Sri Lanka)*	*1996*	*1997*	*Article 34 (1) (d) 'remission' (or 'amnesty')*	*No*	*No*
Gombaragodage Saman Danushka De Silva	*Murder (or s.294 of the Penal code)*	*2005*	*2012*	*Article 34 (1) (a) 'pardon' (or special Pardon)*	*Yes* *Conditional on the respect for privacy of the victim's family*	*Yes* *The offender did not respect the privacy of the victim's family*
Elapathage Malani Sewwandi	*Theft (or s.366 of the Penal Code)*	*2016*	*2017*	*Article 34 (1) (a) 'pardon' (or special pardon)*	*No*	*No*
x	*x*	*x*	*x*	*x*	*x*	*x*

The Information Officer (IO) by letter dated 22.03.2023 responded as follows;

> *"…. 02. It is regretted to inform you that information required by your letter bearing Registration No.PS/RTI/01/2023/39 pertaining to the period from 1978 is not available at the Presidential Secretariat.*
>
> *03. you are further informed that, due to the following reasons, the Presidential Secretariat has to reject providing information on the persons granted presidential pardon as per your enquiry raised by the request bearing Registration No.PS/RTI/01/2023/40.*
>
> - *As per the Section 5 (1) (a) of the Right to Information Act No.12 of 2016, information relating to the persons who have received Presidential pardon falls into the personal information.*
>
> - *Since it has been observed that Court cases have been filed by various parties against the granting of the Presidential pardon to some of the persons who have received presidential pardon so far, and the said cases have currently being proceeded in the courts, such information cannot be provided under Section 5 (1) (j) of the Right to Information Act No.12 of 2016."*

Dissatisfied with the response of the IO the Appellant lodged an appeal dated 04.04.2023 with the Designated Officer (DO) on the grounds *interalia* that, the information requested are a 'matter of public record' and that there is a larger public interest relevant thereto.

The DO by letter dated 12.06.2023 responded as follows;

> *"…02. You are kindly informed of the decision of the Designated Officer as per Section 31 (3) of the Right to Information Act No.12 of 2016 that the Designated Officer has declined to provide the requested information, since the particulars you have requested through your appeal (registration No: PS/RTIA/4/2023/12) are considered to be personal information in terms of Section 5 (1) (a) of the Right to Information Act No.12 of 2016."*

Being aggrieved with the decision of the DO, the Appellant preferred an appeal dated 31.07.2023 to the Right to Information Commission (RTI Commission)

On 31.01.2024 on an application made by the Public Authority, the hearing was re-fixed for 16.02.2024 at 2.30 pm. Furthermore, the PA responded by letter dated 02.02 2024, stating the following: *"…. In addition to my letter dated 12.06.2023 on the above, kindly be informed that this office is not maintaining the requested information in the format (tabular form) that you have referred to in your request dated 21.02.2023."*

On 16.02.2024 is noted as follows: It is recorded that both parties presented their facts, the appeal hearing was concluded and that the RTI Commission's decision will be rendered on 09.04.2024 at 2.00 pm.

Consideration

In this appeal, the Appellant requested several items of information through information request dated 21..02.2023 relating to *interalia,* a **full list** of 'pardons/substitutions/remissions/ respites/special pardons/amnesties' granted by **all** Sri Lankan Presidents since 7th of September 1978 – 6th February 2023 (emphasis ours).

At the outset, it is noted that Section 3(1) of the RTI Act confers the right to every citizen to have access to information in the 'possession, custody or control' of a public authority. As has been previously emphasized repeatedly by this Commission, that Section does not impose a duty on any public authority to enter into an exhaustive task of collecting, compiling and categorizing information even though the information requestor is enabled by way of Section 25 (5) (b) read with Section 27 (1) together with RTI Form No 01 (RTI Regulations, Gazette No. 2004/66, 03.02.2017, as amended), to specify the 'nature of the form and language in which the citizen 'prefers' access.' (quotation marks, ours).

While the relevant Section gives the choice to the citizen making the information request to 'prefer' the manner in which the information may be released (or for that matter, the language in which it is so released), that choice is subject to the primary reading of Section 3(1) as aforesaid which mandates the release of information in 'the 'possession, custody or control' of a public authority.' In other words, as stipulated in RTI Regulation 04 (7), citizens should not expect public authorities to venture beyond their duties and 'collect information' except as provided in that same Regulation, where a public authority may show a 'reasonable effort' to 'produce' the information from records held by that public authority.

