

Selected Orders of the Right to Information Commission of Sri Lanka (2017-2018)

February 2019

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**Selected Orders of the Right to
Information Commission of Sri Lanka
(2017- 2018)**

*With Extraction of Keywords and Index of
Orders*

**A Publication of the RTI Commission of
Sri Lanka**

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LIST OF ABBREVIATIONS

CBEU	Ceylon Bank Employees' Union
CBSL	Central Bank of Sri Lanka
CCO	Chief Commercial Officer
CEO	Chief Executive Officer
CIC	Central Information Commission
CID	Criminal Investigation Department
COI	Commission of Inquiry
DALL	Declaration of Assets and Liabilities Law No.1 of 1975
DG	Director General
DO	Designated Officer
EIA	Environmental Impact Assessment
EMP	Environmental Management Plan
EPF	Employees' Provident Fund
FAC	Frequency Allocation Committee
FOI	Freedom of Information
FOIA	Freedom of Information Act
GoSL	Government of Sri Lanka
HHR	Head of Human Resources
HQ	Headquarters
IO	Information Officer
ISIN	International Securities Identification Number
ISP	Internet Service Provider
LKR	Sri Lankan Rupee
LTTE	Liberation Tigers of Tamil Eelam
MASL	Mahaweli Authority of Sri Lanka
MHz	Megahertz
MOU	Memorandum of Understanding

NIC	National Identity Card
NWSDB	National Water Supply and Drainage Board
PA	Public Authority
PCOI	Presidential Commission of Inquiry
PIA	Pakistan International Airlines
PMO	Prime Minister's Office
PUCL	People's Union for Civil Liberties
RTI	Right to Information
RTIC	Right to Information Commission
SC(FR)	Supreme Court Fundamental Rights
SCM	Supreme Court Minutes
SD	Special Determination
SLA	Sri Lanka Army
SLR	Sri Lanka Law Reports
SLTA	Sri Lanka Telecommunications Act
TISL	Transparency International Sri Lanka
TRCSL	Telecommunications Regulatory Commission of Sri Lanka
UNHRC	United Nations Human Rights Council
UN	United Nations
UOI	Union of India
WTO	World Trade Organization

FOREWORD

It is universally accepted that the essence of government in a democracy must be transparency with every organ of government; executive, judiciary and legislature being answerable to the citizen. Hence Mohandas Karamchand Gandhi, looked upon by Indians as the father of their Nation, when describing his vision of self - governance (Swaraj) for India, described it as follows:

“The real Swaraj will come not by the acquisition of authority by a few but by the acquisition of capacity by all to resist authority when abused.”

India's Right to Information Act 2005, therefore declares that democracy requires an informed citizenry and transparency of information which are vital to its functioning, to contain corruption and to hold Governments and their instrumentalities accountable to the governed. Moreover, this is a universal truth of particular relevance to South Asia, the governments of which countries have remained committed to eliminating poverty, the detritus of colonial rule.

Since the closing decades of the last century, when Australia, New Zealand and Canada enacted laws for freedom of information, this is now becoming, apart from free and fair elections, a definition of the very concept of democracy and a hallmark of our Commonwealth. By 1999, the Commonwealth Law Ministers recognized disclosure with limited and narrowly drawn exceptions as key elements of democratic governance - the preservation and maintenance of records and subjecting information access disputes to an independent review process - became a minimum for freedom of information (FOI) laws in the Commonwealth.

Later the Commonwealth Secretariat commissioned a model FOI law drawing from best global practices. There can, of course, be no single model that suits all, and this draft was no exception. Yet it succeeded in generating public discussion on creating a consciousness of the need for such laws, in the face of the resistance of governments to adopting such openness; and donor agencies seeking to foist such

laws upon countries with weak economies as governance reform measures.

In India, beset with unacceptable levels of poverty and heavy government investment in poverty alleviation, the demand originated with vociferous articulation at the rural community level in the state of Rajasthan. Unfortunately, the lack of such demand for a FOI law coming from the community is also the most visible cause of slow progress made towards the adoption of FOI laws in several other countries, and where such laws have indeed been adopted, the lack of effective enforcement. For example, in countries like Pakistan, Nepal, Sierra Leone, Tanzania and Kenya, only a handful of organisations and activists strive boldly to keep the demand for FOI laws alive in the great cities while community-based groups in semi-urban and rural areas struggle with the effects of opaque decision-making processes, unable to use or invoke such laws in their work.

The principal challenge continues to be that Governments have looked upon FOI laws as an irritating intrusion in their established routine, oblivious of their potential as agents of promoting good governance. This is exacerbated by donors or demands of the media to expose malfeasance but, in the view of such government agencies, impeding their ambitious plans for socio-economic development that must, in their view, take precedence over all other concerns. Civil society and the media, on the other hand, often suspect governments equivocation on the subject as indicative of the desire of politicians and bureaucrats to conceal financial misdeeds. This clash of interests obscures the basic principle that FOI laws have a direct bearing on the deepening of democracy, namely, in empowering the people to participate with government in the crafting of a shared vision of socio-economic development and cooperating in the application of such plans.

Sri Lanka's RTI law emphasizes the importance of making it possible for the poorest and most deprived to get government-held information – information which can make the difference between life and death. As so eloquently advocated by former UN Secretary-General Kofi Annan, "The great democratizing power of information

has given us all the chance to effect change and alleviate poverty in ways we cannot even imagine today... with information on our side, with knowledge of potential for all, the path to poverty can be reversed.” However, engendering a regime of transparency is not as simple as enacting an FOI law that matches up with international standards. For this, civil society must take the lead, working with the government to keep it accountable, constantly generating the feedback that will make governance truly participatory.

Governance, then, must comprise not only delivery of services, but of security of life and property, both of which are predicated on security of the nation, as conceived not by the security forces or the bureaucracy, but by the people. If this is understood, it is easier to see why perceived needs have not been met by the existing system of government. At the same time, I have every hope that the current publication of *Selected Orders of the RTI Commission of Sri Lanka (2017-2018)* by formulating good practices and precedents for Public Authorities, will demonstrate that Sri Lanka stands at a new threshold in governance as its RTI regime takes root in the country’s civic discourse.

Wajahat Habibullah

*Chief Information Commissioner,
Central Information Commission, India
(October 2005- September 2010)*

PREFACE

As Sri Lanka marks two years of operationalization of the Right to Information Act, No. 12 of 2016 on 3rd February 2019, the Right to Information Commission is pleased to publish a selection of key Decisions handed down by the Commission which encapsulates several important principles in advancing an emerging Right to Information regime in the country. Significant keywords relevant to the content of the selected Decisions and an Index of a broader range of Decisions are also included. The law and the facts are stated as at 31st January 2019.

In delivering these rulings, the Commission has endeavoured to maintain a fair balance between the principle of information disclosure for the public interest as emphasized by the Act and the several statutorily specified grounds (Section 5(1)) on which information may be denied. We have emphasized the principle of equity between the Public Authority and the Appellant while taking into consideration the fact that the greater weight of resources and power lies with the State rather than with an individual citizen.

The RTI Act applies to state and (certain) non-state bodies alike. Its reach includes not only state entities and constitutional entities from the Office of the President downwards but also corporate bodies that function with government backing, private entities contracting with the government and non-governmental organizations substantially funded by government, foreign governments or international organizations to the extent of “rendering a service to the public” (Section 43 of the RTI Act).

In its first public statement issued on 10th February 2017, we noted that despite human resource and financial constraints, the Commission was committed to building a strong, independent and

impartial operation with the expertise and capacity of its members and staff to support all seekers and providers of public information.” This is a promise that we have attempted to stay true to notwithstanding considerable difficulties.

Public Authorities have generally co-operated with the Commission in disclosing information following directives issued in appeals, despite a few government entities obstructing and/or delaying the processing of information requests of applicants. The first appeal hearing of the Commission took place in late April 2017, when a resident of Hirana, Panadura asked the Panadura Urban Council for the approval issued by the Urban Council to a developer to fill the earth in a low-lying area, allegedly resulting in flooding of the surrounding lands. Information released to the public in appeals filed to the Commission up to 31st December 2018 included the following;

- reports of commissions of inquiries hitherto be kept secret, reasons for decisions taken by regulatory agencies, (i.e., blocking of controversial news websites by the Telecommunications Regulatory Commission, TRCSL);
- details of salaries and benefits paid out of public funds to state sector/senior corporate executives;
- agreements entered into by the country’s national carrier Sri Lankan Airlines with/among overseas aviation firms and Board decisions taken by the management resulting in major losses to the airlines;
- agreements between Sri Lanka and other countries relating to migrant workers;
- draft laws that had not been placed before the public;
- reasons for delaying or refusing insurance claims by the state insurer;
- amount of legal fees paid to private counsel in litigation against a trade union by a state bank out of public funds;
- conclusions of the Commander of the Army and related documents connected to an inquiry into charges of sexual harassment against a senior military officer;

- vesting certificates relating to the acquisition of land by various state authorities including the Mahaweli Authority;
- statistical data on rehabilitated former cadre of the Liberation Tigers of Tamil Eelam (LTTE) classified by age, district and sex up to 2017 by the Bureau of the Commissioner General of Rehabilitation;
- approvals of local authorities given contrary to the law regarding irregular constructions.

Information seeking in general related to details of procurements and awarding of tenders by state entities, inquiries held by the police following complaints being filed, promotion and disciplinary procedures in state bodies, compensation payments for landowners on the acquisition of their lands and admission criteria of children to schools. The information asked by parents regarding school admissions was in the context of corruption being alleged in the admitting process.

In fact, in some appeals, children were admitted to their preferred schools as a result of these irregularities coming to light. In the North Central Province villagers, questioned the building of crumbling roads and tanks with the public money given to provincial administrators and found that a major percentage of the funds had been swindled. The officers were dismissed and the money recovered. The roads and tanks are now being rebuilt.

Appeals were also filed by civil society organisations asking for information on asset declarations of politicians, the use of state funds by the national and provincial legislative assemblies and details of investment of the Employees Provident Fund (EPF) by the Central Bank of Sri Lanka (CBSL) claiming the public right to know as to how the retirement funds are being invested.

Conscious of the need to enunciate strong RTI principles, the rulings of the Commission overwhelmingly reflect pro-public interest and information disclosure principles.

As at 31st December 2018, the Commission had 1030 appeals before it, out of which 654 appeals had been concluded. In the remainder of pending appeals, interim orders had been issued by the Commission in the majority of cases, releasing information in stages.

In many appeal hearings as extracted in this publication, attorneys-at-law have appeared for either/both parties to the appeal. While this has enabled important views to be put forward regarding the form and content of what constitutes the Right to Information in the context of Sri Lanka's statutory regime, it has also resulted often in the character of the hearing being rendered somewhat legalistic in nature. However, this is so only in a small percentage of appeals. In the majority of appeal hearings before the Commission, citizens and representatives of Public Authorities present their own arguments before the Commission for adjudication, using the Act, the Regulations and the Rules to good effect.

A quietly positive and sometimes unnoticed transformation of Public Authorities has taken place since 3rd February 2017. Not only citizens but also public officers have used the law to expose injustice and corruption. The Commission has emphasized the protection that the Act affords to information officers when carrying out their duties under the Act in good faith (Sections 30 and 40). Since the operationalization of the Act, a single instance of an information officer allegedly being penalized for carrying out his statutory function was brought to our notice. The Commission has initiated an inquiry into the incident with a warning to be issued to the relevant Public Authority if the alleged penalization is shown to be substantiated.

While the slow transformation of an 'information-closed' culture to an 'information-open' culture is evident in Sri Lanka, challenges remain. The duty to give information proactively has to be manifested far more diligently by Public Authorities. Furthermore, the enactment of new

laws establishing bodies that are deliberately placed beyond the scrutiny of the Right to Information regime is of particular concern. Nevertheless, an encouraging factor (see the public statement of the Commission, 30th May 2017) is the support and interest of ordinary citizens who have exercised their 'Right to Information' with commendable enthusiasm during the period in review. In the interests of further development of the RTI culture through an Act which was fourteen long years in the making in Sri Lanka, we hope that these positive trends will continue.

Attorneys-at-law Sushmitha Thayanandan, Jayani Perera, Chrissy Abeysekera and Ruvini Perera assisted RTI Commissioner Kishali Pinto-Jayawardena in the compiling of extracts of Decisions of the RTI Commission of Sri Lanka, 2017-2018 with keywords and synopsis of Decisions and in the editing of the document. The contributions made by Attorney-at law Imalka Abeysinghe to the Index of Decisions of the Commission is appreciated.

Attorneys-at-law Radika Gunaratne, Shalani Fernando, Zainab Ismail, Dumindu Madushan and law graduate Dhanushka De Silva undertook the Sinhala translation of the publication, reviewed by RTI Commissioner S.G Punchihewa. Attorneys-at-law Krijah Sivakumar and Thavapriya Thevakumar assisted in the Tamil publication.

The RTI Commission places on record its deep appreciation of the support given by the Embassy of Switzerland, Colombo in bringing out this publication of *Selected Orders of the RTI Commission* along with its companion volume, *Reflections on Sri Lanka's RTI Act and RTI Regime*. In particular, the understanding and co-operation extended to the RTI Commission by First Secretary (Political), Embassy of Switzerland, Colombo, Sguaitamatti Damiano in this regard is of special note.

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***Airline Pilots Guild of Sri Lanka v.
Sri Lankan Airlines Ltd.¹***

'It is manifest therefore that, where the public purse is concerned, and the alleged financial irregularities of a particular Public Authority are under scrutiny in an Appeal before us, this Commission will be particularly watchful of the public interest.'

Decision: (Jurisdictional) Respondent national carrier determined as coming within the definition of a 'Public Authority' as contemplated in Section 43 (e) of the RTI Act (*effect of certificate of incorporation as a limited company under Section 485 (6) of the Companies Act (2007), meaning of 'as if incorporated'*); (Merits) Decision of Designated Officer reversed and Public Authority obligated to publicly disclose salaries and other allowances and/or benefits of its CEO, Head of Human Resources (HHR) Chief Commercial Officer (CCO) as well as the Memorandum of Understanding dated 28th July 2016 with PIA, the Wet lease agreement dated 04th August 2016 with PIA and the Wet lease extension agreement dated 02nd November 2016 with PIA/two termination agreements with AerCap respectively dated 6th April 2016 and October 4th 2016/Relevant Board papers and minutes of meetings together with reports of aviation consultants, Seabury, Skyworks and Nyrus also to be released with redactions to protect (if so assessed) 'commercial confidence harming the competitive position of a third party under Section 5 (1)(d) or as information given by a third party which was treated as confidential at the time under Section 5(1)(i) confidentiality clauses *per se* not falling within the ambit of information given by a third party which was treated as confidential at the time under (Conti:)

¹ RTIC Appeal (In-Person) /99/2017 heard as part of a formal meeting of the Commission on 13.11.2017, 08.01.2018, 06.02.2018, 23.03.2018, 24.04.2018 and 09.05.2018.

Section 5(1)(i). Decision of Designated Officer upheld regarding refusal to release agreement dated 28th June 2013 between Public Authority and Airbus S.A.S to purchase four A350 aircrafts (three aircrafts to be delivered in 2020 and one aircraft to be delivered in 2021) on the basis that this is an ongoing process involving 'commercially sensitive information' as contemplated in Section 5(1) d) including *inter alia*, pricing and price revision mechanisms.

Keywords: Commercial confidence (*Section 5 (1) (d) / Contracts / Agreements (use of public funds, negotiations, ongoing negotiations as compared with concluded agreements, salary particulars, confidentiality clauses)* / confidential information given by a third party / Fiduciary / Priority Clause / Privacy / Public Interest (*including public interest override, information of public interest*) Public Funds / Severability (*Section 6*).

Brief Description of the Facts

Information requested on 29.06.2017:

1. Salaries and other allowances and/or benefits of:
 - a) The CEO of Sri Lankan Airlines Limited
 - b) Head of Human Resources (HHR) of Sri Lankan Airlines Limited
 - c) Chief Commercial Officer (CCO) of Sri Lankan Airlines Limited
2. All information related and/or connected to Pakistan International Airlines' (PIA) correspondence with Sri Lankan Airlines Limited
3. All information related and/or connected to PIA initial entry into an agreement with Sri Lankan Airlines Limited and all information relating to the Agreement

with Sri Lankan Airlines Limited including the said agreement

4. All financial information (including but not limited to profits and/or losses and damages) connected to the Agreement and/or arrangement between PIA and Sri Lankan Airlines Limited
5. All information related to and/or connected to the termination of the Agreement and/or arrangement between PIA and Sri Lankan Airlines Limited
6. All information related to and/or connected to the cancellation of the order of Airbus A350 Aircraft (including but not limited to all Agreements and/or correspondence related to the ordering of Airbus A350 Aircraft and the cancellation thereof)
7. All information related to and/or connected to the cost of personal flying training for the A320 jet conversion borne by Sri Lankan Airlines Limited and/or any party for the CEO Mr. Suren Ratwatte.

On 19.07.2017, the IO responded to the request refusing the information citing exemptions under Section 5 (1) of the RTI Act, 19.07.2017, while making a reservation that the Public Authority will provide part of the information under request no. (4) and part of the information under request no. (6).

In respect of the refusal of information disclosure, the exemptions cited by the Public Authority were as follows; item 1 of the information request - Sections 5(1)(a) and 5(1)(g), items 2- 5 of the information request - Sections 5(1)(b) (ii)² and 5(1)(d), item 6 of the information request- Sections 5(1)(i), 5(1)(d) and 5(1)(m)³, item 7 - Sections 5(1)(a) and 5(1)(g).

² This exemption was not pursued by the Public Authority during the course of the appeal hearing.

³ This exemption was not pursued by the Public Authority during the course of the appeal hearing.

Believing that the IO had granted incomplete, misleading and false information and citing the public interest importance of the information request, the Appellant appealed to the DO on 02.08.2017. The DO responded on 23.08.2017 refusing to provide the information in items 1 and 6. Re items 2-5, the DO stated that the requests were extremely vague and widely phrased and would be considered if the Appellant is more specific, as the repercussion of releasing such voluminous correspondence would affect relations between Sri Lanka and Pakistan. Following this response, the Appellant appealed to the Commission on 15.09.2017.

Order on Jurisdictional Objection⁴

At the outset, this Commission takes cognizance of the fact that Section 529 of the Companies Act, 2007 defines a “Company” to mean a Company incorporated under this Act or an existing Company. Irrespective of whether a company was ‘in existence,’ (in that it had been incorporated prior to the passage of the Companies Act No. 7 of 2007 or afterwards) the Act considers both categories as “companies” thus making its provisions applicable to both.

The objection raised by SriLankan Airlines is confined to the argument that Section 43 of the RTI Act defining Public Authorities under the Act specifically applies only to a ‘company incorporated under the Companies Act, 2007’ and that SriLankan Airlines is an existing company that had ‘re-registered’ under the Companies Act, 2007, therefore falling outside the ambit of the RTI Act.

⁴ Delivered on 23.03.2018.

In consideration of this objection and following careful examination of the submissions advanced by both parties, it is pertinent to note that Part XVII (transitional provisions) of the Act (Sections 485 - 487) titled “Application of Act to Existing Companies” provides for the manner in which the Act should be made applicable to existing Companies. Under this Part, all Companies existing as at the appointed date of the Companies Act No. 7 of 2007, must register under the 2007 Act, change the names if necessary, as per the provisions of the Act, and obtain a new Company registration number.

The consequences that will ensue if these actions are not taken are distinctly laid down in the Act. In the event of failure to conform, the Registrar of Companies (after giving 12 months public notice) will strike off the name of the Company and all properties of that Company will be vested in the State for disposal [Section 487(5)]. But where compliance is manifested, ‘existing Companies’ are also considered ‘as if incorporated under the Companies Act’ along with a new registration Number.

Section 485 (6) of the Companies Act, No. 7 of 2007 is to the following effect;

- (a) The Registrar shall enter the new name on the register in place of the former name, consequent to the deemed change of name under the provisions of subsection (5), and issue a fresh certificate of incorporation including the said suffix or the said abbreviation, as the case may be, in such certificate of incorporation.
- (b) Such fresh certificate shall be issued after the Registrar has assigned a new number in terms of the provisions of Section 487.

Applying the law to the facts of this appeal, it is pertinent that the certificate of incorporation (emphasis ours) of SriLankan Airlines as a limited company under Section 485 (6) of the Companies Act (2007), dated 9th November 2007 describes it as an ‘existing company’ which is registered as a Limited Company ‘**as if incorporated**’ under the Act (emphasis ours).

The said certificate of incorporation (emphasis ours) states further that the above mentioned new number has been assigned to it and entered in the Register of Companies. A perusal of that ‘new number’ indicates that is PB 67, which is preceded by the old number of the certificate of incorporation which is PBS 1020.

Thus, even if a distinction is to be drawn between a company newly incorporated under the Companies Act, 2007 and ‘an existing company’ incorporated under previous legislation, that is an artificial distinction that takes on colour for the limited purposes of regulating the regime under the 2007 Act at the precise point of that Act coming into force, rather than as a distinction that is meant to continue in perpetuity.

In any event, the said distinction becomes a distinction without a difference on the face of the certificate of incorporation of SriLankan Airlines (dated 9th November 2007) in consequence of which the national carrier is deemed to be incorporated and re-registered under the Companies Act of 2007 without which the said national carrier would have been bereft of its legal and/or juristic persona in its future operations.

In arriving at that finding, it must be emphasized that this Commission paid due regard to and was conscious of its statutory function in not attempting to make an overreach in interpreting the provisions of the RTI Act but rather, confining itself to the framework of the provisions of the Companies Act, 2007 to determine as to what import is required to be given to the definition of a ‘Public Authority’ as coming within the legislative intent of Section 43 (e) of the RTI Act. The preamble

to the RTI Act imposes a duty upon the Commission as the statutory appellate body established under the Act, to ‘foster a culture of transparency and accountability in Public Authorities.’ Thus, the RTI Act was legislatively designed to apply to Public Authorities in the overriding public interest and this Commission is duty bound to enter upon its decisions with that consideration in mind.

It would thus be anathema, in our view, to give a ruling placing the respondent national carrier as lying outside the definition of a ‘Public Authority’ as contemplated in Section 43 (e) of the RTI Act, disregarding the ‘deeming effect’ of the certificate of incorporation applicable to the same under the Companies Act, 2007. This would give rise to the possibility that, not just the respondent national carrier but a vast number of other companies may see fit to purportedly claim the benefit of that same exemption and render themselves outside the reach of the RTI Act, consequently resulting in Section 43 (e) of the said Act being reduced to a futility.

We are fortified in this approach by established canons of statutory interpretation including the excellent and well-known reminder that statutes must receive a sensible construction such as will give effect to the legislative intention so as to avoid an unjust and absurd conclusion and further that, every effort must be made to engage in such construction ‘as shall suppress the mischief, and advance the remedy, and to suppress subtle inventions and evasions for continuance of the mischief, and *pro privato commodo*, and to add force and life to the cure and remedy, according to the true intent of the makers of the Act, *pro bono publico*’ (*Heydon's Case* [1584] 76 ER 637, 3 CO REP 7a).

In this instance, the ‘cure and the remedy’ proposed by the RTI Act must not be rendered redundant. Neither must the legislative intent in the Act’s avowed purpose to ‘foster a culture of transparency and accountability in Public Authorities’ (*vide* preamble to the RTI Act) be defeated.

We are also mindful of the caution that provisions of a statute must be so construed as to make it effective and operative, on the principle '*ut res magis valeat quam pereat*'. As well reminded by Viscount Simon LC in *Nokes v. Doncaster Amalgamated Collieries* ((1940) AC 1014); 'if the choice is between two interpretations, the narrower of which would fail to achieve the manifest purpose of the legislation, we should avoid a construction which would reduce the legislation to futility and should rather accept the bolder construction based on the view that Parliament would legislate only for the purpose of bringing about an effective result.'

Then again, in *Shannon Realities Ltd v. Ville de St Michel* ((1924) AC 185), the following principle of construction is demonstrated *viz.* "Where alternative constructions are equally open, that alternative is to be chosen which will be consistent with the smooth working of the system which the statute purports to regulate and that alternative is to be rejected which will introduce uncertainty, friction or confusion into the working of the system."

In conclusion, we are in no doubt that SriLankan Airlines comes within the ambit of Section 43 of the Right to Information Act, which defines a public authority as a 'company incorporated under the Companies Act, No. 7 of 2007' in which the State or a public corporation or the State and a public corporation together hold twenty-five per centum or more of the shares or otherwise has a controlling interest.' A contrary finding would disturb an effective and smooth working system as contemplated by the RTI Act, bringing about uncertainty, friction and confusion.

As reiterated during previous hearing into this matter (*Vide* Record of Proceedings of the Commission dated 6th February 2018), this objection that the RTI Act does not apply to it is being raised after more than a year of SriLankan Airlines acting in compliance with the RTI Act, including making the appointment of an Information Officer and

a Designated Officer. Further, SriLankan Airlines has affirmed on record that it is incorporated under the Companies Act (2007) in its official documentation as well as in the legal notice available on its website(<http://www.srilankan.com/a/plan-and-book/legal-notice>).

In the circumstances and for the aforesaid reasons, the preliminary objection relating to jurisdiction raised by SriLankan Airlines is dismissed.

Order on Merits⁵

It is important to note that the main objective of Sri Lanka's RTI Act, as detailed in its substantive provisions and underpinned by the overarching force of the preamble which embodies the fundamental values and the philosophy of the Act, is to 'foster a culture of transparency and accountability in public authorities by giving effect to the right of access to information and thereby promote a society in which the people of Sri Lanka would be able to more fully participate in public life through combating corruption and promoting accountability and good governance.'

