

**N. M. Wijesena v. Divisional Secretariat, Mahawa**

RTIC Appeal (Documentary Proceedings)/142/2017- Order adopted subsequent to consideration of the matter at the meetings held on 22.12.2017)

*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 Members:** Mr. S.G. Punchihewa

Dr. Selvy Thiruchandran

**Present:** Director-General Mr. Piyathissa Ranasinghe

**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:** Mr. N. M. Wijesena

**Notice Issued to:** Mr. H.M.J.M. Herath, Divisional Secretary, Mahawa

<b>RTI Request filed on</b>	06.02.2017 and 03.03.2017
<b>IO responded on</b>	26.04.2017
<b>First Appeal to DO filed on</b>	08.05.2017
<b>DO responded on</b>	15.06.2017
<b>Appeal to RTIC filed on</b>	10.07.2017

**Brief Background Facts**

The Appellant had requested the following information, by an information request dated 06.02.2017 and 03.03.2017:

1. Aids received by the ‘*Weliyaya Samagi Subasadhaka Samithiya*’ from the central government and from provincial decentralized aid during 2000-2016-
  - a. Monetary
  - b. Equipment/ physical assets and their value

2. Monetary and Physical assets obtained by the *Weliyaya Youth Society* and *Weliyaya Sports Society* during 2000-2016.
3. Aids obtained for the Development project carried out in the '156 Munamalegama division' of the Weliyaya village and the organisations which carried out the projects.

The Information Officer (IO) by a letter dated 26.04.2017, has provided the information under item 3 and with regards to item 1 and 2 has informed that the information request was forwarded to the respective societies, i.e. *Weliyaya Samagi Subasadhaka Samithiya* by letter dated 22.03.2017 and *Weliyaya Youth Society* and *Weliyaya Sports Society* by letters dated 03.04.2017. Upon being dissatisfied with the decision of the IO, the Appellant has made an appeal to the Designated Officer (DO) on 08.05.2017. The DO by letter dated 15.06.2017 has given an undertaking on the veracity of the information provided under item 3 of the information request by the IO and has issued another copy certifying the same to be a true copy of the original. Furthermore, with regards to item number 1 and 2 of the information request, the DO has stated that the IO has acted in accordance with regulation number 4(vi) of the Commission Regulations gazetted on February 3rd 2017 (Gazette No 2004/66). Thereafter, the Appellant made an appeal to the Commission by letter dated 10.07.2017.

### **Matters Arising During the Hearing**

The Appellant has submitted written submissions.

The PA had failed to submit written submissions presenting their case as instructed by the notices of the Commission dated 05.12.2017.

### **Order**

Due to the insufficiency of material before the Commission to come to a decision on the matter, the Appeal is converted to an in-person hearing and postponed, granting further time for the parties to substantiate their case.

The Appeal is adjourned to 24.04.2018.

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RTICAppeal(In-Person)/142/2017 - *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)* – heard as part of a formal meeting of the Commission on 24.04.2018

**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:** Mr. N. M. Wijesena  
**Notice Issued to:** Mr. H.M.J.M. Herath, Divisional Secretary, Mahawa

**Appearance/ Represented by:**

Appellant - Mr. N. M. Wijesena

Public Authority - Mr. H.M.J.M. Herath, Divisional Secretary, Mahawa

**Matters Arising During the Hearing**

The PA had informed the Commission by letter dated 20.12.2017, received by the Commission on 26.12.2017, it had provided the information requested by the Appellant under item 3 of the information request and that in response to the inquiry made by the IO by letter dated 03.04.2017, the Secretary of *Weliyaya Samagi Subasadhaka Samithiya*, by letter dated 21.05.2017, had refused to provide the information in view of the fact that there was a court case pending at the Mahawa District Court on the matter.

The DO present before the Commission representing the PA stated the same and further stated that the information pertaining to items 1 and 2 of the information request was not in its possession as such was forwarded to the relevant societies.

The Appellant stated that the aids and the assets for the relevant societies referred to in items 1 and 2 of the information request were awarded through the PA and as such the PA should have some documents available.

## **Order**

The Commission notes as of record that the Appellant has been provided the information requested under the item number 3 of the information request dated 06.02.2017 and 03.03.2017.

Section 3(1) of the Right to Information Act, No.12 of 2016 reads as follows

*3. (1) Subject to the provisions of section 5 of this Act, every citizen shall have a right of access to information which is in the possession, custody or control of a public authority*

Accordingly, the right of the citizen to acquire information from a PA arises only when the PA concerned is in the possession, custody or control of the information requested.

The Commission observes that the PA has fulfilled its statutory duty to transfer the information request as provided for in Regulation 4 clause 6 of the Right to Information Regulations of 2017 published in Gazette No 2004/66 dated 03.02.2017 which reads as follows:

*“If the request relates to information which the Information Officer is aware is held by another Public Authority, the Information Officer shall duly in written format transfer the request to the concerned Public Authority and inform the citizen making the request accordingly within 7 days from the date of receipt of the request.”*

However, the Commission observes that the *Weliyaya Samagi Subasadhaka Samithiya*, to which the information request had been forwarded, had refused to provide the information solely on the basis of the existence of a pending court proceeding. In *B.R.P.R. Gunasena v. Coconut Development Authority* (RTIC Minutes dated 23.02.2018), the Commission observed that declining to provide information merely on the basis that there are in existence, contemporaneous legal proceedings is not an acceptable basis for rejection unless the exemption set out in Section 5(1)(j) of the Act is specifically pleaded and it is established on the requisite burden of proof requiring to be satisfied in terms of Section 32(4) that ‘a real risk’ may therein be posed to the ‘authority and impartiality of the judiciary’ so that ‘prejudice’ is caused thereby.

As such, in view of the fact that the PA against which the instant appeal lies, has no objection to provide the information requested under items 1 and 2, the PA is directed provide whatsoever the information that is available in its possession, control or custody pertaining to items 1 and 2 of the information request within a month’s time period.

The Appeal is concluded. Order is directed to be 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).

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