We are cognizant of the huge volume of information asked for by the appellant in this instance as well as the fact that he has asked for a 'full list' of pardons/substitutions/remissions/ respites/special pardons/amnesties' by all Sri Lankan Presidents since 7th of September 1978 – 6th February 2023. In a connected appeal (RTIC 881/2023, decision of the Commission on 31.01.2024), the appellant had asked for statistics pertaining to the exercise of presidential pardon power under Article 34 of the Constitution since 1978 to 06.02.2023 and had been [provided with certain information relating to presidential pardons granted during the periods 2019-2023. In relation that appeal, the public authority informed the Commission that 'there is no other information in its possession, custody or control' which position was recorded as such in the absence of any countervailing evidence and the appeal concluded.

In this appeal, we observe that the Information Officer has rejected the information request in issue on three grounds;

a) Relevant information is not available at the Presidential Secretariat.

b) As per Section 5 (1) (a) of the Right to Information Act No.12 of 2016, information relating to the persons who have received Presidential pardon falls into (*sic*) the category of 'personal information.'

c) Since it has been observed that Court cases have been filed by various parties against the granting of the Presidential pardon to some of the persons who have received

presidential pardon so far, and the said cases (*sic)* are currently being proceeded in the courts, such information cannot be provided under Section 5 (1) (j) of the RTI Act.."

In regard to grounds b) and c), we find that the public authority in question has not discharged the burden of proof under Section 32 (4) of the RTI Act 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. Regulation No. 09 of 'Regulations promulgated under the RTI Act (Gazette No. 2004/66, 03.02.2017)' imposes a duty upon the Information Officer not only to specify the exact clause in Section 5 that is being relied on to refuse the information but also, give 'detailed reasons for rejecting the request.'

The public authority has not specified in what manner the requested information amounts to 'personal information' or detailed the court cases filed by 'various parties' which poses an obstacle under Section 5(1) subsections (a) and (j) of the RTI Act, in the assessment of the Public Authority, to providing the information in issue. Where the application of Section 5(1)(a) is concerned, we are inclined to agree with the appellant that the information requested therein are matters of public record to which a considerable degree of public interest attaches and do not constitute 'personal information' within the meaning of that term. As such, we cannot find a basis on which that subsection will operate to deny the information in question. In that regard, we direct the attention of the Public Authority to Section 5(4), which states 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.'

In respect of the application of Section 5)(1) (j), the public authority has failed to specify the 'court cases' that are referred to as aforesaid and accordingly has failed to adhere to the RTI Act and Regulation 09. Consequently we are unable to accept that ground as a reason to deny the information requested. It must be reminded that the right of access to information which the Appellant claims, arises under and in terms of Article 14A of the Constitution, as 'provided by law' through the several provisions of the Right to Information Act, No. 12 of 2016 (the RTI Act) emphasizes the need to 'foster a culture of transparency and accountability in Public Authorities (vide; preamble to the RTI Act). Those duties of transparency and accountability apply equally to the highest executive office in the land to the lowest municipality as it were. Consequentially the exercise of the power of presidential pardon under Section 34 of the Constitution may be subjected to public scrutiny to establish the accountable application of that power in terms of the relevant constitutional parameters.

However, we are obliged to consider the first ground urged by the Information Officer of the public authority in his rejection of the information request on 22.03.2023 which was reiterated by the public authority by way of letter dated 02.02.2024, namely that it does not 'maintain' the information in the 'tabular format' preferred. During hearings before us, the representative of the public authority stated that, information relating presidential pardons had already been released to the appellant in RTIC 881/2023 and that no other information exists relevant to 'old' presidential pardons' excepting a few files.

The Commission cannot compel a public authority to invent or reinvent information except provide access to information in its 'possession, custody or control' under Section 3(1) of the Act.

As stated previously, it cannot compel the public authority to provide a 'full list' of pardons as requested by the appellant which would necessitate the public authority to enter into the task of 'collecting' such information apart from that which can be supplied with a reasonable effort. However, we note that is distinct to providing access to information to an information requestor in one of the several ways in which information may be provided as detailed in Section 23 (3) of the RTI Act (viz; Section 27 (3)(a); 'inspect relevant work, documents, records').

In the foregoing, we decide that, given the public interest nature implicit in the information asked for (vide Section 5(4), the Public Authority should permit the Appellant to inspect the files relating to presidential pardons issued by Presidents of Sri Lanka during the specified period in its 'possession, custody or control' on a date and time mutually convenient to both parties and in any event on a date before 30.09.2024.

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.