The central focus given to transparency and accountability in Public Authorities is clear. In that regard, it may be said that the preamble of Sri Lanka's RTI Act, even more unambiguously underpins the principle of maximum disclosure, subject to narrowly defined exceptions that must also yield to the public interest override.

It is instructive to note that this is contrasted with, for example, the preamble of India's RTI Act (2005) which refers to the 'harmonizing of conflicting interests' (absent in its SriLankan counterpart); "...whereas revelation of information in actual

⁵ Delivered on 12.06.2018. Appearances for the parties; Nalin Ladduwahetty, PC, Hafeel Farisz, AAL, Shamir Zavahir, AAL, Tarindi Wijepura, AAL, for the Appellant; Dr Shivaji Felix, for the PA (SriLankan Airlines Ltd).

practice is likely to conflict with other public interests including efficient operations of the Government's optimum use of limited fiscal resources and the preservation of confidentiality of sensitive information; and whereas it is necessary to harmonize these conflicting interests while preserving the paramountcy of the democratic ideal."

It is manifest therefore that, where the public purse is concerned, and the alleged financial irregularities of a particular Public Authority are under scrutiny in an Appeal before us, this Commission will be particularly watchful of the public interest. We will proceed with consideration of each item of the Appellant's request with this overriding caution in mind.

Information Requests 1 and 7 (Summary of Order)

In the matter before us, it is clear that the information requested by the Appellant in information requests (1) and (7) must be disclosed for the reason that this is, by its very definition, information that directly relates to the financial accountability and transparency of the Public Authority in the expenditure of public funds. This is all the more so by virtue of the pre-eminent position that it holds as the country's national air carrier and in the context of widespread public concerns in regard to the financial management of the Public Authority, which this Commission is duty bound to take cognizance of. This is quite apart from the fact that the information in Request No. 1 is anyway encompassed within the ambit of Regulation 20 (1) (ii) on proactive disclosure (Gazette No. 2004/66, 03.02.2017).

What is being requested here are the 'salaries and other allowances and/or benefits' of three named executive officers of the Public Authority which does not come within the ambit of a fiduciary relationship. In our view, this information cannot be automatically equated with disclosure of 'employment contracts' which by their very nature, comprise far more information than salary details, even though the Public Authority has submitted the confidentiality of the same as justification under Section 5 (1)(a) and (g) to refuse disclosure. The question as to

whether ‘employment contracts’ can be disclosed under and in terms of the RTI Act remains to be decided by the Commission in the factual circumstances of another appeal since that question is not in issue in this instance.

We rule that, in any event, the exemptions cited by the Public Authority (viz; Section 5(1)(a) and (g) yield to the imperative provisions of Section 5 (4) of the Act in that the information requested is such that the public interest in disclosing the information outweighs the harm that would result from their disclosure.

The decision of the Designated Officer is reversed on this portion of the information request.

Information Requests 2, 3, 4 and 5

Upon the Commission directing that the Wet lease agreements in issue be submitted to it for scrutiny, the same was submitted by the Public Authority on 26.04.2018. Upon scrutiny of the PIA Wet Lease Agreement dated 04.08.2016 and specifically clause 24.3 of the same, it is evident that the confidentiality clause contained therein is made subject to exceptions detailed in sub-sections 24.3.1 to 24.3.3.

Our attention is particularly drawn to subsection 24.3.2. which states that the confidentiality clause will be excepted ‘as may be required by any applicable law or court order or directive from any Government Entity.’ We agree with the submission of the Appellant during hearing into this Appeal, as illustrated in *Transnet Ltd. and Another v. SA Metal Machinery Co (PTY) Ltd* (supra) that a confidentiality clause cannot prevent information disclosure after the contract/agreement had been awarded, where the accountability of public funds and the transparency of the Public Authority is an issue.

Consequently, we rule that Section 5(1) (b)(ii) and Section 5 (1) (d) are not established as legally adequate grounds to refuse the information asked for. The burden to establish the ‘serious

prejudice' caused thereby, which is an inevitable condition of pleading the exemption under Section 5(1)(b) (ii) has not been satisfactorily discharged by the Public Authority in terms of that Section read with Section 32 (4) of the Act.

We also rule that, in any event the public interest override in Section 5(4) and as inherently contained in Section 5 (1) (d), will apply to release the information contained in Information Requests 2, 3, 4 and 5, namely; the Memorandum of Understanding dated 28th July 2016 with PIA, the Wet lease agreement dated 04th August 2016 with PIA and the Wet lease extension agreement dated 02nd November 2016 with PIA which is decided by this Commission to come within the ambit of information that may properly be released under this Act.

The decision of the Designated Officer is reversed on this portion of the information request.

Information Request 6

We rule that Section 5 (1) (d) and Section 5 (1) (i) read with Section 29 of the Act will not apply to bar the release of the termination agreements and that the two termination agreements entered into between the Public Authority and AerCap respectively dated 6th April 2016 and October 4th 2016, are to be released to the Appellant on the following basis;

- a) The said termination agreements have been completed and concluded. The existence of a confidentiality clause in the said agreements do not, by themselves, establish the applicability of Section 5 (1) (i) read with Section 29 of the Act as that is a contractual obligation *per se* and the Public Authority has failed to discharge the burden as required in terms of Section 32 (4) to establish what precise portions of the agreements related to information given by a 3rd party to the Public Authority and 'treated' as confidential at the time;
- b) In its contents, the said agreements comprise several components referring to Termination Fees and

Payments, Termination, Assignment etc. (Termination Agreement dated 6th April 2016) and Agreement on Termination of AGAT Lease, Termination Letter of Credit, Credit for Additional Leases. Delivery process etc. The primary clauses of the said agreements refer to an undertaking to pay termination/cancellation fees by the Public Authority. Consequently, this Commission fails to discern as to what part of these documents may be construed as related to information given by a 3rd party to the Public Authority and ‘treated’ as confidential at the time or as to how the commercial or competitive interests of AerCap can be affected.

- c) In any event and for the reasons more fully set out earlier, the public interest overrides inherently contained in Section 5(1)(d) itself as well as Section 5(4) will apply to release the information, given the financial losses incurred to the State as a result of the same. As observed in *Rob Evans v. Information Commissioner* (The UK, Upper Tribunal Administrative Appeals Chamber, [2012] UKUT 313 (AAC)), there is a strong public interest towards disclosure in matters concerning public policy and the public purse. The decision of the Designated Officer not to release the said termination agreement entered into with AerCap is reversed.

However, where the documentation, in relation to the agreement dated 28th June 2013 which the Public Authority had entered into with Airbus S.A.S to purchase four A350 aircrafts, is concerned, three aircrafts are to be delivered in 2020 and one aircraft is to be delivered in 2021. It is evident that this is an ongoing process and that ‘commercially sensitive information’ may be an issue as contemplated in Section 5(1)(d) including *inter alia*, pricing and price revision mechanisms referred to in the electronic mail notification of Airbus S.A.S dated 19/07/2017 as aforesaid. In the circumstances, the decision of the Designated Officer not to release the said information pertaining to the purchase agreement with Airbus S.A.S is affirmed.

The reports of Seabury, Skyworks and Nyrus

Beyond refusing information disclosure on the basis that the reports of Seabury, Skyworks and Nyrus, (which formed part of the process relating to the purchase and cancellation of the said aircraft) contained detailed evaluation and vital information of the route network and fleet evaluation, strategic overview and business advisory of the Public Authority, and cannot be disclosed, in view of the fact it will seriously prejudice and jeopardize the business activities of the Public Authority and that the information contained in the reports will cause serious financial repercussions and detriment if they were utilized by competitors, no specifics were provided by the Public Authority in relation to the same.

Acting under Section 32(1), which empowers this Commission to ‘affirm, vary or reverse the decision appealed against and forward the request back to the information officer concerned for necessary action’, we direct that the Public Authority release the reports of Seabury (February 2013), Skyworks (October 22nd 2015 and October 26th 2015) and Nyrus dated 18th March to the Appellant, with those portions of the said reports objectively assessed by the Public Authority as needing to be excluded within the meaning of ‘commercial confidence’ harming the competitive position of a third party in terms of Section 5 (1)(d), which assessment is a statutory duty laid on the Public Authority by virtue of that Section.

The Public Authority may also assess if any portion of the reports therein may need to be excluded as coming within the ambit of information given by a 3rd party which was treated as confidential at the time in terms of Section 5(1)(i). Such portions of the reports may be severed under and in terms of Section 6 of the RTI Act and the Appellant shall be provided with access to the remaining portions.

As these are the two exemptions cited by the Public Authority in relation to the refusal of information disclosure in Item 6 of

the information request, we shall confine ourselves to those above stated exemptions in relation to the discretion to severe.

Relevant Board papers and Minutes of the Public Authority regarding the matter in issue

Even where information is protected by privacy or commercial confidence or fiduciary exemption as the case may be, the relevant information may be proved by severing only that information that is demonstrably protected. In *Shri Suhas Vaidya v Bank of Maharashtra*, (File No. CIC/MP/C/2014/900191/SH, File No. CIC/SH/A/2014/001847), the CIC directed the public authority to provide all minutes in question by severing information protected by commercial confidentiality.

Accordingly and acting under Section 32 (1) which empowers this Commission to ‘affirm, vary or reverse the decision appealed against and forward the request back to the information officer concerned for necessary action’, we rule that the below detailed Minutes/Board Papers be released to the Appellant, subject to the condition that those portions of the said Minutes/Board Papers capable of being objectively assessed by the Public Authority as needing to be excluded within the meaning of ‘commercial confidence harming the competitive position of a third party under Section 5 (1)(d) or as information given by a third party which was treated as confidential at the time under Section 5(1)(i) be severed in terms of Section 6 of the RTI Act and the Appellant be provided with access to the remaining portions.

As these are the two exemptions cited by the Public Authority in relation to the refusal of information disclosure in Item 6 of the information request, we shall confine ourselves to those above stated exemptions in relation to the discretion to severe. The Public Authority is directed to notify this Commission

within four weeks of the delivery of this Order as to whether the said Minutes have been released in full or if not, what parts of the below detailed Minutes/Board Papers of the Public Authority will be so severed under Section 6 of the Act, in order for the Commission to ascertain compliance with this directive.

- a) Minutes of Board Meeting held on 1 March 2013 at the Hon. Speaker's residence, Battaramulla where board approval was granted in principle for the purchase of four A 350 aircraft and the lease of an additional A350 aircraft;
- b) Minutes of the Board meeting held on 14th March 2013 where formal board approval was granted;
- c) Minutes of Board meeting held on 9th September 2015 to authorize the negotiation and execution of an operating lease agreement for 1 A350 aircraft with AreCap or its nominee to be delivered during the fourth quarter of 2017;
- d) Minutes of the Board meeting held on 9th March 2016 regarding the cancellation of the lease of 1 A350 aircraft due to be delivered in November 2017;
- e) Minutes of the Board meeting held on 28th September 2016 regarding the termination of the lease of 3 A350 aircraft due to be delivered on October and November 2016.
- f) Board Paper dated 8th March 2016 submitted by the then CEO Mr. Suren Ratwatte and board paper dated 26th September 2016.

The decision of the DO is partially affirmed with regard to information request No. 6, but reversed with regard to information request Nos. 1, 2, 3, 4, 5 and 7.⁶

⁶Following the decision, the Public Authority released the information as directed, including the relevant Board Minutes in full. Redaction of relevant portions of the aviation consultants' reports is ongoing in consultation with the Appellant under the supervision and direction of the Commission.

***B. A. J. Indrathilaka v. Visakha Vidyalaya/
Ministry of Education***⁷

‘Silence on the part of either the Information Officer and the Designated Officer is not a statutory choice and a persistent failure to comply with the provisions of the Act results in a violation of the Act.’

Decision: Admission of children to schools/ Decision of Designated Officer upheld regarding refusal to release the register with the names of students in Grades One to Three on the last date of the third term of 2014 in the context of previous release of similar information but reversed regarding similar data in respect of Grade Four (which pertained to information coming into issue after the said previous release of information).

Keywords: Disciplinary actions/Mandated procedures (consequences of failure to respond to an information request by IO and/or DO)/ Privacy (of minors) (*Section 5 (1)(a)*)/

Brief Factual Background:

Information requested on 23.10.2017:

1. Register with the names of all students in the Grade One classes A, B, C, D, and E on the last date of the third term of 2014
2. Register with the names of all students in the Grade Two classes A, B, C, D, and E on the last date of the third term of 2014

⁷ RTIC Appeal (In-Person) /63/2018 heard as part of a formal meeting of the Commission on 23.03.2018.

3. Register with the names of all students in the Grade Three classes A, B, C, D, and E on the last date of the third term of 2014
4. Register with the names of all students in the Grade Four classes A, B, C, D, and E on the last date of the third term of 2014

As the Information Officer (IO) failed to respond to the said request, the Appellant lodged an appeal with the Designated Officer (DO) on 07.11.2017. As the DO too failed to respond to the appeal, the Appellant lodged an appeal with the RTI Commission on 28.11.2017.

Matters Arising During the Course of the Hearing:

The Appellant submitted that he had requested the Attendance Register for the dates as specified in the information request. Explaining the context of the request, he stated that in 2014, seven doctors received letters from the Secretary of the Ministry of Education directing the Principal to admit their children to the PA (Visakha Vidyalaya) in this instance.

The Principal did not accede to this direction and assured that the students would be admitted to Grade Two in 2015, to which the Appellant conceded. However, in 2015, the Principal did not act on the assurance. Subsequently, the Appellant sought letters from the Secretary of the Ministry of Education directing the Principal to grant admission to Grade Two in 2015.

However, the Ministry did not comply with this request. The Principal subsequently admitted one of the said seven students.

Order

In respect of items of the information listed in items 1-3 which pertain to attendance registers of all children in Grades 1, 2, and, 3 in the years 2014, 2015 and, 2016 at the end of term 3, we note that in *Kumarasiri Manage v. Secretary of Education* (RTIC Appeal/65/2017 RTIC Minutes of 16.10.2017), similar information in regard to the below was already released and is a part of the public record.

In *Manage* (supra), the Commission issued the Order to release information limited to name lists of the children who had been admitted to Grade 1 of Visakha Vidyalaya Colombo 05 in 2014 and their addresses. While acutely conscious of privacy rights of minors, the Commission took note of the fact that the same information in relation to the admittance of children to Grade One in other schools had been released by the Ministry of Education (*Premalal Abeysekere v. Ministry of Education* (RTIC Appeal/25/2017 RTIC Minutes of 21.07.2017) as reflected in the said Order.

In this case, the Appellant has requested information which would result in the release of extensive information relating to the attendance of children in the relevant school after admittance and per each year which, if released, may result in the unwarranted infringement of privacy rights of minors thereby violating Section 5 (1)(a) of the Act.

In *Manage* (supra), the PA has already released the letters issued by the Secretary of the Ministry of Education pertinent to the relevant years, consequent to which the admission of children had taken place, as the Public Authority (Visakha Vidyalaya)

⁸ Order of 23.03.2018.

had affirmed on record before this Commission. Further elucidation of that information is now being sought by this Appellant based on his 'suspicion' that the said letters may not reflect the actual situation in that regard though no concrete information has been advanced by him... we also remain cognizant of the dangers in a precedent being set in regard to similar requests asking for minute details of the admittance sheets of children in each grade and each year in relation to other schools in other parts of the island, particularly as these relate to minors.

The request to release items (1) - (3) in the instant information request is accordingly declined.

While that is so, the failure of the respective Information Officer and the Designated Officer to respond to the information request, in this case, is not in accordance with mandated procedures laid down in Sections 23-29 of the Act, detailing the manner in which an information request must be responded to. Silence on the part of either the Information Officer and the Designated Officer is not a statutory choice and a persistent failure to comply with the provisions of the Act results in a violation of the Act.

In respect of item 4 of the said information request pertaining to the attendance register of the children in Grade 4 (a date after the information release in the *Manage Case*, supra) the Commission considers the contention of the Appellant that the said information is necessary in order to decide as to whether irregularities have taken place in respect of the alleged admission of a child. Strictly on that basis and limited to that ground as well as in consideration of the fact that the said information relates to a specific date/alleged irregular admission and is not generalized in nature, the Commission orders the release of the information in item 4.

The decision of the DO is affirmed with regard to items 1-3 and reversed with regard to item 4.

'The Department of the National Archives is the custodian of 'all records' of Commissions of Inquiry under the Act of 1948 (as amended) read with Section 11 of the National Archives Law No. 48 of 1973 (as amended). The Report of such a Commission would constitute a primary 'record' under and in terms of the said law. Hence the Department may properly call upon the depositing body or individual (effectively the Secretary of such a Commission or Committee in terms of the relevant statutory provision) to ensure that the Report of the Commission or Committee is sent to the Department in accordance with the law.'

Decision: Report of a Commission of Inquiry into the death of the Founder & Former Leader of the Sri Lanka Muslim Congress, Mr. M.H.M. Ashraff released to the public consequent to the report being located in the Criminal Investigation Department (CID) following inquiry conducted by the Commission in the context of the report not being found in the Presidential Secretariat (the depositing body) or the National Archives/duty of National Archives as custodian of records under the Commissions of Inquiry under the Act of 1948 (as amended) to call for and obtain reports of Commissions of Inquiry from the relevant depositing body...

Keywords: Priority clause (*Section 4*) / Primary records / Reports (of Commissions of Inquiry).

⁹ RTIC Appeal (In-Person) /22/2017 heard as part of a formal meeting of the Commission on 16.10.2017, 20.11.2017, 16.01.2018, 27.02.2018.

Brief Factual Background

Information requested on 08.02.2017:

Report of a Commission of Inquiry into the death of the Founder & Former Leader of the Sri Lanka Muslim Congress, Mr. M.H. M. Ashraff who had been killed in a helicopter accident in 2000.

By letter dated 02.03.2017 the Information Officer at the Presidential Secretariat stated that the file related to the Report had been sent to the Department of National Archives. The Appellant was subsequently sent another letter on 20.03.2017 by the Public Authority stating that his information request was rejected as the information could not be found.

The Appellant then appealed to the DO, the Secretary to H.E. the President on 27.03.2017. By response letter dated 25.04.2017 the DO had informed the Appellant that they could not find the information he requested as the contents of the information request were more than twelve years old, and therefore his request was rejected. The Appellant then appealed to the RTI Commission on 08.05.2017.

Order¹⁰

This Commission notes the submission of the Director – General of the Department that these are confidential records which officers of the Department themselves are not allowed to look at in terms of the law and in regard to which, ordinarily, the Department would seek formal permission from the Presidential Secretariat and the Secretary of the Commission of Inquiry to examine the said records or to make the same available to a member of the public. Section 4 of the RTI Act, No.12 of 2016 states,

¹⁰ Delivered on 20.11.2017.

“The provision of this Act shall have effect notwithstanding anything to the contrary in any other written law and accordingly in the event of any inconsistency or conflict between the provisions of this Act and such other written law, the provisions of this Act shall prevail.”

In this regard, it is clear that the RTI Act prevails over and above the clauses relating to confidentiality in the National Archives Law and related Regulations. It is a pertinent factor that the absence of the Report of the Commission of Inquiry in regard to this matter is of considerable public interest. Further, this Commission is not apprised of an exception to the release of information that has been raised by the relevant Public Authority in this matter in terms of Section 5 of the RTI Act. The reason put forward by the Public Authority regarding its inability to provide the requested information to the Appellant by letter dated 20.03.2017 as well as through its Written Submissions to this Commission dated 18.08.2017 is limited to the response that the information could not be provided as it could not be found.

Accordingly, and in the light of the overriding public interest in this matter pertaining to a request for information relating to a Report of a statutory inquiry body established under the Commissions of Inquiry Act, No. 17 of 1948 (as amended), this Commission orders the release of the documents as detailed hereinafter;

- a) A copy of the substantial Minute dated 12.08.2002 made by the Additional Secretary, CPA, Presidential Secretariat, summarising the findings of the Commission of Inquiry in this case, as marked in the file that was sent to the Department by the Presidential Secretariat on 18.05.2007;

- b) A copy of the three pages of the Commission Report which is the subject of this information request, relating to recommendations in regard to the payment of compensation to certain persons that was contained in the aforesaid file.

The Department of the National Archives is the custodian of '*all records*' of Commissions of Inquiry under the Act of 1948 (as amended) read with Section 11 of the National Archives Law No. 48 of 1973 (as amended). The Report of such a Commission would constitute a primary 'record' under and in terms of the said law. Hence the Department may properly call upon the depositing body or individual (effectively the Secretary of such a Commission or Committee in terms of the relevant statutory provision) to ensure that the Report of the Commission or Committee is sent to the Department in accordance with the law. If there was non-compliance with that request, an official notation of the same by the Department would have been useful in clarifying details as to the whereabouts of a particular Report.¹¹

The decision of the DO is reversed.

¹¹ NB; On 27.02.2018, Additional Secretary (Legal), Presidential Secretariat informed the RTI Commission that the Presidential Secretariat had been successful in obtaining a certified copy of the Presidential Commission Report of Inquiry into the late SLMC founder Mr.M.H.M Ashraff's death from the Criminal Investigations Department (CID). This was consequent to the Additional Secretary (Legal) having written to the Government Printer and the CID requesting a copy of the said Report, as directed by the RTI Commission at the previous hearing. In pursuance of the Additional Secretary's written request dated 05.02.2018, the CID had sent a copy of the Report in its possession which was received by the Presidential Secretariat on 14.02.2018. The said copy of the Report certified as a true copy on 26.03.2003 by the then Senior Assistant Secretary to the President, W.J.S. Karunaratne was released to the Appellant.

*Ceylon Bank Employees' Union v People's Bank*¹²

'One important distinguishing factor in this Appeal is the involvement of a public agency and the use of public funds, which invokes the public interest. Public interest has a large role to play when dealing with national banks. This Commission has, time and again, placed a stringent obligation on the PA to justify the citation of exemptions in instances where information is requested that involves expenses from the public purse.'

Decision: Public Authority ordered to disclose the quantum of moneys expended from public funds relating to the retention of private counsel in litigation against members of a trade union who had protested in regard to alleged internal financial irregularities of the Public Authority without retaining the Attorney General/criteria on which decision was made to retain private counsel deemed to amount to an 'institutional decision' subject to RTI and amenable to disclosure subject to redaction of personal names/details of private attorneys so engaged/disclosure of adherence to general reporting requirements to the Auditor General (if any)/to material / information as to whether the Governor and /or Director of Banking Supervision of the Central Bank of Sri Lanka have been made aware of the litigation/sub judice held not to be a ground for refusal of information under the Act (information requests not to be disallowed purely due to a pending case unless the disclosure would be in contempt of court or prejudicial to the maintenance of the authority and impartiality of the judiciary, Section 5(1)(j)).

The decision of the Designated Officer upheld in terms of refusal to disclose internal discussions on an opinion given by a legal consultant of the Bank/material calling for (Conti:)

¹² RTIC Appeal (In-Person) /58/2018 heard as part of a formal meeting of the Commission on 30.01.2018, 27.03. 2018 and 22.05.2018.

information from other attorneys apart from those engaged and material to substantiate discussion as to the excessiveness of the fees charged *inter alia* by lawyers of 'equal standing'.

Keywords: Due diligence// Fiduciary (*Section 5 (1) (g)*)/ Mandated procedures – consequences/maintenance of the authority and impartiality of the judiciary (*Section 5(1)(j)*)/ Privacy (*Section 5 (1) (a)*)/ Professional communications – written law (*Section 5(1) (f)*)/ Public Funds (*Section 5(1)(j)*)/ Public Interest (*Section 5(4)/Sub judice*.

Brief Factual Background:

Information requested on 29.08.2017:

- (a) A certified copy and/or extracts and/or such other documentary material of the decision taken by the People's Bank to disregard and override the legal opinion given by the Legal Consultant of the bank Mrs. Minoli Jinadasa, AAL to desist from initiating or continuing disciplinary action against three employee-members of the Appellant Union, namely, MR. S. M. A. R. Senanayaka, Mr. A. M. M. S. M. Ruwais and Mr. S. K. D. Hewapathirana.
- (b) A certified copy and/or extracts and/or such other documentary material of the decision taken by the People's Bank to retain Instructing Attorney and Counsel from the private Bar in Case Nos. DSP 179/2016, 183/2016 and 184/2016 filed in the District Court of Colombo without first consulting and retaining the Hon. Attorney General for the said three cases.
- (c) A certified copy and/or extracts and/or such other documentary material of the decision taken by the People's Bank to retain Instructing Attorney and Counsel from the private Bar without first consulting and retaining the Hon. Attorney General in Case Nos. WP/HCCA/COL/04/2017as

well as case Nos. WP/HCCA/ COL/15/2017 (LA), WP/HCCA/COL/16/2017(LA) and WP/HCCA/COL/17/2017 (LA) filed by the People's Bank against the said three employees, namely, Mr. S. M. A. R. Senanayake, Mr. A. M.M.S.M. Ruwais and Mr. S. K.D. Hewapathirana.

- (d) A certified copy and/or extracts and/or such other documentary material of the decision taken by the People's Bank to refer SC HCCA LA Leave to Appeal Application Nos. 316/2017, 318/2017 and 319/2017 to the Supreme Court without consulting and retaining the Hon. Attorney-General despite the High Court of Civil Appeal in Case Nos. WP/HCCA/COL/15/2017 (LA), WP/HCCA/COL/16/2017 (LA) and WP/HCCA/COL/17/2017(LA), held against the People's Bank.
- (e) A certified copy and extracts and/or such other documentary material of the People's Bank of the vouchers raised to make payments to date in respect of Case Nos. DSP 179/2016, 183/2016 and 184/2016 filed in the District Court of Colombo and the case WP/HCCA/COL/04/2017 filed and withdrawn by the People's Bank and the Case Nos. WP/HCCA/COL/15/2017 (LA), WP/HCCA/COL/16/2017 (LA) and WP/HCCA/COL/17/2017 (LA) filed by the People's Bank and dismissed by the High Court of Civil Appeal and SC HCCA LA Leave to Appeal Application Nos. 316/2017, 318/2017 and 319/2017 filed by the People's Bank.
- (f) A certified copy and/or extracts and/or such other documentary material of the decision taken by the People's Bank seeking approval and/or provisional approval from the Auditor General to authorize the payment of fees of the Instructing Attorney and the counsel for the Case Nos. DSP 179/2016, 183/2016 and 184/2016 filed in the District Court of Colombo and the case WP/HCCA/COL/04/2017 filed and withdrawn by the People's Bank and the Case Nos. WP/HCCA/COL/15/2017 (LA), WP/HCCA/COL/16/2017 (LA) and WP/ HCCA/ COL/ 17/ 2017 (LA) filed by the

People's Bank and dismissed by the High Court of Civil Appeal and SC HCCA LA Leave to Appeal Application Nos. 316/2017, 318/2017 and 319/2017 filed by the People's Bank.

- (g) A certified copy and/or extracts and/or such other documentary material of the criteria adopted by the People's Bank in selecting and retaining the Instructing Attorney and the counsel for the cases referred in (f) above.
- (h) A certified copy and/or extracts and/or such other documentary material of the People's Bank informing the Auditor General of the said cases referred to in (f) above for auditing purposes to reflect the same in Annual and/or quarterly audited accounts.
- (i) A certified copy and/or extracts and/or such other documentary material of the People's Bank calling for fees from other Instructing Attorneys and Counsel than those who have been retained currently.
- (j) A certified copy and/or extracts and/or such other documentary material of the People's Bank deciding whether the legal fees claimed by the Instructing Attorneys and Counsel in the said cases referred to in (f) above are excessive and/or exorbitant or similar to fees customarily charges in like manner by lawyers of equal standing in the locality for similar legal services in similar circumstances.
- (k) A certified copy and/or extracts and/or such other documentary material of the People's Bank to the effect that the Bank attempted to settle the said Case Nos. DSP 179/2016, 183/2016 and 184/2016 filed in the District Court of Colombo following the dismissal by the High Court of Civil Appeal of the WP/HCCA/COL/04/2017 filed and withdrawn by the People's Bank and the case Nos. WP/HCCA/COL/15/2017 (LA), WP/HCCA/COL/16/2017 (LA) and WP/HCCA/COL/17/2017 (LA) filed by the People's Bank.
- (l) A certified copy and/or extracts and/or such other documentary material of the decision of the People's Bank whether the Governor and/or Director of Banking Supervision of the Central Bank has been informed of the existence and progress of the said cases referred above.

The response of the Public Authority:

The Information Officer on 19.09.2017 responded to the Appellant Union refusing the provision of the information on the basis that the information comes within Section 5 of the Right to Information Act without however specifying the precise subsection of Section 5 relied on and stating merely that the requested information pertained to 'several cases that were pending in court.' Thereafter, by appeal dated 25.09.2017, the Appellant Union submitted an appeal to the Designated Officer. Upon the failure of the Designated Officer to respond, the said appeal dated 23.11.2017 was submitted to the Right to Information Commission.

Specifically addressing the question of the public interest/-purpose in the release of the information, the Appellant submitted that it has a membership of over 30,000 members out of which 6500 are employees of the PA who significantly contribute to and are involved in the banking sector and as such, is a key stakeholder in the banking sector playing a significant role in the protection of that sector. The information request relates to the legal expenses incurred by the PA in respect of legal actions involving three employees of the PA, which expense may have not been incurred had the PA acted in accordance with the legal opinion given by its own legal consultant. The Appellant also submitted that the litigation had been resorted to in order to seek revenge against the employees who had exposed financial fraud involving irregularities in digital banking, also noted by the Auditor General. The Appellant stated that public money had been spent on litigation because the PA wished to punish whistle-blowers.

The PA contended in response that the employees had published and distributed an internal bulletin which was *inter alia*, grossly scurrilous and violated the Disciplinary Code which holds that employees are not permitted to display/circulate pamphlets, posters or other publication without prior permission of the Head of Department or the General Manager. The contravention led to the PA initiating disciplinary proceedings against the said employees.

¹³ **Interim Order**

By Order dated 27th March 2018, this Commission examined the objection raised by the PA that the items of information asked for could not be given due to ‘pending cases in court’ (*vide* refusal by the Information Officer of the Public Authority dated 19.09.2018). It was observed that the Act seeks to promote a culture of transparency and accountability and has been legislatively intended to prevail over any other written law in the event of a conflict (Section 4) of the Act. Accordingly, as the appellate body established under the Act, the Commission is obliged to ‘affirm, vary or reverse’ the decision of the Public Authority appealed against in terms of Section 32(1) of the Act with the key underlining purpose of ensuring the promotion of accountability and transparency in the utilization of public funds, for whatever purpose, by a PA.

¹³ Delivered on 27.03.2018; Appearances for the parties; Nalin Amarajeewa, AAL, Indula Hewage AAL, (Counsel for the Appellant); Sandun Gamage AAL (representing the PA on 27.03.2018) Dusith Johndasan AAL (representing the PA on 22.05.2018) Navod Hewage, AAL, Chamindri Liyanage, AAL for the PA.

In response to the ground of *sub judice* raised by the Public Authority, it was emphasized that information may only be refused strictly within the four corners of Section 5(1), which refusal is finally subject to the public interest override in Section 5 (4) in terms of which, information cannot be declined ‘where the public interest in disclosing the information outweighs the harm that would result from such disclosure.’

In pursuance of the statutory duty in the Commission to strictly uphold the principle of transparency and accountability underlying the RTI Act, it must be pointed out that the concept of *sub judice* has long been interpreted not to preempt and prevent discussions of established public interest, merely on the basis that there are in existence, contemporaneous legal proceedings (*vide*; *Maxwell v. Pressdram Ltd* (1987) 1 All ER 656). The established principle is that there must be a “*real risk*” (emphasis ours), as opposed to a remote possibility, that interference or prejudice would be caused to the due administration of justice. In particular, the reasoning in *The Sunday Times v. United Kingdom*, (26 April 1979, Series A No. 30, 14 EHRR 229) was approved of, where it was cautioned that what was in issue was not a choice between two conflicting principles or “balancing” the public interest in freedom of expression and the public interest in the fair administration of justice. Rather, the correct test was to apply a principle of freedom of expression that is subject to a number of exceptions which must be narrowly interpreted.

As was stated in that Order, that distinction is important in the first instance for the purposes of assessing the relevance of the exemption set out in Section 5(1)(j) of the Act which the PA heavily relies on this appeal. This Commission is called upon to apply the primary principle of the Right to Information on the basis of the test of maximum public disclosure that the Act is

premised on in the intention of its drafters, against the exceptions set out in Section 5(1) of the Act which, as excellently cautioned in *The Sunday Times v. United Kingdom (supra)* in a different but comparable context, must be narrowly interpreted.

By that same Order, the Commission directed the PA to provide the legal opinion submitted by the consultant to the PA, to desist from initiating or continuing disciplinary action against three employee member of the Appellant Union- namely, Mr. S.M.A.R. Senanayaka, Mr. A.M.M.S.M. Ruwais and Mr. S. K.D. Hewapathirana in order to enable the Commission to assess the public interest element in this Appeal. Accordingly the same was provided to the Commission by fax dated 23rd May 2018.

Lack of response by the Designated Officer and duty of diligence on the Public Authority

All Public Authorities covered by the RTI Act are required, in terms of the Act, to carry out their statutory obligations with due regard to the mandates of legislation passed by Parliament and with due diligence thereto.

An appeal arises before this Commission in terms of Section 32 of the Act against a decision arrived at by a Designated Officer of the Public Authority made in terms of Section 31 of the Act. Designated Officers of Public Authorities, if not appearing in person, have a statutory duty to direct competent representatives to appear on their behalf before this Commission in order to satisfactorily discharge the burden of proof imposed on Public Authorities to show that they acted in compliance with the Act in terms of Section 32(4) of the Act.

The fact that the appeal preferred to the DO under Section 31 of the Act has not been responded to by the DO of the PA cannot be excused on the ground of mere advertence. This amounts to bypassing a statutory duty on the part of the DO as detailed in Sections 31 (2) and (3) of the Act. It is unfortunate that a state banking institution such as the PA, as named in this appeal, has treated mandatory duties imposed by legislation in an indifferent manner. This stands in sharp contrast to the manner in which other PAs, including key banking institutions, have carried out their obligations in terms of the Act.

¹⁴ **Order**

The primary issue in this Appeal concerns the expenditure of public funds by a Public Authority which brings duties of transparency and accountability into play.

Information Request A

The PA has sought to deny this request under Section 5 (1) (j) of the Act. Assessing the same in the context of the principles articulated above in regard to a ‘real risk’ that prejudice will be caused to ‘the maintenance of the authority and impartiality of the judiciary’, we observe that the requested information is directly in issue in the pending litigation referred to by the Public Authority and forms in fact, the very basis on which that litigation appears to have been initiated in the first instance.

We consequently uphold the decision of the Public Authority to decline the release of the material in terms of Section 5(1)(j) of the Act, more specifically on the basis that release of the same would be “...prejudicial to the maintenance of the authority and impartiality of the judiciary.”

¹⁴ Delivered on 17.07.2018.

Information Requests B and C

Information requests (B) and (C) are in connection with the disclosure of material to support the decision to retain instructing attorneys and counsels from the private bar without consultation of the Attorney General. As emphasized in our Order of 27th March 2018, the Public Authority is undoubtedly within its discretion to arrive at decisions to retain private counsel in litigation. In that regard, it must be emphasized that the submission of attorneys-at-law for the Public Authority during hearings in this Appeal that to release information regarding the same would amount to dictating to the Public Authority as to whom it should retain as counsel, is flawed in its very basic premise.

What is in issue here relates to internal decisions taken by the Public Authority in pursuance of which private counsel was retained and public funds expended. Consequently, it cannot be maintained that there is no public interest in this matter as the Public Authority is effectively utilizing public funds in regard to which transparency and accountability of the highest standard must be reflected.... The Commission is not convinced that this disclosure would prejudice the pending cases, thus attracting Section 5 (1)(j).

...Disclosure of the grounds on which that decision was based has no connection, in our view, with a specific relationship between a particular lawyer/lawyers and the client (the Public Authority), bringing the same within the scope of a 'fiduciary relationship.' On previous instances, this Commission has ordered disclosure of similar such institutional decisions by

Public Authorities which have been complied with, as was the case in *Dushyanthi Suriyapperuma v. Sri Lanka Medical Council* (RTIC Appeal (In person) /36/2017).

We rule that the internal discussion on the basis of which the decision to engage private attorneys was arrived at by the Public Authority would not come within the purview of the exemptions under section 5 (1) (g) or (j) of the Act and order disclosure subject to redaction of the personal names/details of private attorneys so engaged. The decision of the Designated Officer is reversed in that regard.

Information Request D

The PA has sought to deny this request under Section 5 (1) (g) & (j). On the same reasoning as specified in relation to the ordering of disclosure in relation to information requests B and C above, we determine that application of the exemption of fiduciary relationship, under Section 5 (1) (g) would be inapplicable given that the information request pertains to an internal institutional decision of the PA.

On that same basis, the Commission is also not convinced that this disclosure would prejudice the pending cases and that consequently, Section 5 (1) (j) is attracted, on the reasoning more fully set out in our response to information items B and C above. We rule that the internal discussion on the basis of which the decision taken by the People's Bank not to retain the Hon. Attorney-General to appear on its behalf in regard to the above stated litigation would not come within the purview of the exemptions under Section 5 (1) (g) or (j) of the Act and reverse the decision of the Designated Officer in that regard.

Information Request E

The PA has relied on Sections 5(1)(a), (f), (g) and (j) of the Act. Considering this aspect of the information request, the core question is as to whether the public funds spent on retention of private counsel by the PA in litigation becomes information that may legitimately be requested by an information requester under and in terms of the Act.

Application of exemption under Section 5 (1) (a) of the Act – “privacy.”

This is a ground that has been most strenuously raised by the Public Authority (*vide* paragraph 24 (vi)). For the purpose of assessing the validity of the application of this exemption, it is necessary to consider the full import of Section 5(1) (a) which reads as follows;

Section 5 (1) (a) the information relates to personal information the disclosure of which has no relationship to any public activity or interest, or which would cause unwarranted invasion of the privacy of the individual unless the larger public interest justifies the disclosure of such information or the person concerned has consented in writing to such disclosure;

The questions that arise here are central to the determination of this Appeal. Does the information requested have any ‘*relationship to any public activity or interest*’? Is the information requested linked to the ‘*larger public interest*’? Does the information requested result in the ‘*unwarranted invasion of the privacy of the individual*’?

One important distinguishing factor in this Appeal is the involvement of a public agency and the use of public funds, which invokes the public interest. Public interest has a large role to play when dealing with national banks. This Commission has, time and again, placed a stringent obligation on the PA to justify the citation of exemptions in instances where information is requested that involves expenses from the public purse. Observations made to this effect in *Pilots Guild v SriLankan Airlines (RTIC Appeal (in Person)/99/17)* are relevant in this regard:

'...where the public purse is concerned, and the alleged financial irregularities of a particular Public Authority are under scrutiny in an Appeal before us, this Commission will be particularly watchful of the public interest.'

In *Independent Employees Union v. Ceylon Fisheries Harbour Corporation* (RTIC Appeal/1/112/2018), disclosure of 'information in relation to the public funds expended towards retaining legal counsel' by the Public Authority was ordered and the Order complied with. The Commission observed *"In such instances, what is relevant under and in terms of the RTI Act is not the names of the counsel but the moneys expended as aforesaid."*

...We are of the opinion that the information requested in this segment has a direct relationship to a 'public activity or interest' and that it is linked to the 'larger public interest' Where the question is as to whether the information requested results in the 'unwarranted invasion of the privacy of the individual' as urged by the Public Authority, we reiterate the observation of this Commission in *Independent Employees Union v. Ceylon Fisheries Harbour Corporation* (supra) that 'what is relevant

under and in terms of the RTI Act is not the names of the counsel but the moneys expended as aforesaid.”

Application of exemption under Section 5 (1) (f) of the Act – “professional privilege.”

....it is reiterated that this Section does not automatically apply purely for the reason that documents are communicated between PA and an attorney. In accordance with the earlier order by this Commission in this appeal, if the exemption is pleaded it must be shown how the information is privileged and as to the manner in which it is ‘not permitted to be disclosed under any written law’ as expressly stipulated by that Section.

...The PA has failed to cite any provision of ‘written law’ that specifically establishes its contention that fees paid to lawyers out of public funds are encompassed within the ambit of Section 5(1)(f). It failed to establish that such information will prejudice the substantive rights of the parties in relation to ongoing cases except to urge that disclosure of such information will amount to ‘regulation of fees’ which, as aforesaid, is not a tenable argument.

Application of exemption under Section 5 (1) (g) of the Act – “fiduciary relationship.”

...the public interest factor in the expenditure of state funds in the retention of private counsel must necessarily be reiterated.
Application of exemption under Section 5 (1) (j) of the Act – “prejudicial to the maintenance of the authority and impartiality of the judiciary.”

We do not accept the exemption relied on under Section 5 (1) (j) based on the reasoning more fully set out in respect of our

decision on information items B, C and D above. In light of the above, we order disclosure of the quantum of cumulative fees expended by the PA in its retention of private legal counsel in the litigation cited by the Appellant in item D of the information request, and order disclosure subject to redaction of the personal names/details of private attorneys so engaged, which effectively renders the objections of privacy, professional privilege and fiduciary relationship raised by the PA as inapplicable.

It is a relevant factor that in any event, the Annual Report (page 267) of the PA in 2017 discloses the total value of litigation against the PA under “43.5. Litigation Against the Bank and Companies within the Group.” This information in respect of previous and other instances is therefore already within the realm of public information. The decision of the Designated Officer is varied in that regard.

Information Request F and H

The PA has sought to deny these two items of information under Section 5 (1) (g) & (j) of the Act. In summary, they pertain respectively to material substantiating the approval / provisional approval of the Auditor-General authorizing payments to the instructing attorneys and to reporting the pending cases to the Auditor-General for the purpose of inclusion in the annual report.

...what is in issue in this instance is information regarding the adherence to general reporting requirements to the Auditor General. As aforesaid, it is noted from a review of the Annual Report (page 267) filed by the PA in 2017 which discloses that the total value of litigation against the PA has been included thereunder under “43.5. Litigation Against the Bank and Companies within the Group,” which establishes the fact that

the PA adheres to reporting requirements though those requirements may not necessarily amount to approvals as claimed by the Appellant.

The Commission is of the view that materials to substantiate approval from the Auditor General and / or particulars for complying with reporting requirements for preparation of the annual report do not have a bearing on pending legal disputes. The exemption under Section 5 (1) (j) of the Act would also not be applicable based on the reasoning more fully set out in respect of our decision on information items B, C and D above. We accordingly order disclosure of this and reverse the decision of the Designated Officer in that regard.

Information Request G

The PA has sought to deny this request under Section 5 (1) (g) & (j) of the Act.

This information request pertains to the criteria adopted by the PA in selecting and retaining instructing attorneys and counsels for the pending cases. It is emphasized and reiterated that Act seeks to promote a culture of transparency and disclosure.

The exemption of fiduciary relationship is inapplicable as this request pertains to criteria adopted by the PA in selecting an attorney for the cases. This is a matter of internal consideration/contemplation and relates to an institutional decision. We reverse the decision of the Designated Officer and order disclosure subject to redaction of the personal names/details of private attorneys so engaged. We rely on the reasoning set out above in respect of information items B, C and D in respect of rejection of the exemptions cited in Section 5 (1) (g) & (j).

Information Request I & J

The PA has sought to deny this request under Section 5 (1) (a), (f), (g), (j) of the Act.

The above requests pertain to material calling for information from other attorneys apart from those engaged and material to substantiate discussion as to the excessiveness of the fees charged *inter alia* by lawyers of equal standing.

The Commission finds no merit in this information request. It seeks to disclose information presumably for the purposes of comparative assessment, which has no relationship to this instant Appeal. The PA has relied on the exemption under section 5(1)(a) of the Act. The disclosure of this information would necessitate disclosure of fee particulars of other lawyers of “equal standing”, which is an inherently vague term. Accordingly, the decision of the Designated Officer in this regard is affirmed.

Information Request K

On the same reasoning set out in respect of rejecting disclosure of information in item A) above, the decision of the Designated Officer in this regard is affirmed.

Information Request L

The PA has sought to deny this request under Section 5 (1) (g) & (j) of the Act. The above information request relates to material/extracts to evidence that the Governor and /or Director of Banking Supervision of the Central Bank have been made aware of the existence and progress of the above case. On the facts of this Appeal and in relation to this information item, we are of the considered view that the above information would not fall within the exemption of fiduciary relationship in terms of

Section 5 (1) (g) of the Act. We rely on our reasoning set out above in respect of information items B, C and D in respect of rejection of the exemption cited in Section 5 (1) (j).

The decision of the DO is affirmed with regard to Information Request A, E, F, G, H, I, J and K and reversed with regard to B, C, D and L.¹⁵

¹⁵ On 16.08.2018, the Public Authority (i.e., People's Bank) filed an appeal to the Court of Appeal against this decision in terms of Section 34 of the Act, constituting the first appeal to be lodged on a decision of the Commission.

***Dialog Axiata v. Telecommunications
Regulatory Commission of Sri Lanka
(TRCSL)¹⁶***

‘While the discretion afforded to the Public Authority...in the allocation of spectrum frequency is undeniable, (whether by auction or an administrative decision as the case may be), such discretion is not unfettered but must be exercised ‘in accordance with law’ and subject to the application of the RTI Act...’

Decision: Public Authority obligated to provide information on allocation of spectrum frequency to State Controlled Service Provider Mobitel (Private) Ltd and disclose whether due process had been followed.

Keywords: Commercial confidence (*Section 5 (1)(d)*)/Discretionary powers of public officials/Public Interest (*Section 5 (1)(d)*), *Section 5(4)*.

Brief Factual Background

Information requested by the Appellant on 29.06.2017:

1. Confirmation of whether or not there was a recent allocation of 7.5 MHz spectrum in the 1800 MHz frequency band to the State Controlled Service Provider Mobitel (Private) Ltd.
2. If such an allocation was made, whether due process was followed with respect to the said allocation and in particular

¹⁶ RTIC Appeal (In-Person) /09/2018 heard as part of a formal meeting of the Commission on 16.03.2018, 03.04.2018.

whether any or all of the following processes were adhered to by the TRCSL in its capacity of being the custodian of valuable and scarce state resources

- a. Evidence of a competitive bidding process in line with the commitments to “Good Governance” of the Government of Sri Lanka (GoSL)
- b. Evidence of process followed with respect to the valuation of the scarce resource and ongoing fees to be levied in this regard
- c. Evidence of payment being made to the said scarce resource
- d. The due process with respect to the evaluation of the credentials of service providers considered eligible for such allocation including *inter-alia*
 - i. Assessment of the ongoing contribution of service providers to the revenues of the GoSL cumulative investments to date and subscriber base supported by competing service providers
 - ii. Evaluation of spectrum resources already granted to competing service providers *vis a vis* d. (i.)

3. Copies of

- a. All papers, reports, decisions and recommendations submitted to the Commission by the Frequency Allocation Committee (FAC) of the TRCSL and or any other officer of the TRCSL since 1st January 2017 to-date with respect to allocation of 7.5 MHz in the 1800 MHz Band and/or with respect to the Methodology and Process allocation of the said 7.5 MHz slot in the 1800 band and the decision/s made by the Commission thereon.
- b. All Commission papers, minutes of meetings/discussions and decision relating to the 1800 MHz band during the period starting 01.01.2017 to date (29.06.2017).

By response received on 01.08.2017, the Appellant was informed that its request was denied on the basis of Section 5 (1) (d) of the RTI Act, No. 12 of 2016. Dissatisfied with this response, Dialog appealed to the Designated Officer (DO) on 14.08.2017 and received a response on 28.08.2017 upholding the decision of the Information Officer (IO). Dialog thereafter preferred an appeal to the RTI Commission on 26.10.2017.

Matters Arising During the Course of the Hearing

The Appellant submitted that pursuant to the Sri Lanka Telecommunications Act (SLTA), No. 25 of 1991 (as amended), the TRCSL is authorised to allocate spectra to mobile telecommunications networks and pursuant to the WTO agreements Sri Lanka is committed to allocating national assets and scarce resources such as spectrum in fair, equitable and transparent procedure. The Appellant submitted that the particular spectrum in issue was a 1800 4G band used primarily for broadband services and as such the TRCSL should have provided an opportunity for competitive bidding. The Appellant contended that the information request regarding the allocation of spectrum to Mobitel (Pvt) Ltd was denied under Section 5(1)(d) of the RTI Act despite the information request having no relevance to commercial confidence. The Appellant finally noted that spectrum is a national asset and not a commercial or industrial secret and therefore competitive bidding of the same would enable the State to earn a higher revenue in comparison to the revenue generated through the automatic allocation.

In response to these submissions, the Public Authority contended that the TRCSL was the sole regulator of the industry in the country and therefore could not provide information to a competitor in the same field as the company to which the spectrum frequency was allocated. It further stated that under Section 10 (Radio Frequencies) of the SLTA, TRCSL had the sole right to manage spectrum, which had been auctioned only once before in 2013 and in other years it had been allocated

through an administrative process with the cost factor decided by TRCSL.

Order¹⁷

While the discretion afforded to the Public Authority by the SLTA in the allocation of spectrum frequency is undeniable, (whether by auction or an administrative decision as the case may be), such discretion is not unfettered but must be exercised ‘in accordance with law’ and subject to the application of the RTI Act, absent a clearly applicable exemption set out in Section 5 (1) of the Act which overrides the public interest Sections 5 (4) and 5 (1)(d).

It is also pertinent in this regard that ‘every officer in any public authority giving a decision which affects any person in any way’ is under a duty to disclose reasons for the decision as mandated by Section 35 of the Act. No immunity is afforded to the Public Authority in regard to the operation of these statutory provisions and this Commission is bound by law not to privilege any particular Public Authority.

In this instance, the Public Authority has justified the refusal to give the requested information by citing the exemption in Section 5 (1) (d) of the RTI Act, which states as follows:

¹⁷ Delivered on 03.04.2018. Appearances for the parties; - Trinesh Fernando, SGM- Group Legal and Regulatory - Dialog Axiata PLC, Pulasthi Hewamanne, Attorney-at-Law, Aruna de Silva, Attorney-at-Law, J.C. Weliamuna, P.C. for Appellant; L.S.P. Rodrigo, AD (Legal) for PA (TRCSL).

'Section 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;'

However, this refusal lacks reasoning as to the manner in which the public interest is subordinated to an arguable need to protect the 'competitive position of a third party', particularly considering the subject matter of this information request which is of national importance as reminded by the Supreme Court of Sri Lanka in 1997, given the 'limited availability of spectrum frequencies' and the accompanying judicial caution that only a limited number of persons can be permitted to use the frequencies; (*Atukorale & Others v. The Attorney General*, SD 1/97-15/97, SCM 5 May 1997).

Indeed, this Commission finds that the application of the public interest test is even greater in instances where Section 5 (1) (d) is cited to explain the refusal of information as that sub-section itself refers to the fact that information may be disclosed where *'the public authority is satisfied that larger public interest warrants the disclosure of such information.'* In effect, the 'public interest' test applies both by virtue of Section 5(1) (d) itself and by Section 5 (4) of the Act.

It is also of note that in the hearings before this Commission, the Public Authority appears to be under the misapprehension that its discretion to allocate spectrum frequencies under the SLTA is equated with the absence of a duty to explain its reasons for the decision that has been impugned, which position is not in accordance with Section 35 of the Act.

The PA is directed to abstain from a blanket refusal to provide the information requested, to examine what portions of the information request can be provided and further, to clearly detail the relevant legally applicable exemption under Section 5 if information is being denied together with the manner in which it is not satisfied that the ‘*larger public interest warrants the disclosure of such information*’, in accordance with Section 5 (1)(d) and Section 5 (4).

The decision of the DO is reversed.¹⁸

¹⁸ Information on process followed supplied by Public Authority including the payment made by the preferred service provider for the allocation of spectrum frequency.

6

Dilangani Niroshika v. Bogambara Prison¹⁹

'The RTI Act does not require the Appellant to show reason to obtain information, if such information is in the possession, custody or control of the PA.'

Decision: Public Authority obligated to provide information on prison inmates.

Keywords: Information requester not required to give reasons

Brief Factual Background

Information requested on 05.01.2018:

1. Statistics of the below mentioned according to the gender of prison inmates for the dates 13.12.2017, 20.12.2017 and 02.01.2018
 - 1.1 Prisoners in remand
 - 1.2 අවිච්ඡිද්ධ විඳින රැඳවියන්
 - 1.3 Prisoners detained for a death sentence
 - 1.4 Details of prisoners detained for a death sentence
2. Statistics of the following details
 - 2.1 Detainees below the age of 16
 - 2.2 Detainees between the ages of 16 – 22
 - 2.3 Children under the age of 5
 - 2.4 Children between the ages of 5 – 10
 - 2.5 Number of expectant inmates

¹⁹ RTIC Appeal (In-Person) /228/2018 heard as part of a formal meeting of the Commission on 30.05.2018.

3. Statistics of detainees between ages 16 – 22 according to gender
4. Total number of inmates the facility can accommodate

The Appellant received no response from the IO and appealed to the DO in 14.02.2018. In his response, the DO requested for a letter of approval to be sent to the Commissioner General of Prisons by the Head of the Institution to which the Appellant belonged. Dissatisfied with the response, the Appellant submitted an appeal to the Commission on 23.02.2018.

Order²⁰

The RTI Act does not require the Appellant to show reason to obtain information, if such information is in the possession, custody or control of the PA *vide* Section 24(5) (d). The PA is directed to handover to the Appellant the requested information. Consequent to the agreement of the PA to handover the said information, it is to be provided to the Appellant with a copy of all information and a covering letter to the commission on or before 13.06.2018.

The decision of the DO is reversed.

²⁰ Delivered on 30.05.2018.

***Feizal Samath v. Sri Lankan Bureau of
Foreign Employment***²¹

'The requested information relates to Memoranda of Understanding and/or Bilateral agreements pertaining to migrant workers between the Governments of Sri Lanka and Saudi Arabia, Qatar and Kuwait...there is considerable public interest attached to the same, given public concern in regard to protecting the rights of Sri Lankan citizens who work in those countries.'

Decision: Public Authority obligated to provide copies of MOUs and/or Bilateral agreements pertaining to migrant workers between the Governments of Sri Lanka and Saudi Arabia, Sri Lanka and Qatar, Sri Lanka and Kuwait to journalist seeking information in the public interest.

Keywords: International agreements, obligations under international law (*Section 5(1)(b)(ii)*)/Overseas trade agreements (*Section 5(1)(c)(v)*).

Brief Factual Background

Information requested on 03.07.2017:

Copies of MOU's and/or Bilateral agreements pertaining to migrant workers between the Governments of Sri Lanka and Saudi Arabia, Sri Lanka and Qatar, Sri Lanka and Kuwait.

The Information Officer (IO) had by email dated 06.07.2017 refused the requested information citing Section 5 (b) (ii) (*sic*). Thereafter, the Appellant submitted an appeal to the Designated

²¹ RTIC Appeal (In-Person) /201/2017 heard as part of a formal meeting of the Commission on 06.02.2018, 23.02.2018.

Officer (DO) on 13.07.2017. The DO responded to him by email on 10.08.2017 reiterating the decision of the IO. The Appellant then appealed to the RTI Commission on 17.10.2017.

Order²²

The PA has not been able to satisfy the Commission as to why and how the information requested by the Appellant must be considered confidential. The requested information relates to Memoranda of Understanding and/or Bilateral agreements pertaining to migrant workers between the Governments of Sri Lanka and Saudi Arabia, Qatar and Kuwait and there is considerable public interest attached to the same given public concern in regard to protecting the rights of Sri Lankan citizens who work in those countries.

Further, the information request does not relate to pending agreements but concluded MOUs. As such, there is no serious prejudice caused to any of the parties to the agreements. Therefore, it is determined that the two exemptions cited by the PA namely, Section 5 (1) (b) (ii) and Section 5 (1) (c) (v) will not be applicable in this instance. The PA is ordered to release the information requested.²³

The decision of the DO is reversed.

²² Delivered on 23.02.2018.

²³ On 16/03/2018 the Appellant notified the Commission that he had been informed by the PA *via* RTI Form 04 dated 14/03/2018, that in accordance with Section 25 (1) of the RTI Act, No. 12 of 2016, the relevant information requested by the Appellant will be provided to the Appellant.

*G. Dileep Amuthan v. Ministry of Defence*²⁴

'The Appellant is only required to note whether he/she is a citizen or not... the PA cannot keep questioning further without a substantial reason in the belief that the Appellant is not a citizen.

Further, requesting for proof of citizenship can only be on objective grounds, for example, when a request is made from abroad...

It is difficult to uphold the argument by the Public Authority (SLA) that where there have been allegations against Sri Lankan peacekeepers and there had been an inquiry on the said issue which has been concluded, the SLA cannot provide the details of the inquiry (viz allegations against the Sri Lankan peacekeepers) to the public. To do so, is for the Public Authority (SLA) to claim a privilege especially for itself. Such privileges are not provided for in the RTI Act'...

In principle, it must be strongly emphasized that if any Public Authority commences to obtain Military Intelligence reports in regard to citizens purely on the basis that he/she is filling Right to Information requests which is a legitimate and legal procedure under the RTI Act ...,then the fundamental objectives of the Act would be negated...'

²⁴ RTIC Appeal/ (In person) 70/ 2018 heard as part of a formal meeting of the Commission on 23.03.2018, 15.05.2018, 03.07.2018, 07.08.2018, 09.10.2018 and 11.12.2018.

Decision: Public Authority (Sri Lanka Army, SLA) warned against requiring Appellants to provide proof of citizenship unless objective reasons exist to doubt citizenship. Public disclosure mandated in respect of commercial hospitality ventures run by the Public Authority in the North and East in line with similar information provided by the Sri Lanka Navy and Sri Lanka Air Force to the Commission/SLA ordered to provide statistics as to the numbers of soldiers against whom disciplinary action had been taken.

Decision of Designated Officer to refuse information pertaining to the nature of crimes, names of victims of such crimes (alleged against Sri Lankan peacekeepers in Haiti) upheld on the basis of Section 5 (1)(a) in the context of the 'Strictly Confidential' status of the relevant report handed over by the United Nations to the Public Authority.

Keywords: Information requester not required to give reasons (*Section 24 (5)(d)*)/Military intelligence reports /Proof of citizenship/Public Interest override (*Section 5 (4)*), Public funds (hospitality ventures out of public funds)/ International agreements or obligations under international law (*Section 5 (1) (b) (ii)*)/ Privacy (*Section 5 (1) (a)*), confidential details re sexual abuse incidents).

Brief Factual Background

Information requested on 28.09.2017:

- I 1. A comprehensive list of the shops, canteens, outlets and/or restaurants catering *inter alia* to members of the public maintained by and/ or under which are responsible to the Sri Lanka Army and/or Sri Lanka Navy and / or Sri Lanka Air Force;

2. A comprehensive list of all business enterprises other than those in point 1 above catering *inter alia* to members of the public maintained by and/ or under or which are responsible to the Sri Lanka Army and/or Sri Lanka Navy and/ or Sri Lanka Air Force;

- II.
1. Relevant rules, procedures, guidelines and /or policies pertaining to the Army Directorate of Welfare;
 2. Annual Statements of accounts reflecting total income, total expenditure and other details for the Army Welfare Society Fund of the Sri Lanka Army for the last ten years, i.e., 2006 to 2016;
 3. Audit procedures pertaining to the Army Welfare Society Fund and all relevant audit documents for the last ten years, i.e., 2006 to 2016;
 4. A comprehensive list of the shops, canteens, outlets and / or restaurants catering *inter alia* to members of the public maintained by and / or under or which are responsible to the Directorate of Welfare;
 5. A comprehensive list of all business enterprises other than those in point 4 above catering *inter alia* to members of the public maintained by and/or under or which are responsible to the Army;
 6. Total number of army personnel working at and/ or assigned to and/ or posted to the establishments listed in question 4 and 5 above;
 7. The annual audited statement of accounts for each hotel under the Laya chain of hotels, i.e. Laya Beach, Laya Leisure, Laya Safari, and Laya Waves from 2009 to 2016;
 8. Annual statements of accounts of Thal Sevana hotel for the years 2010 to date;

9. A comprehensive list of beneficiaries benefiting from the Legal Aid Fund maintained under the Directorate of Welfare and a comprehensive list of payments made thereunder;

III. Concerning the allegations of Sri Lankan peacekeepers deployed to Haiti being perpetrators of sexual abuse of Haitian citizens in 2007.

1. Names of peacekeeping officers, including names of senior and high-ranking officers who were repatriated from Haiti following the allegations of involvement in a sex ring while engaging in UN peacekeeping activities in Haiti in 2007;
2. Findings of the Court of Inquiry in the form of reports or investigative notations on activities concerning Sri Lankan peacekeepers deployed to Haiti and the events concerning the sex ring which unfolded in Haiti while the Sri Lankan peacekeepers were engaged in peacekeeping operations;
3. A list of allegations made by citizens of Haiti against the peacekeepers deployed from Sri Lanka including the nature of their crimes, names of victims of such crimes and/ or any other relevant information regarding the allegations made against the peacekeepers deployed from Sri Lanka;
4. Details of disciplinary action taken against the 11 soldiers, one Lieutenant Colonel and two Majors including the following:
 - Whether or not these persons were brought before a General Court Martial or submitted to any form of Court Martial process;

- Findings of the General Court Martial and/ or any other Court Martial process;
- Names and ranks of the officers who presided at the General Court Martial and/ or other Court Martial process;
- List of the allegations and/ or crimes tried by the General Court Martial and / or other Court Martial process;
- Disciplinary measures (including *inter alia* reprimanding, suspension, dismissal) taken against persons accused of committing/ being involved in the alleged crimes in Haiti;
- Disciplinary and/ or penal action taken against the commander of the contingent;
- Information on the institution of prosecution of persons found to be guilty of committing the alleged crimes in Haiti including case numbers of such criminal action filed before the Courts in Sri Lanka;

The Appellant received a response on 16.10. 2017 requesting a copy of his National Identity Card (NIC) attested by the Grama Sevaka and Divisional Secretary. He was informed that this request was made on behalf of Sri Lanka Army. The Appellant stated that he had already mentioned his NIC number in his information request and that requesting a copy of said NIC seemed to be a delaying tactic or form of intimidation and appealed to the Designated Officer (DO) on 22.10.2017. The DO responded stating that a copy of the NIC was needed to

assess the citizenship of the Appellant. The response was sent by the Additional Secretary (Parliamentary Affairs and Policies) on the letterhead of the Ministry of Defence. Dissatisfied with this response, the Appellant appealed to the Commission on 04.12.2017.

Interim Order²⁵

It must be reiterated that the Appellant is only required to note whether he/she is a citizen or not in the form RTI01 as provided in the Regulations published in Gazette No.2004/66 dated 03.02.2017. The PA cannot keep questioning further without a substantial reason in the belief that the Appellant is not a citizen. Further, requesting for proof of citizenship can only be on objective grounds, for example, when a request is made from abroad, then there might be a reason to doubt the citizenship of the requester.

As observed by this Commission in *TISL v. Prime Minister's Office/Presidential Secretariat* (RTIC Appeal/05/2017 & RTIC Appeal/06/2017, RTIC Minutes of 2302.2018), requesters should be asked for proof of citizenship only in the 'rarest of cases' (*Shri K. Balakrishna Pillai v. National Human Rights Commission* (CIC/OK/C/2008/00016, Minutes of the Central Information Commission of India, 26th May 2008), and only where there is a *bona fide* doubt on the part of the PA as to whether the information requester is a citizen.

In the instant matter, the Appellant has already mentioned his NIC number in his information request; therefore, it is not appropriate for the PA to further request copies of his NIC and /or Passport. The RTI Act No.12 of 2016 is very clear, that an

²⁵ Delivered on 23.03.2018.

information request can only be declined by citing one of the exemptions in Section 5(1) of the Act; it cannot be blocked through circuitous means. The Commission will, therefore, note as of record that this was a previous procedural policy at the PA which is now obsolete.

With regard to the substantive information request, it is difficult to uphold the argument by the Public Authority (SLA) that where there have been allegations against the Sri Lankan peacekeepers and there had been an inquiry on the said issue which has been concluded, that the SLA cannot provide the details of the inquiry to the public. To do so is for the Public Authority (SLA) to claim a privilege, especially for itself. Such privileges are not provided for in the RTI Act.

Further, in assessing the public interest in such matters, it is a relevant consideration that if there has been a process of inquiry, it is in the Public Authority (SLA)'s benefit to establish what concrete action it has taken regarding allegations made thereto. The Public Authority (SLA) is directed to prepare a thorough summary of the findings of the court of inquiry for submission to this Commission. Upon perusal, thereof and if assessed as being required for the purpose, this Commission may call upon the Public Authority (SLA) to furnish the report of the court of inquiry for the Commission's examination in order to ascertain if the summary correctly reflects the contents of the substantive report.

Interim Order²⁶

As agreed before us, the Public Authority (SLA) is directed to provide to the Commission the information in Items I and II which are public documents and not subject to any exemptions.

²⁶ Delivered on 15.05.2018.

Where it is so relevant, the requested information in regard to the relevant hospitality ventures under the management of the Army may be provided from the date that the same were converted as public/business ventures.

In respect of the information requested in Item II (4), the Public Authority (SLA) may provide the information bifurcated if necessary by those canteens being maintained internally by the Army which the public is also permitted to use and those canteens explicitly run as a public undertaking. In respect of the information requested in item II (9), this is directed to be submitted for our perusal consequent to which a decision will be made regarding public release of the same.

With regard to Item III and the exemption in Section 5 (1) (b) (ii) pleaded by the Public Authority (SLA) (as per the advice of the Department of the Attorney General), the attention of the Public Authority is drawn to the said Section which states that information can be declined where it;

*“would be or is likely to be seriously prejudicial to Sri Lanka”s relations with any State, or in relation to international agreements or obligations under international law, where such information was **given by or obtained in confidence**;*” (emphasis ours)

It is important to note that the reliance on an international agreement to deny information pertains strictly to instances where the requested information was given or obtained in confidence and further, where provision of the same is assessed as being ‘*seriously prejudicial to Sri Lanka’s relations with any State, or in relation to international agreements or obligations under international law.*’ As such it is manifest that this exemption cannot be applied in a vague or generalized manner

as to include all information relating to any international agreement.

The Public Authority is directed to clarify as to first, what international agreement or obligation under international law is at issue here; secondly, the precise terms of the serious prejudice that can be caused thereby; and thirdly, what information was given or obtained in confidence. This is in order for the Commission to assess the legitimacy of the applicability of the exemption that is cited in the first instance, as well as the relevance of the public interest override contained in Section 5(4) of the Act which states that;

(4) Notwithstanding the provisions of subsection (1), 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.

It is of further note that such an assessment is called for in accordance with the powers accorded to this Commission in the exercise of its statutory duties and functions in terms of Section 15 of the RTI Act, and that failure to abide by the same may constitute a breach of the statutory duties and functions given the scope and content of the preamble to the Act which emphasizes ‘*a need to foster a culture of transparency and accountability in Public Authorities by giving effect to the right of access to information.*’

Interim Order²⁷

In principle, it must be strongly emphasized that if any Public Authority commences to obtain Military Intelligence reports in regard to citizens purely on the basis that they are filing Right

²⁷ Delivered on 03.07.2018.

to Information requests which is a legitimate and legal procedure under the Right to Information (RTI) Act passed by the Sri Lanka Parliament, then the fundamental objectives of the Act would be negated.

While the Commission is not in a position to assess at this stage as to whether this has actually happened in this case or not on the facts before us, it must also be stated that in principle, this would be a matter of grave concern befitting the specific intervention of the Commission if RTI applicants are sought to be intimidated in any way whatsoever.

We note particularly that the background of an Appellant or the purpose of an information request is not a relevant consideration under and in terms of the RTI Act to deny information. Section 24 (5) (d) of the Act states that;

‘A citizen making a request for information shall... not be required to give any reason for requesting the information or any other personal details except those that may be necessary for contacting him or her.’

The function of the Commission is to ascertain whether the information requested can be legitimately and in law, be made available to the Appellant, provided that the said information does not fall within the purview of the several exemptions detailed in Section 5 (1) of the RTI Act and further, the public override in Section 5 (4) is not found to apply. With regard to item I of the information request before us, the Public Authority (SLA) is directed to hand over to the Appellant the information requested akin to what has been provided by the Sri Lanka Navy and the Sri Lanka Air Force at this appeal hearing, with a copy to the Commission on or before 07.08.2018.

In relation to item II (7) of the information request by which ‘the annual audited statement of accounts for each hotel under the Laya chain of hotels, i.e. Laya Beach, Laya Leisure, Laya Safari, and Laya Waves from 2009 to 2016’ are requested, the consideration arises as to whether the hospitality ventures run by SLA are funded by public or private funds (Welfare society funds of SLA). It is a relevant factor that the said hospitality ventures are controlled, operated and maintained by members of the Public Authority who are being paid out of Government funds. Upholding the claim of the Public Authority without substantiating the same would in effect amount to allowing the Public Authority, a privilege that is not provided for under and in terms of the RTI Act which would be acting contrary to the RTI Act where the statutory function of this Commission is concerned.

Interim Order²⁸

...pleading the ‘**Strictly Confidential**’ status of the said report handed over by the United Nations to the Public Authority and citation of the exemption under Section 5(1)(b) (ii) of the Act is not applicable in the circumstances of the case, where the information requested by items III (1), III (2) and III (4) is concerned.

Moreover, statistics as to the numbers of soldiers against whom disciplinary action is taken in this regard is already in the domain as the said information is of record as having been submitted by the Government of Sri Lanka on successive occasions before bodies of the United Nations.

The Public Authority is directed to prepare a thorough statistical summary of soldiers against whom action had been taken pursuant to these allegations made and the disciplinary action

²⁸ Delivered on 07.08.2018.

taken against the soldiers. This statistical summary will satisfy the information requested by items III (1), III (2) and III (4).

Information requested by item III (3) pertains to the following;

3. A list of allegations made by citizens of Haiti against the peacekeepers deployed from Sri Lanka including the nature of their crimes, names of victims of such crimes and/or any other relevant information regarding the allegations made against the peacekeepers deployed from Sri Lanka

It is our considered view that the information requested, in so far as the portion ‘a list of allegations made by citizens of Haiti against the peacekeepers deployed from Sri Lanka including the nature of their crimes, names of victims of such crimes concerned, attracts Section 5(1)(a) of the RTI Act in that it concerns information pertaining to the victims in the said cases. This further impacts the ‘**Strictly Confidential**’ status of the said report handed over by the United Nations to the Public Authority given that the contents of that report which have been perused by this Commission contain references to the said personal details.

Considering all these relevant factors, we deny disclosure of that information requested in item III (3) under Section 5 (1)(a) in the context of information disclosure of items III (1), III (2) and III (4) being deemed as sufficient for the purpose in that the public interest is consequently satisfied by the said disclosure to all intents and purposes where Section 5(4) is concerned.

The decision of the DO is partially reversed.

G. Dileep Amuthan v. Northern Provincial Council²⁹

'The Commission observes that legislation protecting whistleblowers would perfectly complement the RTI regime which seeks to achieve the same goal. It could also resolve conflicts, such as the case in point, where RTI requests threaten to harm whistleblowers.'

Decision: Giving due regard to concerns raised regarding the adverse consequences of a full disclosure on whistleblowers, the DO is directed to release the inquiry report on the Valvettithurai Urban Council subject to redaction of that portion of the testimony of the public officer whose complaint was instrumental in the inquiry being initiated.

Keywords: Competing rights/ Inquiry reports/ confidential information by a third party (Section 5(1)(i) read with proviso to Section 29 (2) (c)/Public Interest (Section 5 (4)) /Privileges of Provincial Council Members (Section 5(1)(k)/ Privacy (Section 5 (1)(a)/Whistleblower Protection.

Brief Factual Background:

Information requested on 23.02.2017

The inquiry report on the Valvettithurai Urban Council pursuant to which the Council was dissolved.

²⁹ RTIC Appeal (In-Person) /21/2017 heard as part of a formal meeting of the Commission on 10.07.2017, 24.04.2018, 15.05.2018, 03.07.2018, 07.08.2018.

The Appellant was provided with a one-page summary of the report; unsatisfied with the information provided, the Appellant appealed to the DO. The Designated Officer responded to his Appeal stating that providing the full report would affect the interests of the former members of the Urban Council and that since some of them were currently members of the Provincial Council, it would affect their privilege according to Section 5 (1) (k) of the RTI Act No. 12 of 2016. The Appellant filed an appeal with the Commission on 29.05.2017.

Matters arising during the course of the hearings

The Commission declined to accept the argument of the DO regarding the applicability of the exemption of privilege as provided for under Section 5 (1) (k), pointing as follows;

- a) The interpretation of the Section cannot be used as an omnibus clause for denial of each and every matter;
- b) The application of the clause is strictly limited to the entities statutorily named as there cannot be a process of implied extension.
- c) However, the involvement of third parties (aggregating to about 10 officers and witnesses) calls for consideration of the exemption provided for under Section 5 (1) (i) of the Act. Thus,³⁰ the matter was referred back to the IO for it to be reheard with the participation of all parties involved under and in terms of Section 32(1) of the Act. Consequent to such referral, the Public Authority informed the Commission on 23.04.2018 that it had released a redacted version of the inquiry report to the appellant, redacting only that portion of the evidence of the Public Officer whose complaint regarding corruption had led to the inquiry in the first instance.

³⁰ Interim order delivered on 10.07.2017.

In a subsequent hearing, the PA submitted the inquiry report in its entirety to the Commission for scrutiny upon a direction being so issued. Having perused the report, it became evident that the exemption of privacy as provided for under Section 5 (a) may be in issue. Despite the Appellant going on record before the Commission assuring the maintenance of privacy of the third party and reiterating the same at the meeting held between both parties, the DO in his letter dated 28.05.2018 stated, the third party did not change her stance regarding the matter at the said meeting and continued to object to a full disclosure. Due to the failure on the part of both parties to reach a favourable compromise, the matter was moved for a final order.

Order³¹

In balancing the competing rights involved, due regard must, however, be given to the applicability of exemptions provided for under Sections 5 (1) (a) and (i) namely, privacy and consent of third parties. Specifically, when Section 5 (1) (i) is read with Section 29 of the Act, although a Public Authority is compelled to deny information supplied to it on a confidential basis by a third party who refuses to consent to the release of the information (Section 29 (2) (c)), the proviso to that Section stipulates that information can be disclosed by order of the Commission, if the ‘public interest in the release of the information concerned demonstrably outweighs the private interest in non-disclosure.’

In the given instance, weighing these exemptions in the light of public interest is of particular interest and importance as the public officer involved was a ‘whistleblower’ in the Valvettithurai Urban Council or in other words, a public officer who had sought to seek accountability through the disclosure of information regarding wrongdoings or corruption in the workplace.

³¹ Delivered on 09.10.2018.

Striving for accountability and transparency is an evident common ground between acts of whistleblowers and the RTI regime.

Given the absence of a separate law that protects such whistleblowers, the Commission is duty bound to act cautiously. In this regard, we are constrained to point out that Sri Lanka should consider statutory measures to protect whistleblowers acting in the public interest from adverse repercussions of their actions. Failure to do so would have a chilling effect and deter public officials from exposing corruption in the future. The need for the statutory protection of Whistleblowers is now being globally recognized world over, with some countries even extending the ambit of such legislation to the private sphere. The Commission observes that legislation protecting whistleblowers would perfectly complement the RTI regime which seeks to achieve the same goal. It could also resolve conflicts, such as the case in point, where RTI requests threaten to harm whistleblowers. Until such time, the Commission has the duty to exercise its discretion when values important for the functioning of a democratic society are pitted against each other.

While it is conceded that the public has a right to know what transpired in the Urban Council prior to its dissolution, the Appellant has failed to prove how the omission of a portion of the report hampers such public interest especially when, given the nature of the case, the public officer concerned fears repercussions of such information being made public. Moreover, the Commission fails to see as to how much more or how differently the public interest could be served in the full disclosure of all information in the context of the report being substantially released by the Public Authority.

Therefore, taking into full consideration the right to privacy of the public officer concerned and giving due regard to concerns raised regarding the adverse consequences of a full disclosure in such circumstances, we find that Section 5 (1)(a) operates to block the information remaining to be released in this instance and that in any event, the proviso to Section 29 (2) (c), read with the general public interest override in Section 5(4) of the Act, would not be applicable to issue Order directing the release of the information requested.

The decision of the Public Authority (as revised in releasing the inquiry report subject to redaction of that portion of the testimony of the public officer whose complaint was instrumental in the inquiry being initiated) is affirmed.

***H.C.S. de Zoysa Siriwardena v. Sri Lanka
Army³²***

'The Commission is bound by its statutory duty to give effect to the spirit and letter of the Act with regard to the principle of maximum disclosure which mandates that the right to information can be refused only when the specified exceptions in Section 5 (1) are invoked. It is noted that the Sri Lanka Army is a Public Authority that comes within the purview of the RTI Act and therefore has a statutory duty to abide by its provisions.'

Decision: Public Authority directed to disclose the court summons, the complete inquiry report redacting the evidence given by third parties whose privacy will be affected, observations and conclusions of the inquiry and related documents, qualifications of those drafting the Conclusion of the inquiry.

Keywords: Mandated procedures – consequences / Inquiry reports / Privacy/ (Section 5 (1) (a))/ Severability, (Section 6).

Brief Factual Background

Information requested on 02.05.2017:

In this case, the Appellant had requested the following information relating to an investigation conducted by the special court of the Sri Lankan Army (the Public Authority) in relation

³² RTIC Appeal (In-Person) 89/2017 heard as part of a formal meeting of the Commission on 06.11.2017, 27.11.2017, 30.01.2018, 23.02.2018, 16.03.2018, 03.04.2018, 30.05.2018, 17.07.2018, 31.07.2018, 14.08.2018, 02.10.2018, 09.10.2018 & 30.10.2018.

to the sexual abuse of the Appellant by Major General (AAL)
R. P. Rajapathirana, RSP USP:

1. Certified copies of court summons for 01.08.2014 issued to conduct the initial investigation
2. Certified copies of the hand written initial investigation report of the Court.
3. Certified copies of observations and conclusions
4. Certified copies of related documents
5. Certified copies of the conclusion arrived at by the Commander of the Army
6. Since the court legal officers were also witnesses in the initial investigation, the information/ qualifications of the officer/s who drafted/prepared the conclusion reached by the Commander of the Army.

Responding to the information request by the Appellant, the Information Officer (IO), Major General A.W.M.P.R. Seneviratne, by letter dated 12.05.2017 had directed the Appellant to make a request to her immediate supervisor, and (failing which) to the Commander of the Army in order to obtain the requested information.

Upon the receipt of the letter from the IO, the Appellant had forwarded her information request to her supervising officer on 14.05.2017. Having received no response from the supervising officer, the Appellant then filed an appeal by letter dated 05.06.2017 to the Designated Officer (DO), the Commander of the Army. The DO did not respond to the appeal. The Appellant filed an appeal with the Commission on 28.08.2017.

³³ Delivered on 06.11.2017.

Interim Order³³

In the instant matter, the Public Authority had not provided the information requested under the RTI Act by the Appellant and has asked the Appellant to follow the internal procedures of the Public Authority established by the Sri Lanka Army Act in order to obtain the requested information. Section 25 of the RTI Act clearly states that an information officer shall make a decision either to provide the information requested or to reject the request on any one or more of the grounds referred to in Section 5 of the RTI Act, and shall forthwith communicate such decision to the citizen who made the request.

The Commission is bound by its statutory duty to give effect to the spirit and letter of the Act with regard to the principle of maximum disclosure which mandates that the right to information can be refused only when the specified exceptions in Section 5 (1) are invoked. It is noted that the Sri Lanka Army is a Public Authority that comes within the purview of the RTI Act and therefore has a statutory duty to abide by its provisions. The manner, in terms of which the RTI request dated 02.05.2017 made by the Appellant had been considered, adheres neither to Section 25 nor to any of the subsections of Section 5 (1) of the RTI Act.

Therefore, noting the fact that certain items of information requested by the Appellant such as court summons etc. are information requests that are justified by principles of natural justice, the PA is directed to reconsider the information request of the Appellant dated 02.05.2017 and to inform the Commission of its decision, as required by Section 25 of the RTI Act, either to provide the information requested or to reject the request on any one or more of the grounds referred to in Section 5 of the RTI Act...

Interim Order³⁴

...The Commission is generally cautious in the release of preliminary inquiry reports since it may impact the maintenance of authority and impartiality of the judiciary in subsequent formal inquiries and court proceedings. However in this instance since no such further action is contemplated based on the conclusion reached by the Commander of the Army (item 5 of the request which has been produced before the Commission and issued to the Appellant) the PA is directed to submit a copy of the hand written initial investigation report of the Court (which will include items 2 and 3 of the information request) for the perusal of the Commission along with a summary of the said report redacting the parts which may affect the privacy of third parties. Subsequent to the detailed perusal of the Army Commander's Conclusion and the Appellant's continuous insistence of the grave injustice caused to her during the course of the inquiry evident in her written and oral submissions before the Commission, the Commission sees no prejudice caused to the PA in providing a copy of the inquiry proceeding...

Interim Order³⁵

...Upon comparison of the inquiry report, with the summary handed over by the PA, it is evident that the summary is an inadequate reflection of the full inquiry report. It is directed that the observations and conclusions of the inquiry report in their entirety, as well as the summary provided by the PA be released to the Appellant today.

It is noted in particular that evidence in favour of the Appellant has not been adequately represented in the summary. The PA is

³⁴ Delivered on 30.01.2018.

³⁵ Delivered on 03.04.2018.

directed to release the full contents of the evidence of witnesses favourable to the Appellant. This includes the evidence of the 5th, 12th, 16th, 17th and 18th witnesses. The PA is further directed to prepare a list of witnesses whose privacy will be affected (as pleaded on previous hearings by the PA itself) by the release of the information along with the basis for submitting the same.

Interim Order³⁶

...The Public Authority is directed to obtain official confirmation by the two female officers, namely that the said officers were not in agreement to releasing their evidence or excerpts of such on the grounds of privacy. We see no reason as to why the remainder of the inquiry report cannot be disclosed to the Appellant excluding the evidence of/ relating to the two officers.³⁷

The decision of the DO is reversed, information released subject to redaction.

³⁶ Delivered on 30.05.2018.

³⁷ By Order of 17.07.2018, the printed copy of the inquiry report was handed back (to the PA with the RTI Commission retaining the original hand written inquiry report) for the purpose of redaction of the evidence given by the two officers which would include their evidence in chief, evidence in cross-examination and evidence in re-examination as well as evidence given by any of the other witnesses including the Appellant which will affect the privacy of the said two officers in line with Section 5 (1)(a) of the Act, subject to vetting by the Commission for conformity to the RTI Act. By Order of 02.10.2018, the report was released to the Appellant subject to the redactions.

Dr. Kumarasiri Manage v. Secretary, Ministry of Education³⁸

'The DO's rejection of the instant information request... is a bare refusal to furnish the information and does not contain the citation of the relevant section under which an exemption under Section 5 (1) of the Act may be pleaded. This is a serious contravention of Section 31 (3) of the Act.

'These letters pertain to the exercise of discretionary powers in office by public functionaries and are therefore of demonstrable public interest, the release of which information satisfies the requirements laid down in Section 5 (4) of the Act.'

Decision: Public Authority mandated to disclose the number of students in class, names and number of students admitted through interviews through the Special Appeal Board recommendations and through letters issued by the Ministry of Education in 2014.

Keywords: Mandated procedures – consequences/Discretionary powers Of public officers / School Admissions / Offences Section 39 (1)(c)/ Public Interest (Section 5 (4)).

Brief Factual Background

Information requested on 22.04.2017:

1. The number of students in each Grade 4 class of Visakha Vidyalaya Colombo 05 as at 22.04.2017.

³⁸ RTIC Appeal (In-Person) /65/2017 heard as part of a formal meeting of the Commission on 16.10.2017.

2. Following details regarding school admissions to Grade 1
 - a. The list of names and number of students admitted, through interviews, to Grade 1 in 2014
 - b. The list of names and number of students whom the Special Appeal Board recommended be admitted in 2014 (The students who were admitted under the direction/order of the Secretary of the Ministry of Education)
 - c. The list of names and number of students admitted through letters issued by the Ministry of Education in 2014
 - d. Details of the students admitted in a manner other than by following the above-mentioned procedure from January 2014 to date
 - i. Name of the student
 - ii. Date of admission
 - iii. Reason/s for admittance

The Principal of Visakha Vidyalaya had informed by letter dated 29.04.2017 that she had written to the DO for advice and intended to take further action based on the advice of the DO (Secretary of the Ministry of Education).

Order³⁹

A clear breach of the law and procedure mandated by the RTI Act, No. 12 of 2016 (the Act) and RTI Regulations gazetted on February 3rd 2017 (Gazette No. 2004/66) is evidenced on the part of the relevant Public Authority, namely the Ministry of Education and the designated DO, the Secretary to the said Ministry.

In the first instance, the DO has failed to appear before this Commission or send a representative on his behalf, despite being noticed to do so under the RTI Act and the Rules of the Commission gazetted on February 3rd 2017, (Gazette No. 2004/66). The Public Authority has provided no explanation as to the failure thereof and attempts made by the staff of this Commission to contact him on the date of the hearing were not fruitful. This constitutes an offence under and in terms of Section 39 (1) (c) of the Act, incurring specific legal consequences in terms of that Section. In such an eventuality, the Commission is empowered under Section 39(4) to initiate a prosecution in the relevant court. Section 39 further specifies that the conviction of such an offence carries with it the penalty of a fine and/or imprisonment for a term not exceeding two years. Furthermore, the DO's rejection of the instant information request by letter dated 06.10.2017 (which the Appellant states that he had not received) is a bare refusal to furnish the information and does not contain the citation of the relevant section under which an exemption under Section 5 (1) of the Act may be pleaded. This is a serious contravention of Section 31 (3) of the Act. Section 31 (3) states as follows;

(3) The decision on any appeal preferred under subsection (1), shall be made by the designated officer within three weeks of the receipt of the appeal and shall include the reasons for the said decision including specific grounds for the same.

³⁹ Delivered on 16.10.2017.

The Public Authority is in violation of the statutory duty laid upon the said Public Authority and its Secretary, the DO in this instance which mandates a refusal of information only on the specified grounds detailed in Section 5(1) of the Act. Moreover, due to the failure on the part of the relevant Public Authority to put into place clear procedures in regard to the handling of information requests, this particular information request submitted by the appellant on 22.04.2017 has not been effectively responded to by the responsible Public Authority. At the time of the submission of the information request (namely 22.04.2017), the said Public Authority, namely the Ministry of Education, had been directly handling all information requests. It was only with effect from 19.06.2017 and almost two months after the instant information request had been made under Section 24 (1) of the Act, that Principals of National Schools had been appointed as IOs to process information requests relating to the respective schools. Therefore, the Principal of the school cannot be faulted in the circumstances of the case as she was not the named IO at the time in question. The responsibility of conforming to the Act in this regard fell fairly and squarely on the shoulders of the Public Authority, the Ministry of Education.

Thereafter, the Appellant wrote to the Secretary of the said Public Authority, the Ministry of Education on 20.06.2017. Even at that stage, no response was received by him. The rejection of the information request by the DO by letter dated 06.10.2017, a copy of which was furnished by the Principal of the said school, namely the IO indicates not only that the DO had failed to cite a specific exemption under Section 5 (1) of the Act but that he had failed to adhere to the time limits of responding to the appeal in terms of Section 31 (3). The Appellant appealed to this Commission on 12.07.2017 and notices were sent to the Respondents on 26.09.2017. A hastily

written refusal by the DO (which refusal is, in any event, not in conformity with the Act), dated 06.10.2017 follows a delay of well over three months since the Appellant first submitted the appeal to the DO on 20.06.2017 and follows soon after notices were sent to the DO by the Commission.

The whole constitutes multiple violations of Section 31 and Section 39 (1) (c) of the Act as well as the violation of Regulations promulgated by the Minister of Parliamentary Reforms and Mass Media, gazetted on February 3rd 2017, (Gazette No. 2004/66). This Commission takes considered note of the same in the context of its duty under Section 14 (a) to 'monitor the performance and ensure the due compliance by public authorities of the duties case upon them under this Act.' In consideration of this Appeal on its substantive merits, the Principal of the relevant school (the IO at the time of the appeal to the Commission) presented the relevant information in issue. She stated that she is willing to provide the said information on an order of the Commission.

Upon perusing the relevant material placed before us, it is evident that this appeal concerns, in part, information of a similar nature already released in appeals before the Commission relating to the name lists and numbers of children admitted to Grade One in other schools (RTIC Appeal No. 25/2017, Minutes of 21.08.2017). The Designated Officer in question has not cited any specific ground under Section 5 (1) of the Act to deny the information. It is therefore idle to speculate as to what grounds may have been put forward as a reason.

The Principal of the said school, who became the information officer at the time that the appeal was filed before this

Commission, has cited concerns in regard to the safety and security of the children concerned. The information that has been asked for is limited to name lists, the numbers of the children who have been admitted and their addresses which confirms the same information released by the Public Authority in RTIC Appeal No. 25/2017(Minutes of 21.08.2017) in which instance, the information had been released by the Public Authority after the appellant in that case had appealed to the Commission.

In this instance and in addition, the requested information relates to letters issued by the said Public Authority authorizing the admission of particular children to Grade One of the said school. These letters pertain to the exercise of discretionary powers in office by public functionaries and are therefore of demonstrable public interest, the release of which information satisfies the requirements laid down in Section 5(4) of the Act. It is notable that the preamble to the Act emphasizes the need to foster a culture of transparency and accountability in public authorities by giving effect to the right of access to information. The Commission is bound by its statutory duty to give effect to the spirit and letter of the Act with regard to the principle of maximum disclosure which mandates that the right to information can be refused only when the specified exceptions in Section 5 (1) are invoked and in any event, where the public interest becomes uppermost. It bears repetition that in this instance, the Designated Officer in question has not cited any specific ground under Section 5 (1) of the Act to deny the information, either before the Commission or in other letters issued by the said Public Authority. In these circumstances, we order the release of the information in relation to items 1 and 2. (a) - (c) of the information request. Based on the information released, the relevant details

pertaining to 2 (d), i.e.; details of students admitted outside the above-mentioned procedures from January 2014 to date (name, date of admission and reasons for admitting the students) may be ascertained by the Appellant.

The decision of the DO is reversed.

***L.D.N. Kumarasiri v. Mahanama
College, Colombo/ Ministry of
Education⁴⁰***

'If the documents have been removed/ destroyed the Public Authority (Mahanama College 03) is directed to provide any documentation which authorizes the destruction of these records/ tangible evidence to show the same.'

Decision: Public Authority directed to release the list of students selected along with the marks obtained subsequent to the first interview, those selected on appeal based on an interview with their respective marks and name, Number of Grade 1 classes to which students were admitted to in 2012 (those selected from the appeal). Since the Public Authority stated that all copies of one requested list had been destroyed it was directed to submit documentation to the effect that the subject matter of the information request had been destroyed. The parties reached a settlement as the Public Authority admitted the student and the Appellant withdrew the application.

Keywords: Destruction of documents / School Admissions.

Brief Factual Background

Information requested on 16.03.2017:

The following information of the children who applied under the Old Boys category for admission to Grade 1 in 2012.

⁴⁰ RTIC Appeal (In-Person) 44/2017 heard as part of a formal meeting of the Commission on 14.09.2017, 16.10.2017, 20.11.2017 & 16.01.2018.

1. Marks list with the names of the students who participated in the initial/ first interviews
2. List of children selected subsequent to the above-mentioned interview with their marks- schedule mailed to the Commission
3. Marks list of the applicants (with names) who were called for the appeal interview as they appealed having not been selected under 2, subsequent to the interviews conducted under 1 (with names)
4. Those selected under 3 (on appeal) with their respective marks and name (4 students selected)
5. No. of Grade 1 classes to which students were admitted to in 2012 (those selected from the appeal)

The IO and DO failed to respond to the information request.

Matters arising during the course of the hearing

Information requested in 2), 4) and 5) were released during the appeal hearing. In regard to information requested in 1) and 3), the Public Authority stated that as a practice, lists under 1 and 3 are not maintained by schools during the admissions process and it is only those documents produced before the Commission that are tabled and publicized.

Order⁴¹

“The Public Authority is hereby directed to examine the school records diligently to trace the aforementioned lists namely the marks list with the names of the students who participated in the initial/ first interviews, and the marks list of the applicants (with names) who were called for the appeal interview as they appealed having not been selected under item 2, subsequent to the interviews conducted under item 1 (with names), pertaining

⁴¹ Delivered on 20.11.2017.

to children who applied under the Old Boys category for admission to Grade 1 of Mahanama College, Colombo 03 in 2012.

If the documents have been removed/ destroyed the Public Authority (Mahanama College, Colombo 03) is directed to provide any documentation which authorizes the destruction of these records/ tangible evidence to show the same. Since the Public Authority states that these lists are maintained in a file in the custody of the Principal, and since they were handed over to him by the former Principal during whose tenure the said lists were prepared, the letter/document which itemized the contents of what was handed over is to be produced before the Commission.”⁴²

The School agreed to admit the Appellant’s son to the School, which the appellant stated would be an acceptable solution to his grievance which gave rise to the information request. The decision of the DO is reversed.

⁴² By way of Minute of 16. 01.2018, it was recorded that “The PA has agreed to admit the child of the Appellant to Mahanama College, Colombo. The Appellant states that this is an acceptable solution to his grievance, which gave rise to the information request. Accordingly, the Appellant does not wish to continue with the appeal.” The Commission therefore, records that the Appellant has withdrawn his appeal in terms of Rule 30 of the Right to Information Commission Rules of 2017 Published in Gazette No. 2004/66 on 03.02.2017.

***Dr. Mario Gomez v. Ministry of Social
Empowerment, Welfare and Kandyan
Heritage⁴³***

‘While the draft law on the Rights of Persons with Disabilities may be subject to subsequent amendments, the PA is bound to provide a copy of the draft in its current state to the Appellant and there is no requirement to wait until the draft legislation is gazetted.’

Decision: Public Authority obligated to release the draft law on the Rights of Persons with Disabilities as the definition of “information” in Section 43 of the Act expressly includes ‘draft legislation’ within its ambit.

Brief Factual Background

Information requested on 13.07.2017:

The Appellant had requested a copy of the most recent version of the draft law on the Rights of Persons with Disabilities (in Sinhala, Tamil, English, and braille if available) and the current status of the draft law. The Appellant had also inquired as to when the draft law is likely to be approved by Cabinet and tabled in Parliament.

The IO responding on 11.10.2017 stated that the draft amendment of the Rights of Persons with Disabilities Act has been sent from the Legal Draftsman to the Ministry for the Ministry’s observation and that steps have been taken to provide the said observations.

⁴³ RTIC Appeal (In-Person) /51/2018 heard as part of a formal meeting of the Commission on 27.02.2018.

The PA has further stated that it cannot provide the draft legislation until it is gazetted.

The Appellant then lodged an appeal with the DO on 25.10.2017 to which the DO responded on 08.11.2017 reiterating the IO's response that the draft amendment of the Rights of Persons with Disabilities Act has been sent from the Legal Draftsman's Department for the Ministry's observation.

The DO further stated in his response that a report on the said amendments has been prepared and that the PA expects it to be submitted to the Governing Council of the National Institute of Social Development before 15.11.2017 to obtain the Council's approval subsequent to which the PA intended to inform the Legal Draftsman's Department before 30.11.2017. The Appellant filed the appeal with the Commission on 05.12.2017.

Matters arising during the course of the hearing

Additional Secretary, Ministry of Social Empowerment, Welfare and Kandyan Heritage stated that although the draft law on the Rights of Persons with Disabilities (which the Legal Draftsman's Department had amended, and sent to the Ministry for its observations) had been listed several times before the Governing Council at its meetings, the draft had not yet been considered. He stated however that if the Commission issued an Order to that effect, the said draft could be provided to the Appellant.

The Appellant observed that the draft was of considerable public interest in Sri Lanka with disability groups, in particular, being interested in its contents.

Order⁴⁴

The fact that the draft legislation has not been considered by the relevant Governing Council is not an exceptional circumstance under Section 5 of the Right to Information Act No. 12 of 2016 warranting the refusal of the requested information. It is pertinent in this regard that the definition of information in Section 43 of the Act expressly includes 'draft legislation' within its ambit. In many countries in the region as well as globally, draft laws are required to be presented before the public in advance and before the Bill is gazetted, in order to obtain public feedback on its contents which is a beneficial process leading to public consensus around the framing of legislation.

While the draft law on the Rights of Persons with Disabilities may be subject to subsequent amendments, the PA is bound to provide a copy of the draft in its current state to the Appellant and there is no requirement to wait until the draft legislation is gazetted.

The PA is directed to provide the Appellant of a copy of Sri Lanka's draft law on the Rights of Persons with Disabilities (in Sinhala, Tamil & English) as agreed upon between the Appellant and the representative of the PA by 16.03.2018.

The decision of the DO is reversed.

⁴⁴ Delivered on 27.02.2018.

'In the absence of a legal ground under which the disclosure of information can be refused, the Commission, operating within the four corners of the Right to Information Act, No.12 of 2016, orders the release of the information requested by the Appellant.'

Decision: As purported obstruction to the general administration of a public authority is not a ground under which a citizen's right to information can be denied under Section 5 of the Right to Information Act, the Public Authority is obligated to release information relating to the basis on which internal promotions were made, including marks obtained by candidates.

Keywords: Government Circulars/ Institutional Policies/ Public Interest /Public Funds/ Exemptions.

Brief Factual Background

Information requested on 27.03.2017

1. As per circular no 78/2016 dated 27.09.2016 how many vacancies were there for the Manager Grade? (කළමනාකරණ ලේකම්)
2. What were the marks obtained by the 58 persons who obtained promotions to the Manager Grade as per circular 17/2017 dated 20.02.2017, before the interviews?
3. What were the marks obtained at the interviews by the above 58 persons?
4. What were the cut-off marks for the above promotion?
5. What were the marks obtained by O.W.K.Gnanadasa (No 099350) at the interview held on 19.01.2017 subsequent to the calling for promotions via circular no. 78/2016 dated 27.09.2016?

⁴⁵ RTIC Appeal (In-Person)/131/2017 heard as part of a formal meeting of the Commission on 04.12.2017,06.02.2018 and 23.02.2018.

The Information Officer (IO) by letter dated 03.05.2017 had refused the requested information citing Section 5 (1) (b) of the RTI Act. The Appellant had made an appeal on 14.04.2017 to the Designated Officer (DO) who by letter dated 21.06.2017 had refused the same citing Section 5 (1) (a) of the Act. The present appeal dated 06.07.2017 lies before the Commission upon non-receipt of the requested information.

Matters arising during the course of the hearing

Upon the Commission seeking a clarification about the basis on which the information had been refused since there appeared to be a contradiction as two subsections of the Act had been quoted on two different instances, the PA clarified that the information was denied under Section 5 (1) (a) of the Act and that citing Section 5 (1) (b) was a typographical mistake. The PA stated that the promotion system adopted by the PA was transparent and that a copy of the circular, the marks obtained by the Appellant according to such system specified by the circular had already been provided to the Appellant. The PA raised its concern of releasing marks obtained by other candidates stating that this would not only be an invasion in regard to privacy but also a hindrance to the general administration of the PA since it would create a precedent for the other 8000 employees of the PA, to make similar information requests. Therefore, it was the opinion of the PA that releasing the marks of other candidates would not constitute a public interest in the instant matter.

The Commission referenced several judgments of the Supreme Court of Sri Lanka delivered in favour of releasing final results of examinations conducted by Public Institutions and Boards. The Commission also remarked that the public interest of the subject matter is derived from the fact that the PA is funded by public money and therefore the public has a right to know whether or not appointments and promotions have been made in accordance with proper procedure. Therein, the PA expressed its consent to release the information for the perusal of the Commission at the next hearing.

Matters arising during the course of the hearing⁴⁶

...Subsequent to the Order of the Commission on the last occasion, the PA had brought the requested information for the perusal of the Commission. However, the PA reiterated its concerns in regard to disclosing the information at hand, stating that since it creates a precedent for other employees to make similar information requests, it would hinder the general administration of the PA.

Order⁴⁷

Upon perusal of the documents brought by the PA, it has become evident that the information requested by the Appellant in the instant matter, was not of a confidential nature. Purported obstruction to the general administration of a public authority is not a ground under which a citizen's right to information can be denied.

Therefore, in the absence of a legal ground under which the disclosure of information can be refused, the Commission, operating within the four corners of the Right to Information Act, No.12 of 2016, orders the release of the information requested by the Appellant. This decision is strictly limited to the factual and contextual matters in consideration in this Appeal and should not be taken as a precedent in other cases the determination of which will depend on the facts of each appeal.

The PA is directed to submit a revised document expunging the information that is not requested by the Appellant in her information request from the original document that the PA had brought before the Commission and to hand over the revised document to the Appellant before the Commission on 23.02.2018 at 12.30 pm.

The decision of the DO is reversed.

⁴⁶ Heard as part of the meeting of the Commission on 06.02.2018.

⁴⁷ Delivered on 23.02.2018.

P. U. Rangabandara v. The Mahaweli⁴⁸
Authority of Sri Lanka

'A Public Authority may not claim the benefit of Section 5 (1) (f) of the RTI Act simply on the basis that there is an ongoing court case. Section 5 (1) (f) only applies to information 'which is not permitted to be disclosed under any written law' and is of strictly limited application...

The law does not privilege any PA in this regard as to what information can be accepted as being encompassed within the category of information that is 'not permissible to be disclosed under any written law.' That is confined to the category of documents defined by the law...'

Decision: Public Authority directed to release the information requested by the Appellant with regard to the piece of land as the issuance of a vesting certificate by the PA which is not a privileged document negates the raising of exemptions under Section 5 (1) (f) and (j).

Keywords: Mandated procedures – consequences, failure to provide assistance to IO (*Section 39 (2)*)/ Maintenance of the authority and impartiality of the judiciary (*Section 5(1)(j)*)/ Offences /Professional communications – written law(*Section 5 (1) (f), Sections 126, 129 of the Evidence Ordinance*)/Public document/*Sub judice*.

⁴⁸ RTIC Appeal (In-Person)/55/2017 heard as part of a formal meeting of the Commission on 14.09.2017, 23.10.2017, 27.11.2017, 19.12.2017. Appearances for the parties - G.C. Rajapakse, Dilumi de Alwis, (Attorneys -at-Law for Appellant).

Brief Factual Background

Information requested on 15.03.2017:

The Appellant had requested the following information, pertaining to a land which was deemed by the Public Authority to be vested/ allegedly vested with them.

1. Is the land more fully described below vested with the MASL under and in terms of any specific provisions of a written law?
2. Is such a formal and specific order, if any, still in operation?
3. Please provide a copy of any such operating vesting order, certified as true by you.
4. If no has the MASL acquired ownership of the Land more fully described below under and in terms of any specific provisions of a written law?
5. If yes, under which provision of written law did such acquisition take place?
6. A certified copy of the Gazette Notification, if any, in terms of which such acquisition was made.

The response of the Public Authority

The Information Officer had refused the information on 03.05.2017 stating that the land area on which information is sought is directly related to a court case ongoing in the Gampola Magistrates Court and specifically claimed the exceptions under Sections 5 (1) (f) and 5 (1) (j) of the Right to Information Act No 12 of 2016.

The DO had stated by letter addressed to the IO (and copied to the Appellant) on 25.05.2017, that he had determined that the information requested could be provided to the Appellant and directed the IO to furnish the information accordingly, but despite such direction, the relevant officers had refused to comply.

The Appellant filed an appeal with the Commission on 24.07.2017.

Interim Order⁴⁹

In this case the original information has been refused by the Information Officer (Director HQ Operations/ IO) based on Sections 5 (1) (f) and 5 (1) (j) of the Right to Information Act No. 12 of 2016 (The Act) relating to respectively privileged information and contending that release of the information would be ‘prejudicial to the maintenance of the authority and impartiality of the judiciary’. However, on perusal of the documents and on further questioning the Designated Officer (DO) who was present at the hearing, it is apparent that the invocation of these two grounds rests purely on the claim that the information sought relates to a court case that is ongoing in the Gampola Magistrates Court instituted by the Mahaweli Authority of Sri Lanka (the Public Authority- PA).

The mere institution of a case in court is not a reason to refuse the disclosure of information under and in terms of the Act. Section 5 (1) (f) relating to professional privilege consists of information which is not permitted to be disclosed under any written law. This ground of objection manifestly does not apply to vesting orders or gazette notifications, which are public documents. It is commendable that the DO accepted that the refusal by the IO was wrong and directed the IO to provide the information.

The attention of the PA is drawn to Section 39 (2) of the Act which states that ‘any officer whose assistance was sought for by an information officer under Section 23(3) and who fails without reasonable cause to provide such assistance, shall commit an offence under this Act, and shall on conviction after summary trial by a Magistrate be liable to a fine not exceeding

⁴⁹ Delivered on 14.09.2017.

ten thousand rupees’ and to Section 39 (3) which states that ‘a fine imposed for the commission of an offence referred to in sub - section (1) or (2) of this Section, shall be in addition to and not in derogation of any disciplinary action that may be taken against such officer by the relevant authority empowered to do so.’ It is further noted that in terms of Section 39 (1) (a) every person who deliberately obstructs the provision of information or intentionally provides incorrect, incomplete or inaccurate information or under Section 39 (1) (e) ‘fails or refuses to comply with or give effect to a decision of the Commission commits an offence under this Act and shall on conviction after summary trial by a Magistrate be liable to a fine not exceeding fifty thousand rupees or to imprisonment for a term not exceeding two years or to both such fine and imprisonment.’

Upon further perusing this letter sent on 12.09.2017 by the IO to the DO of the said PA, it becomes apparent that the contents of the said letter bear out the request of the said IO to release the said information on the direction of the DO but that there has been no response forthcoming from the Director (Lands) of the said PA. The PA is hereby directed to release the information requested which is a copy of any such operating vesting order pertaining to the aforementioned land, certified as true by the PA. Further, the contents of the letter dated 12.09.2017 of file No.DL/06/02/146 written by Director (Lands) to (Director HQ operations) clearly indicates that no vesting order has been issued in respect of the said land.

Consequently the PA is directed to furnish all relevant gazette notifications in respect of the lands in question which are described above (and which is reproduced again below) before the Commission.

Interim Order⁵⁰

...A Public Authority may not claim the benefit of Section 5 (1) (f) of the RTI Act simply on the basis that there is an ongoing court case. Section 5 (1) (f) only applies to information '*which is not permitted to be disclosed under any written law*' and is of strictly limited application.

For the purposes of the instant case, this includes matters exchanged confidentially in terms of Section 129 of the Evidence Ordinance No. 14 of 1895 which states that;

'No one shall be compelled to disclose to the court any confidential communication which has taken place between him and his legal professional adviser, unless he offers himself as a witness, in which case he may be compelled to disclose any such communications as may appear to the court necessary to be known in order to explain any evidence which he has given, but no others.'

Section 126 of the Evidence Ordinance states as follows;

'No attorney-at-law or notary shall at any time, be permitted, unless with his client's express consent, to disclose any communication made to him in the course and for the purpose of his employment as such attorney-at-law or notary by or on behalf of his client or to state the contents or conditions of any document which he has become acquainted in the course and for the purpose of his professional employment or to disclose any advice given by him to his client in the course of and for the purpose of such employment.'

⁵⁰ Delivered on 27.11.2017.

It is pertinent that Section 126 is subject to several provisos which are however of little relevance in this matter.

On the facts of the instant case, the application of Section 5 (1) (f) of the Act cannot be maintained. Moreover, a vesting order is unquestionably a public document and the exact status of its issuance or non-issuance as the case may be which forms the core of the instant information request must be clarified by the PA and the relevant documents supplied as requested by the Appellant. The mere *ipse dixit* of a state officer will not suffice for that purpose.

The PA is hereby directed to produce the relevant file before the Commission at the next date of hearing in order to ascertain the aforesaid status of the information requested.

Order⁵¹

...The information request in this matter pertains to the basis on which the land in question and more fully described in the preceding Orders of this Commission has been acquired by the PA by virtue of a vesting certificate/ order issued in relation to the particular land.

In consideration of the submission made by the DG of the PA before us that the requested information is exempted by reason of Section 5 (1) (f) of the RTI Act, it is reiterated that this Section does not automatically apply purely for the reason that documents have been submitted by the relevant PA to the Department of the Attorney General in relation to an ongoing court case.

In accordance with earlier orders by this Commission in this appeal, if the exemption is pleaded it must be shown how the information is privileged. The relevant portion of the Section contains the stipulation that the information should be that '*which*

⁵¹Delivered on 19.12.2017.

is not permissible to be disclosed under any written law'. Thus, each and every document submitted to the Attorney General would not be covered by the cited exemption.

In this instance, a vesting order cannot be privileged as it is a public document. Whether such an order was issued and to what portion of the land that order is applicable should be information available to the public.

It is of record that the Director General of the PA has in fact, accepted that a vesting order issued in respect of a particular land is not a privileged document. The law does not privilege any PA in this regard as to what information can be accepted as being encompassed within the category of information that is '*not permissible to be disclosed under any written law*.' That is confined to the category of documents defined by the law. If it is the case, as confirmed by officers attached to the PA before us at this appeal hearing, there is a vesting certificate/ order issued by the State in relation to the particular land; the PA is directed to release such information to the Appellant.

We note that the DG has assured on record before the Commission that the information in issue will be provided to the Appellant within one week of the conclusion of this appeal hearing. If the said information is not provided or is inadequate, the Appellant may apply to the Commission to take necessary action re failure to comply with the decision of the Commission as per Section 39 (1) (e) of the RTI Act No. 12 of 2016.

The decision of the DO is reversed.

***Premalal Abeysekere v. Ministry of
Education***⁵²

‘...substantial allegations of financial irregularities are not a compulsory condition to be established under the RTI Act in each and every appeal in order to decide if the proviso to Section 29 (2) (c), read with the general public interest override in Section 5(4) of the Act, would apply...’

Decision: Refusal of the Public Authority to provide a copy of the assets declaration of the retired school principal of Southlands College Galle upheld on the basis that public interest not evidenced in the factual context of the specific appeal, under Section 5(1)(i) read with proviso to Section 29 (2)(c) in the context of third party (ie; the principal) refusing to consent to disclosure.

Keywords: Assets Declarations / confidential information by a third party (*Section 5(1)(i), proviso to Section 29 (2)(c)*)/ Public Interest (*Section 5(4)*).

Brief Factual Background

Information requested on 14.02.2017:

The Appellant sought a certified copy of the statement of assets and liabilities of the former Principal of Southlands College Galle, Ms. Shanthi Seneviratne. By request dated 14.03.2017, the Appellant sought documents relating to the admission of children in 2017 to the following schools. 1. Aloysius College

⁵² RTIC Appeal/25/2017 (Order adopted as part of a formal meeting of the Commission on 17.07.2018, 21.08.2017, 16.10.2017, 06.11.2017, 27.11.2017, 27.03.2018 and 20.04.2018).

Galle 2. Mahinda College Galle 3. Richmond College Galle 4. Southlands College Galle 5. Anuladevi Girls' School Galle 6. Sanghamitta Balika Vidyalaya Galle 7. Siridamma College Galle 8. Rippon Girls College Galle. The Appellant had initially requested this information from the Principals of the respective schools. However subsequent to the response from the Principal, Sanghamitta Balika Vidyalaya Galle, stating that the authority to issue such information has been vested with the Additional Secretary (Administration) Ministry of Education (Information Officer), the Appellant directed the information request to the Ministry.

On the date of the second hearing (*viz*; 21.08.2017) the Public Authority had provided the Appellant with part of the information requested in the request of the Appellant dated 14.03.2017 as indicated by letters dated 24.07.2017 and 17.08.2017 (No. ED/RTI/1703/034). The PA had attached an RTI 04 form to the letter dated 24.07.2017, addressed to the Appellant indicating the same. The PA had also by the said letter, denied the information in relation to the statement of assets and liabilities of the former Principal.

Matters arising during the course of the hearing

The Public Authority had declined to provide a certified copy of the statement of assets and liabilities of the former Principal of Southlands College Galle, Ms Shanthi Seneviratne (letter of the DO refusing the information dated 17.10.2017) on the basis that this was the information supplied by a third party to the Public Authority which would fall under the exemption in Section 5 (1) (i), and the third party had refused to consent to the disclosure. Consequently, as mandated under Section 29(2) (c), the DO had refused the information request following the third party refusing to provide the information.

The Public Authority contended that it was not within the province of the PA to release this declaration of assets and liabilities since it was obtained from the respective individual in a sealed form and that information on an individual's assets and liabilities may be released only in limited circumstances as specified in the Declaration of Assets and Liabilities Law No. 1 of 1975 (as amended) by specified authorities, such as the Commission to Investigate Allegations of Bribery and Corruption or in exceptional circumstances under and in terms of specific laws such as those laid down under the Inland Revenue Act No. 10 of 2006.

Order⁵³

Under and in terms of Section 5(1)(i) read with Section 29 of the Act, though a Public Authority is compelled to deny information supplied to it on a confidential basis by a third party who refuses to consent to the release of the information (Section 29 (2) (c)), the proviso of that Section stipulates that information can be disclosed by order of the Commission, if (the public interest) in 'the release of the information concerned demonstrably outweighs the private interest in non-disclosure.' In assessing the public interest as stipulated by the proviso to Section 29 (2) (c) read with the general public interest override in Section 5(4) of the Act in order to arrive at a determination as to the release of the said information and as a matter of comparative guidance, it is notable that in India, both the courts and Information Commissions have been agreed on the need for accountability and transparency in regard to the declarations of assets and liabilities of politicians or those contesting for political office. However, the courts have been demonstrably more cautious in regard to information requests relating to declarations of assets and liabilities of public officials in similar circumstances...

⁵³ Delivered on 20.04.2018.

...where this Commission is required to assess the application of the proviso to Section 29 (2) (c) read with the general public interest override in Section 5(4) of the Act, the only factor for consideration is to determine if the public interest is in issue. In *TISL v. PMO/Presidential Secretariat (RTIC Appeal/05/2017 & RTIC Appeal/06/2017, RTIC Minutes of 23.02.2018)*, the thinking of the Supreme Court of India in *Bihar Public Service Commission v. Saiyed Hussain Abbas Rizwi and another, ([2013-2-L.W. 293 (Part 4)] at 301)* was seen as being useful in this regard (at p25); In its common parlance, the expression ‘public interest’, like ‘public purpose’, is not capable of any precise definition. It does not have a rigid meaning, is elastic and takes its colour from the statute in which it occurs, the concept varying with time and state of society and its needs. [*State of Bihar v. Kameshwar Singh* (AIR 1952 SC 252) (1952) 62 L.W. 527].

In this Appeal, does ‘the public interest’ demand that the declaration of the assets and liabilities of the third party (*viz*; a retired school principal) be released? The position would have been differently assessed if the Public Service Commission had found the said third party culpable of the allegations leveled against her. That would have been one factor (among others) that would have swayed the Commission’s mind in determining if the proviso to Section 29 (2) (c), read with the general public interest override in Section 5(4) of the Act, would apply in this Appeal. But that is not the case here. Other than this, no further factor has been evidenced before us in these hearings that would tilt the scales in favour of the public interest.

Substantial allegations of financial irregularities are not a compulsory condition to be established under the RTI Act in each and every appeal in order to decide if the proviso to Section 29 (2) (c), read with the general public interest override in Section 5(4) of the Act, would apply where information requests are lodged for the declarations of assets and liabilities of public officials (as opposed to elected politicians). Each appeal must be weighed and assessed in the circumstances of each case. We

find that the proviso to Section 29 (2) (c), read with the general public interest override in Section 5(4) of the Act, would not be applicable to issue Order directing the release of the information requested.

The decision of the DO is affirmed.

P. Thangamayil v. National Water Supply & Drainage Board⁵⁴

'Non-appointment of an Information Officer (IO) and failure to take requisite steps to publicise the same as well as the relevant Designated Officer in that Authority is a serious dereliction of its statutory obligation under and in terms of Section 23(1)(a) and Section 26(1) of the RTI Act.'

Decision: Public Authority is reminded of its statutory obligation to appoint information officers in accordance with the RTI Act as failure to do so would result in the PA being named in the report required to be presented by this Commission to Parliament in terms of Section 37(1) of the RTI Act.

Keywords: Appointment of IO and DO (Section 23(1)(a) and Section 26(1), Mandated Procedures – consequences, reporting to Parliament (Section 37(1)).

Brief Factual Background

Information requested on 27.04.2017:

1. Research reports on the Northern desalination project to be undertaken in Maruthankerny, Thalaiyady, Jaffna
2. Environmental Impact Assessment Report (EIA) and Environmental Management Plan Report (EMP) of the Northern desalination project to be undertaken in Maruthankerny, Thalaiyady, Jaffna
3. The feasibility study report on the selection of Maruthankerny as the location for the Northern desalination project
4. Reports of feasibility studies with regard to other sites considered for the Northern desalination project

⁵⁴RTIC Appeal (In-Person)/78/2017 heard as part of a formal meeting of the Commission on 23.10.2017.

The Information Officer at the District Secretariat, contacted the Appellant and informed him that she would forward his request to the NWSDB- North office acting in accordance with Regulation 4 clause 6 of the Regulations gazetted on 03.02.2017 by Gazette No. 2004/66. The Appellant filed an appeal with the Commission on 10.08.2017.

Matters arising during the course of the hearing

The Appellant had appealed to the Commission after he alleged inordinate and purposeful delay on the part of the Public Authority in providing him with the information, which had later been released online. The PA contended that its officers had been unsure regarding the release *inter alia* of a feasibility report since it might have referred to financial details that needed to be kept confidential.

Order⁵⁵

The non-appointment of an Information Officer (IO) and failure to take requisite steps to publicise the same as well as the relevant Designated Officer in that Authority is a serious dereliction of its statutory obligation under and in terms of Section 23 (1) (a) and Section 26 (1) of the RTI Act, No. 12 of 2016. It is now more than 9 months since Sri Lanka's RTI Act had been operationalized on February 3rd 2017. In any event and in instances of failure to appoint an IO, the CEO/Head of the PA would serve as IO in the absence of an IO being named, in accordance with Section 23 (1) (b) of the Act. The NWSDB is reminded of its statutory obligation to appoint Information Officers (as needed) in accordance with the RTI Act, and the Regulations gazetted on 03.02.2017 by Gazette No. 2004/66. Erring Public Authorities failing to abide by their statutory duties would be named in the report required to be presented by this Commission to Parliament in terms of Section 37(1) of the RTI Act.

⁵⁵Delivered on 23.10.2017.

***Raisa Wickrematunga v. Telecommunications
Regulatory Commission of Sri Lanka
(TRCSL)***⁵⁶

*'The duty to transfer 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 has been stipulated for the exact purpose of preventing an Appellant from going from pillar to post in the search for information...
... the information requested in this instance is legitimate information that can be obtained through a right to information request unless the PA can prove that any or one of the exemptions provided for in the RTI Act, No. 12 of 2016 would apply and further establish that it is not in the public interest to provide the information.'*

Decision: Public Authority ordered to disclose reasons for blocking website Lanka-E-News in November 2017, the identity of authority making the order and reasons given for the same as information that may legitimately be released under the RTI Act/Reasons for blocking website held not to come within scope of national security.

Keywords: Duty to transfer (*Regulation 4 clause 6 of RTI Regulations*/National security (Section 5(1)(b)(i)).

⁵⁶ RTIC Appeal (In-Person)/106/2018 heard as part of a formal meeting of the Commission on 27.02.2018 and 23.03.2018.

Brief Factual Background

Information requested on 10.11.2017:

1. Any complaints against news websites received by TRCSL from January 2015 to date and identity of authorities making the complaints
2. Any websites blocked to ISPs in Sri Lanka as a result of complaints from 2015 onwards and reasons given for the block
3. Any complaints against the news website Lanka-E-News in 2017 and identity of the State authority making the complaint
4. Any order to block the website Lanka-E-News in November 2017, the identity of the authority making the order and reasons given for the same
5. Records of TRCSL involvement in blocking Lanka-E-News, if any

The Information Officer (IO) responded on 28.11.2017 stating that the PA has decided to provide the documents relating to web addresses blocked by the PA, and that information requested under item 01 of the information request was not in the possession, custody or control of the PA. The IO further stated that the information requested under items 3,4 and 5 would be withheld as disclosure of such information would undermine the defence of the State or national security and amounted to exempted information covered by Section 5(1)(b)(i) of the RTI Act.

The Appellant being dissatisfied with this response, then appealed to the Designated Officer (DO) on 07.12.2017. The DO responded on 15.12.2017, stating that with regard to item 1 of the information request the PA had informed the Fixed and Mobile Operators to block news website based on the instructions communicated to it by the Ministry of Mass Media and as such, it did not have any records of complaints against websites in its possession or custody. With regard to item 2, the

information had been provided to the Appellant. The decision of the IO with regard to item 3 was reiterated. The Appellant filed an appeal with the Commission on 29.12.2017.

Matters arising during the course of the hearing

The IO of the PA stated that the PA entertained only telecom related complaints and not complaints against Websites. She submitted that complaints in respect of websites are lodged with the Ministry of Mass Media as websites are registered with that Ministry.

The IO was reminded by the Commission of the duty on Public Authorities under Regulation 4 clause 6 of the Right to Information Regulations of 2017 published in Gazette No. 2004/66 dated 03.02.2017, to transfer the said request to the relevant PA where the IO is aware that the information is held by such PA.

Interim Order⁵⁷

The duty to transfer 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 has been stipulated for the exact purpose of preventing an Appellant from going from pillar to post in the search for information. All PAs are required to abide by this duty rather than attempt to circumvent the same.

The PA is directed to inquire from the Ministry of Mass Media as to what information is in its custody, possession, or control relating to the information request of the Appellant and apprise us of the same. The information requested in this instance is legitimate information that can be obtained through a right to information request unless the PA can prove that any or one of

⁵⁷ Delivered on 27.02.2018.

the exemptions provided for in the RTI Act, No. 12 of 2016 would apply and further establish that it is not in the public interest to provide the information.

Order⁵⁸

Having perused the complaint made by the Office of the President and the attached news items, we see no reason for the information to be denied to the Appellant. The veracity of the news items in question is not for this Commission to decide. The complaint submitted by the President's Office on November 6th, 2017, only brings these news items to the notice of the PA and requests that suitable action be taken according to law. This is legitimate information that may be disclosed by the PA.

The PA is directed to provide a copy of the complaint and attached news items to the Appellant. The Commission is of opinion that these documents fulfill items 3, 4 and 5 of the information request made by the Appellant. The PA is directed to liaise with the Appellant with regard to providing the information requested in item 1 once it receives a response from the Ministry of Mass Media.

The decision of the DO is reversed.

⁵⁸ Order delivered on 23.03.2018.

*Shreen Saroor v. Prime Minister's Office*⁵⁹

'It is also a relevant factor that Sri Lanka's RTI Act is (relatively) still a new law and both citizens and Public Authorities are getting accustomed to the procedures and practices that need to be followed in filing information requests and appeals.'

Decision: Public Authority obligated to provide draft of Reparations Bill on the basis that draft legislations before the Cabinet falls within the definition of 'information' under Section 43 of the RTI Act.

Keywords: Cabinet Memorandum, Definitions, Interpretations, Draft legislation (*Section 43*), Time limits (*Section 32 (1) (a)*).

Brief Factual Background

Information requested on 21.06.2017:

- A. Copies of proposals and/ or draft legislation and/ or concept notes and/ or documentation relevant to the commitments made by the Government of Sri Lanka in the United Nations Human Rights Council Resolution 30/1 (UN HRC 30/1) to:
 - a. Establish an office on missing persons
 - b. Establish a truth-seeking mechanism
 - c. Establish a judicial mechanism with a special counsel
 - d. Establish any other mechanism for the purpose of delivering truth, justice, reparations, or guarantees of non-recurrence

⁵⁹ RTIC Appeal (In-Person)/1/2018 heard as part of a formal meeting of the Commission on 15.05.2018, 10.07.2018 and 04.09.2018.

- B. Copies of reviews and/or correspondence and /or documentation prepared by nation and/ or international consultants and/or experts with respect to the above-mentioned proposals and/ or draft legislation and/ or concept notes and/ or documentation.
- C. Copy (s) of a roadmap of the action plan with regard to the implementation of the UN HRC30/1.

The Information Officer (IO) responded on 07.07.2017 stating that the two acts on the Office on Missing Persons were public documents and accessible on documents.gov.lk and cited the Section 5 (1) (m) to deny the remaining items requested stating that the matters are under consideration to be submitted to the Cabinet of Ministers for a decision. The Appellant then appealed to the Designated Officer (DO) on 22.07.2017. The Appellant stated that she received a letter from the DO on 31.07.2017 which contained two copies of letters sent to the Secretaries of the Ministry of National Integration & Reconciliation and the Ministry of Foreign Affairs in relation to her RTI request. The Appellant filed an appeal with the Commission on 06.10.2017.

Matters arising during the course of the hearing

Strictly without prejudice to its submissions regarding information not in its possession, custody, or control, the PA noted that it had proactively obtained some information from the appropriate PAs and made them available at the hearing of the Appeal.

Order⁶⁰

This information request pertains to matters relevant to Sri Lanka's transitional justice process and therefore concerns information that is vital to the public interest.

⁶⁰ Delivered on 15.05.2018 Appearances for the parties; Ms. Sankhitha Gunaratne, AAL Counsel for the Appellant; Suren Gnanaraj, State Counsel, for the Department of the Attorney General, PA (PMO).

In particular, where the drafting of laws is concerned, this Commission reiterates its observations in *Gomez v. Ministry of Social Empowerment, Welfare and Kandyan Heritage* (RTIC Appeal/51 /2018, RTIC Minutes, 27.02.2018) that ‘in many countries in the region as well as globally, draft laws are required to be presented before the public in advance and before the Bill is gazetted, in order to obtain public feedback on its contents which is a beneficial process leading to public consensus around the framing of legislation.’ This observation was made in the context of the fact that the definition of information in Section 43 of the Act expressly includes ‘draft legislation’ within its ambit.

In her appeal to the Commission dated 06.10.2017, the Appellant has referred to the two letters sent by the Public Authority to the Secretaries of the Ministry of National Integration & Reconciliation and the Ministry of Foreign Affairs dated 27th July 2017 in relation to her RTI request and this Commission is inclined to accept her explanation that the omission to file the letter of the Public Authority on that same date apprising her that the information requests had been transferred to the relevant Public Authorities (which letter had not been annexed to the appeal) was inadvertent rather than deliberate.

The Public Authority has also raised the question of delay on the part of the Appellant to appeal to the Commission within the time limits laid down in Section 32(1)(a) on the ground that the Appellant had not ‘established that she was prevented by a reason beyond his or her control from filing the appeal in time’ as required by Section 32(2).

The Appellant had explained that she had been occupied in attempting to get the requested information through following up with the relevant Ministries to which the said information requests had been directed by the Public Authority during the months in question, before she filed an appeal to the Commission upon failing in that attempt. We will note this explanation of the Appellant of record as a satisfactory ground to explain delay under and in terms of Section 32(2) of the Act. It is also a relevant factor that Sri Lanka's RTI Act is (relatively) still a new law and both citizens and Public Authorities are getting accustomed to the procedures and practices that need to be followed in filing information requests and appeals.

In regard to the material that has been furnished to the Commission, it is noted that its contents include the Cabinet Memorandum No. 18/0430/702/008 dated 5th March 2018 relating to the establishing of an Office of Reparations signed by the Prime Minister and Minister of National Policies and Economic Affairs which information is information that would have been legitimately 'within the possession, custody and control' of the Public Authority in this appeal (*viz*; the Office of the Prime Minister) under and in terms of Section 3 of the Act.

It is further noted that the said Cabinet decision thereof on 6th March 2018 states that approval had been granted to establish an Office of Reparations as proposed in the Memorandum and that the Legal Draftsman had been instructed to draft legislation based on the draft attached as Annexure 1 to the Memorandum which has also been furnished to this Commission.

The decision of the DO is reversed.⁶¹

⁶¹ Reparations draft was released to the Appellant through the Office of the Attorney General, RTIC Minute of 15.05.2018. This appeal is ongoing.

***Transparency International Sri Lanka v.
Presidential Secretariat***⁶²

‘This Commission was not established as a court of law but for the ‘purpose’ of the Act, (vide Section 11(1) of the Act), which is to ‘foster’ a culture of transparency and accountability in Public Authorities (viz, the preamble to the Act). It must necessarily give effect to that clear legislative intention. This Commission is also acutely conscious that the right of appeal afforded by the Act must be preserved to the broadest extent possible rather than be restricted.....Stringent duties of transparency in regard to declarations of assets applies without exception to elected public officials (politicians) is a standard commonly accepted for long elsewhere.’

Decision: (Jurisdictional) Where the requestor is a body whether incorporated or unincorporated, the requirement of averment of citizenship is a jurisdictional fact to be ascertained by an Information Officer in the first instance/Failure to so aver by organisation is a curable defect at the second stage of appeal before the Commission with discretion being employed in exceptional circumstances to enable the same/Averment of citizenship by organization as ‘citizen’ distinguished from ‘proof of citizenship’. (cont...)

⁶² RTIC Appeal (In-Person) /06/2017 heard as part of a formal meeting of the Commission on 19.06.2017, 08.08.2017, 25.09.2017, 06.11.2017; 08.01.2018; 23.02.2018 (delivery of Order on Jurisdiction); 24.04.2018 (amendment of papers by Appellant); 26.06.2018; 04.09.2018 and 30.10.2018.

(Merits) Public Authority obligated to provide a copy of the assets declaration of the Prime Minister for the years 2015 and 2016 on the basis that public interest mandates the same in the factual context of the specific appeal and particularly, given the principle of public accountability of politicians.

Recommendation; That the Declaration of Assets and Liabilities Law No. 1 of 1975 (as amended) be further amended to impose a legal duty on the Executive President to submit a Declaration of Assets and Liabilities qua President.

Keywords: Articles 14A, 121 of the Constitution/ Assets Declarations / Averment of citizenship (*Section 3 (1), Section 24 (1) & (2), Section 32 (1), Section 43*)) / confidential information by a third party/Duties of Information Officers and Designated Officers (*under Section 31(3) regarding giving specific reasons for rejection of request*)/Due diligence of information requesters/Fiduciary (*Section 5(1)(g)*)/(Section 5(1)(i) read with proviso to Section 29 (2)(c))/ ‘possession, custody or control’ of information (Section 3)/Proof of citizenship/Priority clause/Public Interest (*Section 5(4)*)/Privacy (*Section 5 (1)(a)*) / Speaker’s ruling / RTI Rules and Regulations/ Severability (*under Section 6*).

Maxims: *expressio unius est exclusio alterius, generalia specialibus non derogant* (Declaration of Assets and Liabilities Law No. 1 of 1975 (as amended)) *vis a vis* the Right to Information Act, No. 12 of 2016).

Brief Factual Background

Information requested on 03.02.2017:

A certified copy of the Declaration of Assets and Liabilities of President Maithripala Sirisena for the years 2015 and 2016 and

a certified copy of the Declaration of Assets and Liabilities of Prime Minister Ranil Wickremesinghe for the years 2015 and 2016.

- The information requests to the Presidential Secretariat were rejected on 6th March 2017 by the Information Officer which refusal was upheld by the Designated Officer of the said Public Authority (the Secretary to the President) on 20th March 2017.
- The information request to the Prime Minister's Office was rejected by the Secretary to the Prime Minister on 1st March 2017 (to whom the information request was addressed by the Appellant under Section 23 (1)(b) as aforesaid) and again reiterated on 14th March 2017.

Matters arising during the course of the hearings

The following preliminary questions of law were framed by the Commission and agreed by the parties to this appeal as requiring to be answered in both Appeals;

- Whether the requirement of averment of citizenship on the part of the information requester in terms of Section 3 (1) of the RTI Act No.12 of 2016 read with Section 43 of the said Act is a mandatory requirement?
- Is the said requirement a fatal irregularity or a curable defect at the second stage of appeal before the Commission?

These questions were formulated consequent to the failure by the Appellant, in availing itself of the right to make an information request under Section 3 (1) read with Sections 24 (1) and 43 of the Act, to aver the fact of citizenship in the

information requests which consisted of letters written to the two Public Authorities on 3rd February 2017, which failure was manifest also in the consequent two Appeals filed on 19.05.2017 & 12.05.2017 to this Commission.

Order on Jurisdictional Objection⁶³

The relevant constitutional and statutory provisions

Article 14A of the Constitution (introduced under the 19th Amendment to the Constitution in 2015) states as follows;

14A. 1 Every citizen shall have the right of access to any information as provided for by law, being information that is required for the exercise or protection of a citizen's right held by: -

- b) the State, a Ministry or any Government Department or any statutory body established or created by or under any law;
- c) any Ministry of a Minister of the Board of Ministers of a Province or any Department or any statutory body established or created by a statute of a Provincial Council;
- d) any local authority; and
- e) any other person, who is in possession of such information relating to any institution referred to in sub-paragraphs (a) (b) or (c) of this paragraph⁶⁴

The constitutional right of access to information as aforesaid, is 'provided for by law' through Act No. 12 of 2016. The relevant Sections of the Act are as follows;

⁶³ Delivered on 23.02.2018. Appearances for the parties; Gehan Gunatilleke, AAL, Ms. Sankhitha Gunaratne, AAL Counsel for the Appellant; Nerin Pulle, Deputy Solicitor General, Suren Gnanaraj, State Counsel, for the Department of the Attorney General, PA (Presidential Secretariat).

Section 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.

Section 43. In this Act, unless the context otherwise requires – “citizen” includes a body whether incorporated or unincorporated, if not less than three-fourths of the members of such body are citizens;⁶⁵

⁶⁴ This Article further states;

No restrictions shall be placed on the right declared and recognized by this Article, other than such restrictions prescribed by law as are necessary in a democratic society, in the interests of national security, territorial integrity or public safety, for the prevention of disorder or crime, for the protection of health or morals and of the reputation or the rights of others, privacy, prevention of contempt of court, protection of parliamentary privilege, for preventing the disclosure of information communicated in confidence, or for maintaining the authority and impartiality of the judiciary.

2. In this Article, “citizen” includes a body whether incorporated or unincorporated, if not less than three-fourths of the members of such body are citizens.

⁶⁵ In addition, Section 24 (1) and (2) deal with the filing of information requests; 24. (1) Any citizen who is desirous of obtaining any information under this Act shall make a request in writing to the appropriate information officer, specifying the particulars of the information requested for:

Provided that where any citizen making a request under this subsection is unable due to any reason to make such request in writing, such citizen shall be entitled to make the request orally and it shall be the duty of the appropriate information officer to reduce such request to writing on behalf of the citizen.

- (2) Where a citizen –
 - a. wishes to make a request to a public authority; or
 - b. has made a request to a public authority which does not comply with the requirements of this Act, the information officer concerned shall take all necessary steps to assist the citizen, free of charge, to make the request in a manner that complies with this Act.

Further, Section 32 (1) which enables appeals to be filed to this Commission states as follows;

“Any citizen aggrieved by: – (a) the decision made in respect of an appeal under section 31(1), may within two months of the communication of such decision; or (b) the failure to obtain a decision on any appeal made within the time specified for giving the same under Section 31(3), may within two months of the expiry of the period so specified, appeal against that decision or the failure, to the Commission and the Commission may within thirty days of the receipt of such appeal affirm, vary or reverse the decision appealed against and forward the request back to the information officer concerned for necessary action.”

The RTI Regulations by the Minister under Section 41 of the Act (hereafter RTI Regulations) and the Rules of the RTI Commission on Fees and Procedure the RTI Regulations made by the Minister under Section 41 of the Act (hereafter RTI Regulations) and the Rules of the RTI Commission on Fees and Appeal Procedure (*viz*; Gazette No. 2004/66, 2017.02.03) under Section 42 of the Act are additionally relevant.

In terms of Regulation No. 3, requests for information should be made ‘preferably’ in the manner prescribed in RTI Form 01. In terms of Form RTI 01, line 11 requires a requestor to declare if she/he is a citizen of Sri Lanka. Regulation 3 states further that using RTI 01 is not mandatory. The Form RTI 01 states it will suffice if the request contains the essential information to identify the requested information.

Preliminary Questions of Law

The preliminary questions of law that arise in this appeal are whether Section 3 (1) read with Sections 24 (1) and (2), 43 and Section 32 (1) of the Right to Information Act No. 12 of 2016 (hereafter the Act) mandatorily requires incorporated or

unincorporated bodies (emphasis ours) to aver citizenship (emphasis ours) when filing information requests under the Act and whether the said requirement is a fatal irregularity or a curable defect at the second stage of appeal before the Commission.

Inasmuch as this question arose in regard to the initial filing of the information requests under Section 24 (1), it was also a relevant question in the filing of the instant appeals before the Commission given the wording of Section 32 (1) of the Act which states that any citizen may appeal to the Commission against a decision of a Designated Officer within two months of the communication of such decision or where non-communication is concerned, within two months of the time statutorily specified for such decision.

These questions arise in the specific context of incorporated or unincorporated bodies seeking to bring themselves within the ambit of Section 43 of the Act to assert the right to information by filing an information request to an Information Officer under Section 24 (1) of the Act which is thereafter appealed against to the Designated Officer under Section 31 of the Act and as aforesaid, to the Commission under Section 32(1) of the Act.

As such and as explicitly acknowledged by the Learned Deputy Solicitor General, these matters in dispute have no legal relevance in regard to information requests filed by individual citizens under Section 24 (1) which are alleged to lack the said averment. This distinction is important given the peculiar characteristics of Section 43 of the Act in the context of the relevant legislative intent underlying the Sri Lankan statute passed into law by the Parliament on 4th August 2016.

It is without a doubt that in giving decisions that affect the right to information of citizens under the Act, the Commission must exercise its powers within the four corners of the Act. It must, of necessity, be satisfied with its jurisdictional competence to proceed with appeals filed to it under Section 32 (1), subject to

the fundamental caution that a right of appeal lies to the Court of Appeal against its Orders in terms of Section 34 (1) of the Act. Accordingly, it was considered important that this Commission delivers a reasoned Order with full and fair consideration of the issues that have arisen for determination before entering upon the merits of the two appeals.

What is the effect of Section 3 (1) read with Sections 24 (1) and (2), 43 and Section 32 (1) of the Act on incorporated or unincorporated bodies being required to aver citizenship when filing information requests under the Act?

On what grounds was the Information Officer (IO) required to act under Section 24 (1) of the Act when he/she entertained the requests for information in question and made a determination or decision in that regard? There were two questions in that respect;

- 1) The first is a substantive question of law, namely whether the Prime Minister and the President's Declarations of Assets and Liabilities are liable to be disclosed under and in terms of the Act;
- 2) The second is whether the requirement of the averment of citizenship was disclosed on the face of the information requests in terms of Section 3 (1) of the RTI Act No.12 of 2016 read with Section 43 of the said Act?

The IO did not refuse the request on the basis of (ii) above. The main contention of the Respondents was that, given that a request could be made only by a citizen as contemplated by Section 3(1) of the Act read with Section 43 if the information requester is an organizational body, the failure to aver that fact was fatal to the application. The Appellant's argument was that there was no requirement to aver and even if so, that this requirement was directory if at all. The competing positions taken by the parties in this matter appear to turn on distinctly differing conceptual understandings of the duties and

responsibilities laid on Public Authorities and information requesters as well as more broadly, the nature and purpose of statutory Commissions such as the one constituted under the RTI Act.

The Appellant's position appears to be that the provisions of the Act read together with the Rules and Regulations made thereunder pertain to a process that is flexible to the extent that very little constraints should apply. This is in conjunction with the argument advanced on its behalf by Learned Counsel for the Appellants during the hearing on this matter on 08.08.2017 that no responsibility vests in an information requester at all in making a request under the RTI Act and that the entire weight of the burden falls therein on Public Authorities.

The formulation of Rules and the collaboration by this Commission with the nodal agency on the framing of Regulations gazetted by the Minister (*viz*; Gazette No. 2004/66, 2017.02.03) were undertaken with the primary purpose of lessening burdens on information requesters given the unequal weightage of power and resources vested in the State as opposed to citizens, individuals and keeping in mind the underlying ethos of the Act being the principle of maximum disclosure as evidenced in its preamble which emphasizes the importance of the right of information in the promotion of democracy and participation in civic life.

However, that is a very different matter to asserting that no burdens whatsoever lie on information requesters. Citation of *Mundy v Central Environmental Authority* (2004), SC Appeal 58/2003 and *Ghany v Dayananda Dissanayake* (2004) SC Appeal, 37/2003) by the Appellant are therefore unhelpful in the circumstances of this case. The duty of care therein is particularly pronounced when the said requesters have organizational resources and come in the cloak of incorporated or unincorporated bodies seeking reliefs afforded under Section 3 (1) read with Section 43 of the Act. Indeed, specific responsibilities are imposed upon information requesters and

Appellants within the scheme and structure of the Act, individuals and organizations alike. While discretion can be exercised, that too must be within the limits of the law, for example in the context of Section 32 (2) where appeal petitions filed from decisions of the Designated Officer ‘out of time’ (i.e., after the expiry of two months) may be accepted if the Commission is ‘satisfied’ that the appellant was prevented by a reason beyond his or her control from filing the appeal in time.

On the other hand, the Learned Deputy Solicitor General has exerted considerable effort to persuade the Commission that the very same strictures that apply to invoke the jurisdiction of Courts of Law are applicable in full before the Commission. The force of that submission is premised, for instance, on equation of the constitutional procedure laid down in Article 121 in respect of ‘invocation’ of the constitutional jurisdiction of the Supreme Court with the ‘procedure’ (see the Marginal Note to that Section) contemplated under Section 24 (1) of the Act in respect of filing an information request and under Section 32 (1) of the Act which states that ‘any citizen’ aggrieved by a decision (or non-decision) of a Designated Officer ‘may’ appeal to the Commission within prescribed time limits.

These positions advanced by the Appellant and by Respondents, it must be confessed, are singularly uninviting for reason of the extreme viewpoints advanced by both parties. It may be of assistance therein to look at the nature and scope of statutory appellate Commissions such as the body of which we are members, as established under the Act. Commissions of this nature are statutory appellate tribunals obligated to consider and weigh submissions and arguments adduced before it and to come to an objective decision on the same.

The powers of the Commission under this Act include *inter alia*, to hear and determine any appeals made to it by any aggrieved person under Section 32 and to institute prosecutions under Section 39 (4) of the Act in respect of offences specified under Section 39 of the Act. Appeals lie to the Court of Appeal against

the decisions of the Commission under Section 34 of the Act. In these circumstances, the Commission must necessarily be conscious of the fact that power that affects rights must be exercised in accordance with law ‘and the answer in a given case is not provided by the statement that the giver of the decision is acting in an executive or administrative capacity as if that were the antithesis of a judicial capacity’ (per Lord Hodson in *Ridge v Baldwin*, (1964), AC, 40, at 130).

The submissions made by the Appellant relating to the need to aver citizenship not being included in Section 5 of the Act as a ground to refuse information is erroneous in our view as the failure to aver does not relate to a refusal of information in substantive respects. Instead, the cumulative effect of Sections 3, 24 (1) and 43 of the Act render the requirement to aver citizenship, a jurisdictional fact to be ascertained when an information request is filed by an incorporated or unincorporated body before an Information Officer. The maxim of *expressio unius est exclusio alterius* is therefore inapplicable in such instances. Similarly, a jurisdictional question cannot be ‘fairly incidental’ to the Commission’s functions under the Act and we do not find the precedent cited by the Appellant as relevant in that regard. The Appellant has also contended that imposing a requirement to aver citizenship would be contrary to Regulation 03 and RTI 01 Form. The prescribed Public Notice in Regulation 3 states only that the use (emphasis ours) of the RTI 01 Form is not mandatory. This is quite distinct as to whether the requirement for an incorporated or unincorporated body to aver citizenship when filing an information request is a jurisdictional fact that needs to be established for the Information Officer to act under Section 25. In any event, the RTI Regulations are subordinate instruments to the main statute and as such, cannot countermand the statute.

The decision of the Indian Central Information Commission (CIC) in *Shri K. Balakrishna Pillai v. National Human Rights Commission* (No; CIC/OK/C/2008/00016, Minutes of 26th May 2008) was cited by the Appellant wherein the CIC had stated

that it is only ‘in the rarest of rare cases’ that a Public Authority may ask a citizen for ‘proof’ of citizenship. For the purpose of greater clarity, it must be noted that in the hearings before us on 8th August 2017 and in the context of the Written Submissions of the Appellant received by the Commission on 25th July 2017, it was observed by this Commission that the distinction between the terms ‘aver’ and ‘proof’ should not be used interchangeably as if to mean the same requirement. It was pointed out that the matter in issue in these appeals concern the averment of citizenship per se where an incorporated or unincorporated body is concerned (*viz*; Section 43 of the Act), as distinguished from requiring proof of citizenship.

The requirement in the context of the Sri Lankan law in relation to such bodies stems from Section 43 of the Act which is noticeably absent in the Indian Right to Information Act. As such, the decision of *Shri K. Balakrishna Pillai v. National Human Rights Commission* (No; CIC/OK/C/2008/00016, Minutes of 26th May 2008) cited by the Appellant has limited application in the present context. That being said, we agree with the reasoning of the Indian Central Information Commission in that case that requesters should be asked for proof of citizenship only in the rarest of cases and only where there is a *bona fide* doubt on the part of the Public Authority as to whether the information requester is a citizen.

Further, the Indian RTI Act refers to the right of information being available to all ‘citizens’ in Section 3 but states in Section 6 of that Act that information requests may be filed by ‘a person’ who ‘desires to obtain any information.’ In contrast, the Sri Lankan RTI Act, in the intention of its drafters, embodies a far stricter use of the term ‘citizen’ particularly in relation to organizational entities. This is borne out by the fact that the Constitution itself allows a certain category of rights to citizens and certain others to ‘persons.’ For example, a citizen has been afforded the right of non-discrimination in Article 12(2) as well as rights relating to *inter alia*, expression, association and movement in the several sub-articles of Article

14 (1) while ‘a person’ is given the benefit of a specific category of rights, including *inter alia*, the freedom of thought, conscience and religion (Article 10); freedom from torture (Article 11); right to equality (Article 12(1) and freedoms from arbitrary arrest, detention and punishment.

In fact, it is of note that Article 14A itself which brought in a right to information in 2015 not only allows the right to information only to citizens in sub-article (3) but also prescribes the manner in which an organizational body ‘becomes’ a citizen in exactly the same manner as Article 121 of the Constitution which states that a citizen may invoke the ordinary exercise of the constitutional jurisdiction of the Supreme Court in respect of Bills and that a citizen includes a body whether incorporated or unincorporated, if not less than three-fourths of the members of such body are citizens. The relevant Constitutional articles are phrased in the same language as Section 43 of the RTI Act. The Commission cannot brush aside the fact that deliberate distinctions were drawn between these categories of rights with a particular constitutional condition attaching to instances where an incorporated or unincorporated body seeks the benefit of a particular right.

Moreover, it is pertinent that RTI 01 form titled ‘Application to Receive Information’ as gazetted as aforesaid, prescribes in line 11 that the information requester must aver citizenship. The said Regulation was concurred with by the Commission when the draft Regulations were sent by the nodal agency to the Commission for scrutiny in terms of Section 41 of the Act prior to the act of gazetting precisely for the reason that it was within the express contemplation of the Commission that the averment of citizenship arises from the application of Section 3 (1) read with Sections 24 (1) and 43 of the Act. Where an information requester is a body, corporate or incorporate, that duty is vested with a particular importance given the wording and impact of Section 43.

This Commission is not persuaded by the Appellant's argument that dire consequences will ensue if an information requester, being an organizational entity, is required to aver the fact of citizenship in the information request. It must be specifically noted that the matter before the Commission is limited to the application of Section 43 of the Act read with Sections 3 (1), 24 (1) and 34 (1) in the context of a body, whether incorporated or unincorporated, failing to aver citizenship.

It must be specifically noted that the matter before the Commission is limited to the application of Section 43 of the Act read with Sections 3 (1), 24 (1) and 34 (1) in the context of a body, whether incorporated or unincorporated, failing to aver citizenship. As discernible on the record of the Commission as at this date, only 4 appeals filed by organizations (incorporated or unincorporated) have failed to aver citizenship, including in another appeal filed by this same Appellant. This is out of an approximate number of 456 appeals filed by both individuals and organizations accepted by the Commission as fit for consideration under Section 32 (1) since the Act was operationalised on February 3rd 2017 in respect of which Orders have been handed down while other matters are pending.

This is excluding a little more than 200 appeals which have been determined as not constituting proper appeals or defective due to other reasons.

In conclusion, there is little doubt in our minds that the averment as to citizenship, where a body, corporate or incorporate files an information request, is a jurisdictional fact that needs to be ascertained by an Information Officer in terms of Section 3 (1) read with Sections 24 (1) and 43 of the Act.

The constitutional provision from which the RTI Act draws its strength, namely Article 14A of the Constitution reflects a similar bar in regard to who may file fundamental rights challenges on the denial of the right to access information.

Where Article 121 of the Constitution is concerned, and in the Determination of the Supreme Court in SC.SD 19/2016, SCM

23.02.2016) in respect of a Bill titled '*Budgetary Relief Allowance of Workers*' in respect of challenges filed to Bills under Article 121 of the Constitution, we note the specific statement by the Court to the fact that '...admittedly there is no averment to show that not less than three-fourths of the members of the eight Unions are citizens' (emphasis ours).

Does the failure to aver citizenship result in a loss of jurisdiction to entertain the Appeals?

Does failure to aver deprive the Commission of the jurisdiction ('the power to decide') to entertain the Appeals?

For proper elucidation of that question and reversing that submission of the Respondents, let us ask the question as to what would be the consequence if a non-citizen makes an information request but avers citizenship falsely? Would that false averment vest the Commission with jurisdiction under the Act? In that view of the matter, it is clear that refusal/dismissal cannot be the only consequence of the mere failure to make an averment.

The majority ruling of the Supreme Court in *Nicholas v. Marcan Marker* (SC/Appeal No. 30/81; SCM 24.3.1982; (1986) B. L. R. Vol. 1. part VI at 245,) is of considerable assistance in deciding the matter in issue. The majority reversed the Court of Appeal decision (*Nicholas v. Marcan Marker Ltd* (1981) 2 SLR 1) holding that dismissal of the application (for a writ of certiorari) was the consequence of failure to aver that the jurisdiction of the Court had not been previously invoked in accordance with Rule 47 of the Rules of the Supreme Court, 1978. The Appeal was allowed and the petitioner permitted to perfect his petition by the insertion of the missing averment.

Where the Act is concerned, it would be a very clear case if, for instance, an information requester had come directly to the Commission from an adverse decision of an Information Officer, disregarding the appeal to a Designated Officer as the

Act strictly mandates in Section 32(1) that an appeal to the Commission lies only from a decision of a Designated Officer under Section 31.

Indeed, in the procedure followed at the very outset by this Commission since the Act was operationalized on 3rd February 2017, appeals filed by purported appellants directly to the Commission from a refusal of the Information Officer to give the requested information without appealing to the Designated Officer, have not been accepted as ‘proper appeals’ by the Commission under Section 32 (1) of the Act. It may be that, in many of these cases, explanations proffered by citizens as to why they did not appeal to the Designated Officer are understandable. But even if the Commission may have empathy for such explanations, our appellate powers are limited by law and have to be necessarily exercised within those statutory limits.

Such a patent lack of jurisdiction may arise in other respects as well. Let us say in a hypothetical example, a non-citizen had presented himself or herself before this Commission and pleaded the indulgence of the Commission to entertain an appeal filed under Section 32 (1) on the basis that he or she had been living in Sri Lanka for a long period of time. That plea could not have been entertained for the reason that the Commission does not possess jurisdiction to determine or ‘decide the matter’ given the effect of Sections 3(1), 24 (1) and 43 of the Act.

As provided for by the Act, the right to information vests as of right in a citizen and the relevant Sections lay out the procedure in availing himself/herself/itself of that right. While there is a jurisdictional defect arising from the fact that there is no avermnt on the citizenship of the Appellant in the two information requests or the two Appeals filed before us, does this relate to the ‘form’ or the ‘invocation of jurisdiction’?

In *Edward v. de Silva*, Soortez, ACJ. stated as follows;

"Some of those rules are so vital, being of the spirit of the law, of the very essence of judicial action, that a failure to comply with them would result in a failure of jurisdiction or power to act, and that would render anything done or any order made thereafter devoid of legal consequence. The failure to observe other rules, less fundamental, as pertaining to the letter of the law and to matters of form would not prevent the acquisition of jurisdiction or power to act, but would involve the exercise of it in irregularity".

The Learned Deputy Solicitor General has strongly pressed the decision of the Supreme Court in SC.SD 19/2016, SCM 23.02.2016) in respect of a Bill titled '*Budgetary Relief Allowance of Workers*' as relevant to the Commission in the determining that the Appeals before us should be dismissed *in limine*.

We are in agreement with the Appellant's counter-argument that, notwithstanding the same language used in both Article 121 of the Constitution and Section 43 of the Act, the 'invocation' of the jurisdiction of the Supreme Court in dealing with challenges to Bills under Article 121 of the Constitution is different from the procedures stipulated under the Act as the constitutional jurisdiction in respect of Bills is necessarily bound by strict rules as to time limits. Petitions challenging Bills cannot be allowed to trespass beyond the strict condition that the constitutional jurisdiction of the Court may be 'invoked' within the said time limits. No exceptions are entertained for the reason that otherwise, the amendment of petitions to redress defects therein would take the amended petition out of the applicable time limits.

As detailed in the succeeding paragraphs of this Order and illustrating the difference in the exercise of constitutional jurisdiction in respect of Fundamental Rights petitions under Article 126 of the Constitution, discretion has been affirmed by the Court to award relief in appropriate circumstances even

where there is non-compliance with mandatory Rules.

Perera v. the Commissioner of National Housing (77 NLR 361) was also cited by the Respondents to support the contention that if the Commission proceeds to act or make any consequential orders notwithstanding the Commission's lack of jurisdiction, all such proceedings taken would be null and void and any orders made thereunder shall be a nullity (Written Submissions of the Respondents dated 02.01.2018). This case is authority for the principle that lack of competency of a Court or tribunal may arise in one of two ways; either through lacking jurisdiction over the cause or over the parties which is fatal or through failure to comply with such procedural requirements as are necessary for the exercise of power.

As clearly stated by the Court, both are jurisdictional defects but attract different consequences. In the first case where the want of jurisdiction is patent, acquiescence, waiver and inaction cannot confer jurisdiction which a tribunal cannot have but in the second case of latent or contingent jurisdiction, acquiescence, waiver and inaction estops a party from raising the jurisdictional objection at a later stage.

The law relating to compliance or non-compliance with averments, whether mandatory or directory and though *prima facie* mandatory, whether a failure to aver could be curable in the exercise of discretion is contained in a plethora of decisions of the Supreme Court and the Court of Appeal in the context of interpretation of the Supreme Court Rules (*vide*; Hussain's Digest of Case Law – pages 1375 to 1380). Though the Commission is not part of the judicial hierarchy in this country, decisions of the superior courts may be useful in deliberating on this matter.

Examination of relevant precedents in this regard indicates a palpable division of views in the Supreme Court where there is non-compliance of a party with the statute or the Rules of the Supreme Court. That being so, the weight of opinion inclines

towards the view that such non-compliance does not automatically result in the dismissal of the petition or appeal.

To some extent it must be conceded that there are significant variations in judicial thinking in that some judges have proceeded on the basis that ‘a mistake or oversight’ (coupled with unwarranted delay in seeking to cure the lapse may result in a dismissal without further ado. In *Munasinghe Leela Nanda Silva v. TG Chandrawathie Wijesekera and Others* (S.C. H.C. C.A. L.A. Application No.449/ 2014, WP/ HCCA/ KAL/ 128/ 2007(F); D.C. Kalutara Case No.6040/P; SCM 02nd September 2016), the Court was called upon to determine the consequences of non-observance of Rule 28 (5) of the Supreme Court Rules, 1990.

This Rule places an imperative burden and responsibility upon an Appellant or Petitioner to name a necessary party as a Respondent to a Petition of Appeal. Recapitulating a long line of decisions which upheld the view that non-compliance with a mandatory provision will result in rejection of the Appeal, the Court referred to Rule 28 (5) as an ‘important provision of procedural law designed to ensure the due and proper dispensation of justice.’ Non-compliance due to an “oversight and or a ‘mistake’ (even if not deliberate)” does not mitigate the lapse, especially when it is taken in conjunction with a lapse of time. Failure to comply cannot be justified on the basis that it was unintentional.

The Court nevertheless observed, albeit in passing, that there is discretion to ‘grant indulgence’ in exceptional circumstances even on non-compliance of a ‘mandatory’ duty, ‘where it has been established that, the non-compliance was unavoidable or was caused by exceptional circumstances and *provided* there had been no fault, negligence or lack of diligence on the part of the Petitioner or Appellant or his Attorney-at-Law. On the facts of that case, judicial indulgence was not granted.

In *Chelliah v. Ponnambalam*, IV, Sri LR,61, (at pages 64-65 in particular; See also 111 Sri LR, at page 1), the petitioner had omitted to append the proceedings of the lower Court to his petition. This was ruled by the Court to amount to non-adherence to the requirements of Rule 46 of the Supreme Court (Court of Appeal – Appellate Procedure – copies of records) Rules, 1978 which were mandatory in the first instance. The relevant principles of law are that discretion to allow the curing of lapses must be exercised having regard to the nature of the default, the circumstances in which it occurred and the prejudice to the other party.

On the facts of that case, that lapse was not satisfactorily cured as at no point had the petitioner asked for permission of the Court to file the proceedings but had instead tendered the proceedings after the petition was filed without application to the Court, notice to the other party and without permission being obtained. This was held by the Court to be grounds to deny the relief sought.

In other instances, a clear distinction has been made between mistake and negligence. Thus, as was observed by Kulatunge J. in *Packiyathan v. Singarajah* (1991, 2SLR, 205) ‘a mere mistake can generally be excused but not negligence, especially continuing negligence.’

In *Sri Lanka General Workers Union v Samaranayake* (1996)2 Sri LR, 268), the Court pointed to the fact that ‘the failure to invoke the jurisdiction of a Court or tribunal within the prescribed time limit generally results in the Court or tribunal lacking the power to deal with the matter’ but that here too, there are exceptions. Thus, the Court will entertain fundamental rights applications even though not filed within the time limit of one month if the principle *lex non cogit ad impossibilia* (*‘The law does not compel the doing of impossibilities’*) is applicable. (See

also *Kariyawasam Widanarachilage Gathidu Ugeeshwara Perera and Another v. Upali Gunasekera, Principal, Royal College and Others* (S.C.F.R. Application 27/11, SCM 18.09.2014) which concerned the non-compliance of the petitioner with Rule 44(1)(b) of the Supreme Court Rules 1990 even though on the facts of that case, that discretion was refused).

In the authoritative thinking of *Kiriwanthie and Another v. Navaratne and Another* (1990 2SLR, 393), it was emphasized that the consequences that should follow upon non-compliance could not be ‘mechanically applied.’ Discretion may be exercised either through dismissal or through imposing of a sanction. As observed by the Court, the relevant question that may be asked is if there was a want of *uberrima fides* (good faith) and if there was willful non-disclosure or deception?

It is instructive to refer to the thinking of the majority in *Nicholas v. Marcan Marker* (SC/Appeal No 30/81; SCM 24.3.1982; (1986) B. L. R. Vol. 1. part VI at 245,) which was to the effect that ‘the drastic step of dismissal’ was not warranted in regard to the failure to aver in that case, which was necessary to ensure that no second order can be made regarding the identical matter.

If that be the case in regard to courts of law and Rules of Court, it is a compelling argument that Commissions of this nature as the RTI Commission established under Act No. 12 of 2016 must admit a greater degree of flexibility where there is non-compliance, particularly where the same relates to a failure to aver *per se*. The consideration of strict time limits applicable to petitions challenging Bills under Article 121 of the Constitution cannot weigh with the Commission which operates in entirely different circumstances under the Act.

It is also our view that the fact of discretion being given to the Commission in respect of admittance of appeals after the lapse of time limits as provided for in Section 32(2) does not automatically mean that the discretion of the Commission in that respect is shut out where there is failure to aver citizenship when an incorporated or unincorporated body makes an information request or an appeal under the Act. It is relevant in this regard that the Act permits information requests to be made 'orally' (*vide* Section 24(1)) which further buttresses the view that the jurisdictional fact of failure to aver in this case is a latent defect and is capable of being cured.

Attanayake v. Commissioner General of Elections, (2011 1 Sri LR, 220) and *Fernando v. Sybil Fernando*, (1996 2 SLR, 169) were cited by the Learned Deputy Solicitor General as authorities for the proposition that non-compliance with mandatory requirements results in a lack of competency in the Commission and can only be met by a dismissal of the Appeals *in limine*. It must be noted that *Attanayake v. Commissioner General of Elections*, (*supra*) was a matter where jurisdiction of the Court had been properly invoked but there had been non-compliance with Rules of the Supreme Court, 1990 pertaining to the non-issuance of notice on the Respondents and the fact that, if there is any need for extension of time, to do so by a proper application. *Fernando v. Sybil Fernando* (*supra*) dealt with the non-compliance by the party to provisions of the Civil Procedure Code relating to the requirement that the notice of appeal should be signed by the registered attorney-at-law.

These decisions are distinguishable from the core issue in the instant Appeals which, as aforesaid, is a failure to aver *per se*. We consequently determine that the failure to aver citizenship in the circumstances of these Appeals does not deprive the

Commission of jurisdiction to consider the same but amounts to a contingent want of jurisdiction and that the acquiescence, waiver and inaction on the part of the Respondents estops them from making or attempting to make the argument that this Commission was lacking in jurisdiction. To now claim the Commission has no jurisdiction thwarts the protection of the statutory right in a situation where the Public Authorities were in a position and under an obligation to cure the defect at its onset.

Do the instant Appeals warrant the exercise of the discretion to allow the Appellant to cure the lapse?

This question is complex in all its aspects and has merited our most anxious consideration. There is a statutorily prescribed appeal process laid down in respect of an information request before the Commission deliberates on a matter in appeal. It is on the material before him/her that an Information Officer is required to give his or her independent mind to a request for information and a Designated Officer is required to exercise his or her independent discretion in appeal. However, there is also a duty lying on the Commission to take into account the equities of the matter coupled with the fact that, as aforesaid, a statutorily available right of appeal must not be easily negated (per Ranasinghe, J. (as he then was) observed in *Karunadasa v. Wijesinghe* (1986, 1 Sri LR, 358);

'In construing provisions dealing with the right of appeal, a Court ought to prefer a broad construction which would preserve to an aggrieved party that right, rather than a strict construction which might abridge it'.

That is an important consideration that must necessarily weigh

in our thinking, given that the objective of the Act is to ‘foster a culture of transparency and accountability in Public Authorities.’

On the one hand, even the legal status of the Appellant remains unclear on the face of the information requests in issue. Is the Appellant an incorporated body or an unincorporated body? There is no mention of the fact of the Appellant being a corporate in the letters written as information requests by the Appellant to the two Public Authorities on 3rd February 2017. Before this Commission, Learned Counsel for the Appellant submitted that the Appellant had filed its certificate of incorporation before the Public Authorities along with the said information requests. This claim is denied by the two Public Authorities.

Neither do the annexures to these appeals include a certificate of incorporation. In this respect, the Appellant’s attention is drawn to Rule 13 (4) (v) which states that copies of other documents relied upon by the Appellant and referred to in his or her appeal must accompany the appeal which is filed before the Commission. These information requests, as evidenced on the facts, have been filed hastily on the very day of the Act being operationalized, i.e., February 3rd 2017. While the eagerness with which the Appellant hurried to avail itself of the benefits of the Act is undoubtedly salutary, greater care needs to have been taken in filing the information requests, also given that the Appellant is an organization which engages training on the proper use of the RTI Act.

In any event, the Appellant’s assertion regarding its certificate of incorporation being filed with the information requests has not been substantiated on the documentation and the factual position therein is unclear. However, by itself that was a

technical defect that may have been rectified by the Appellant under and in terms of Rule 17 of the Rules on Fees and Appeal Procedure. That being said, the Commission takes cognizance of the argument of the Learned Deputy Solicitor General that an averment regarding corporate status (or inferring therein from an annexed certificate of incorporation) would not have sufficed to satisfy the statutory jurisdictional requirement. The Determination of the Supreme Court in SC.SD 19/2016 in respect of a Bill titled '*Budgetary Relief Allowance of Workers*' (SCM 23.02.2016) was cited as authority for the principle that, when claiming to be a citizen in terms of Article 121, averring capacity to sue and be sued by the petitioner would not satisfy the requirements of being 'a citizen'.

Specifically, where the failure to aver citizenship was concerned, no reason had been adduced by the Appellant for the said failure, leaving the Commission to draw the obvious inference that this had been a 'mistake or oversight' in filing the information requests which was not corrected at the stage of an appeal being filed to the DO under Section 31 or in the papers filed before the Commission under Section 32 (1) on 12.05.2017 and 19.05.2017. The Appellant's position has been throughout that there is no duty to aver, save and except a grudging concession by Counsel that better diligence may have been observed in the filing of the papers during oral hearings in these Appeals. It is also of note that Para 30 of the Written Submissions received by the Commission on 25th July 2017 states that; 'It is respectfully submitted that the Appellant is a citizen in terms of Section 3(1) read with Section 43 of the RTI Act as it is a body incorporated under the Companies Act, No. 7 of 2007 and not less than three-fourths of its members are citizens of Sri Lanka.' In the proceedings thereafter, Counsel for the Appellant has submitted that no responsibility vests in an information requester in making a request under the RTI Act

with the entire weight of the burden falling therein on Public Authorities, who are presumed to assume ‘good faith’ in these instances.

We must reiterate that we cannot, in good conscience, agree with that flourishing sentiment, as agreeable as that may seem to be. The Commission recognizes that the balance of power between the State and a private citizen is often inequitable in the circumstances that the Act may be invoked. This is the reason that much care was taken in formulating its Rules (*viz*; Gazette No. 2004/66, 2017.02.03) in order to minimize unnecessary formalities and to lessen the burden on citizens when filing an information request under and in terms of the Act. That however cannot be taken as a cover for excusing an information requester from exercising a duty of care when filing information requests under Section 24 (1) or in filing appeals to the Commission under Section 32 (1) ...

The Appellant also cited two decisions of the Commission (*G. Dileep Amuthan v. Secretary, Chief Minister’s Ministry, Northern Provincial Council*, RTIC Appeal 21/2017 of 10.07.2017 and *Dr. Kumarasiri Manage v. Secretary, Ministry of Education*, RTIC Appeal No. 65/2017 of 16.10.2017) and has cited the Commission’s reminder in the later Order that ‘it is bound to give effect to the spirit and letter of the Act with regard to the principle of maximum disclosure. As these decisions and others in similar vein handed down by us since the Act was operationalized on February 3rd 2017 disclose, this Commission has been applying the principle of maximum disclosure underlying the RTI Act where the substantive release of information is asked for. But where consequences arising from Jurisdictional defects are concerned, the same must be considered with the utmost gravity lest undue laxity in that regard impacts negatively on the smooth working of the

substantive appeals procedure under the Act as evidenced so far.

However, on the facts ascertainable before us however, it cannot be determined that there has been ‘want of *uberrima fides* (good faith) or willful non-disclosure or deception’ (*Kiriwanthie’s Case*, supra) on the part of the Appellant though carelessness has been undoubtedly evidenced. The Appellant had not been asked by the Respondents to cure this defect at any stage of the information requesting or appealing process before the Appeals came to the Commission. Had the Appellant failed to do so, despite being so asked, then it would have been a factor that militates against the exercise of discretion in these Appeals as an opportunity of amending the lapse would have been made available but not availed of by the Appellant.

On the other hand, it is manifest that care has also not been exercised by the Public Authorities. Both Information Officers and Designated Officers have not complied with their statutory duties to advise the info requester under Section 24 (2) (b) of the Act where a request has been made ‘which does not comply with the requirements of the Act.’ Compliance with Regulation 4 of the RTI Regulations gazetted under the Act on 3rd February 2017 where an Information Officer is required to immediately communicate to the information requester any mistakes or discrepancies and make the necessary corrections is also not evidenced. Section 24 (2) (b) casts this duty in a peremptory formula in that it states that where information requests which do not ‘comply with the requirements of the Act’ are made, the information officer ‘shall’ take all necessary steps to assist the citizen, free of charge, to make the request in a manner that complies with the Act. That the legislative intent envisaged a high standard of care in this respect is also evidenced by Section 32 (4) which states that ‘...the burden of proof shall be on the Public Authority to show that it acted in compliance with this

Act in processing a request' (emphasis ours).

General duties arising on Information Commissions to 'promote the following of good practice by Public Authorities' in respect of Right to Information laws have been discussed and expounded upon in a variety of decisions by Commissions and by Courts in regard to information laws of nations. Information Commissioners are required to consider the duty of Public Authorities to assist requesters who are incumbent on government institutions during the 'processing of a request.' Examining the duties that arose under the United Kingdom's Freedom of Information Act (FOIA), 2000 for instance, the Information Tribunal did not agree with the thinking of the Information Commissioner who had decided in that particular case, that the government institution did not have an obligation to respond to a request that was not clear. The Tribunal decided that the request was clear enough. It also states in *obiter* that the Commissioner should have critically reviewed the assistance provided by the government to the requester which was found to be wanting.

Where the Sri Lankan law is concerned, the duties and functions of this Commission pertain to not only 'hearing and determining any appeals' under Section 32 (1) (*viz*: Section 15 (f) but also to 'ensure the due compliance by Public Authorities of the duties cast on them under this Act.' In the yet early days of the operationalizing of this Act, it is important that these duties are clearly emphasized and conformed to.

The decision of the Commission

In these circumstances and for these reasons, the two preliminary questions of law are answered as follows;

- Whether the requirement of the averment of citizenship on the part of the information requester in terms of Section 3 (1) of the RTI Act No.12 of 2016 read with Section 43 of the said Act is a mandatory requirement? **Where the requestor is a body whether incorporated or unincorporated, the requirement of the averment of citizenship is a jurisdictional fact to be ascertained by an Information Officer in the first instance.**
- Is the said requirement a fatal irregularity or a curable defect at the second stage of appeal before the Commission? **It is a curable defect with discretion being employed in exceptional circumstances to enable the same**

The Appellant has urged that the Commission allow the Appellant to amend its papers in terms of Rule 17 of the Commission's Rules on Fees and Appeal Procedure. This Rule states that an Appeal may be returned to the Appellant if the Appeal fails to provide the requisite information or is otherwise substantially deficient. In our view, jurisdictional defects impugned in these Appeals cannot be cured by recourse to this Rule which applies to a situation where an Appeal is deficient on the merits of the substantive matter/s in issue (i.e.; for instance, where an Appeal is unclear in the information that is sought or is lacking relevant documentation in that regard) which were, in fact, the circumstances in the contemplation of the Commission at the time that the said Rule was formulated.

However, we are of the view that if the Commission allows the Appellant to aver citizenship at the appeal stage, that will be tantamount to the Commission taking the necessary steps in terms of its inherent powers under the Act to determine if the

appellant has a right of appeal in satisfaction of the jurisdictional facts (albeit contingent) that must be ascertained under the Act. This Commission was not established as a court of law but for the ‘purpose’ of the Act, (*vide* Section 11(1) of the Act), which is to ‘foster’ a culture of transparency and accountability in Public Authorities (*viz*: the preamble to the Act). It must necessarily give effect to that clear legislative intention. This Commission is also acutely conscious that the right of appeal afforded by the Act must be preserved to the broadest extent possible rather than be restricted (*Karunadasa v. Wijesinghe, supra*).

Therefore, in consideration of the equities in this matter and to necessitate the speedy consideration of the merits in these Appeals and acting under the inherent powers in this Commission in terms of Section 32(1), we allow the Appellant to amend the papers in order to include the averment of citizenship as aforesaid. Further, in pursuance of the duty arising on this Commission under Section 14 (a), we determine that the Public Authorities have failed to ensure compliance with Section 24 (2)(b) read with Regulation 4 of the RTI Regulations gazetted under the Act on 3rd February 2017 to assist the requester/Appellant contrary to the intent and spirit of the legislation.

We direct the relevant Information Officers to act in accordance with the law in responding to requests for information filed by incorporated or unincorporated bodies under Section 3 (1) read with Section 24 (1) and Section 43 of the Act. When information requests by such bodies are made, ‘all necessary steps shall be taken’ by the said Information Officers under Section 24 (2) (b) and Regulation 4 of the RTI Regulations to advise the information requester in order that any mistakes or discrepancies are noted and necessary corrections are made.

It is determined further that, having regard to the scope and object of the RTI Act, an averment to that effect *per se* made by an incorporated or unincorporated body will suffice to satisfy the mandatory requirements of Section 3 read with Sections 24 (1) and 43 of the Act. It is only in the rarest of rare cases and where sufficient reasons objectively are shown to exist awakening a *bona fide* doubt as to the said averment not being indicative of the correct factual position, that the Information Officer will be justified in law in requiring an incorporated or unincorporated body filing an RTI application under Section 24 (1) to furnish proof of the said averment, viz; to demonstrate by annexed material that three-fourths of such body are citizens. We have considered the further preliminary objection raised by the State that the Appellant has failed to demonstrate that the information sought is required for the exercise and protection of a Citizen's right as required by the wording of Article 14 A (1) of the Constitution which states that the right to access information is limited to 'information that is required for the exercise and protection of a citizen's right' and that merely alleging that the disclosure of information is of public interest will not suffice.

We are of the view that this objection is not sustainable in that it is a question which goes to the merits of the matter given the inextricable linking of a right with the concept of 'public interest' and is best decided at that stage. For the purposes of this instant Order, it may suffice to affirm that the right sought to be exercised and information asked for should fall within the scope of 'information' and 'right to information' as defined under the Act subject always to the overriding concept of the 'public interest', in the context of which, it may be useful to refer to the thinking of the Supreme Court of India in *Bihar Public Service Commission v. Saiyed Hussain Abbas Rizwi and another*, [2013-2-L.W. 293 (Part 4)] at 301;

The expression “public interest” has to be understood in its true connotation so as to give complete meaning to the relevant provisions of the Act. The expression “public interest” must be viewed in its strict sense with all its exceptions so as to justify denial of a statutory exemption in terms of the Act. In its common parlance, the expression “public interest”, like “public purpose”, is not capable of any precise definition. It does not have a rigid meaning, is elastic and takes its colour from the statute in which it occurs, the concept varying with time and state of society and its needs. [State of Bihar v. Kameshwar Singh (AIR 1952 SC 252) (1952) 62 L.W. 527]. It also means the general welfare of the public that warrants recommendation and protection; something in which the public as a whole has a stake [Black’s Law Dictionary (Eighth Edition)].

Order on the Merits⁶⁶

It must be emphasized at the outset that the duty laid on the DO under Section 31(3) to ‘include the reasons’ for a decision ‘including specific grounds for the same’ flow from the high degree of authority that the DO enjoys institutionally. Consequently, there is a duty to put on record, the fact that an information request has been seriously considered and that the denial has been in accordance with the statutory duty laid on a DO in terms of the Act rather than a bare reference to subsections of Section 5.

We are confident that, by including the terms ‘specific grounds,’ the legislative intention was to make a clear distinction between a duty to cite a provision of the law and the far more onerous duty to give ‘specific grounds’ for rejection which is perfectly

⁶⁶ Delivered on 04.12.2018.

in accordance with the paramount importance of the right to know, as declared constitutionally through Article 14A of the Constitution. The source of the right to information does not emanate from the RTI Act alone. It is a right that emerges from the constitutional guarantees under Article 14A.

The RTI Act is an instrument that lays down statutory procedure in the exercise of this right and consequently, as the Supreme Court recently remarked, is conferred with a ‘quasi-constitutional status’ (*vide* Supreme Court Determination on the Reparations Bill, SCM 26.07.2018, at p7). Its overreaching purpose is to facilitate democracy by helping to ensure that citizens have the information required to participate meaningfully in the democratic process and to hold the governors accountable to the governed.

This reading of the constitutional *cum statutory* provision is buttressed by Regulation 09 of the Right to Information Regulations gazetted on 3rd February 2017 (No. 2004/66) where it is unequivocally stated that, when an information request is rejected, ‘detailed reasons’ for rejecting the request should be given. While this Commission takes cognizance of the fact that the IO and the DO of the PA were considering these requests at a time when the ink had scarcely dried on the new Act and thus any failures thereto may be regarded some understanding, these are salutary safeguards that must be observed for the future.

1) In Relation to the certified copy of the Declaration of Assets and Liabilities of Prime Minister Ranil Wickremesinghe for the years 2015 and 2016.

Threshold Question – Satisfaction of Section 3 of the RTI Act
The application of Section 3 of the Act (access to information

arises only when a Public Authority is in ‘possession, custody or control’ of that information) read with the Declaration of Assets and Liabilities Law, No. 1 of 1975 (as amended) must be dealt with at the outset. This is, to our minds, a threshold question in the context of this information request.

Sri Lanka has enacted a specific law which provides for the submissions of Declarations of Assets and Liabilities by specified categories of persons (emphasis ours), namely the Declaration of Assets and Liabilities Law, No. 1 of 1975 (as amended). This Law (hereafter referred to as DALL) prescribes a specific structure in respect of who is statutorily required to give such declarations and to whom the same may be given. Therefore, the question as to disclosure of Declarations of Assets and Liabilities in the context of Right to Information merits more deliberate consideration than where an RTI law would operate sans such a specific law as would be the case in many countries in this region.

Section 4 (a) of DALL states that the declaration shall be made to the President (i) by the Speaker of Parliament, (ii) by Ministers of the Cabinet of Ministers, other Ministers and Deputy Ministers, (iii) by Judges and other public officers appointed by the President. Section 4 (b) states that the declaration shall be made to the Speaker by all other Members of Parliament not referred to in paragraph (a). Section 4 (a) states that the declaration be made to the Commissioner of Elections by;

- (i) Office-bearers of recognized political parties for the purposes of the elections under the Presidential Elections Act, No. 15 of 1981, Parliamentary Elections Act, No. 1 of 1981, the Provincial Councils Elections

Act, No.2 of 1988, the Development Councils (Elections) Act, No. 20 of 1981 or the Local Authorities Elections Ordinance:

- (ii) Candidates nominated for election at elections to be held under the Presidential Elections Act, No. 15 of 1981, the Parliamentary Elections Act, No. 1 of 1981, the Provincial Councils Elections Act, No. 2 of 1988, the Development Councils (Elections) Act. No. 20 of 1981 or the Local Authorities Elections Ordinance.

Declarations of Assets and Liabilities are not documents that are lightly entered into by individuals in public office. The analogy cannot be comparable to a situation where, as the Appellant sought to persuade us, a line Ministry decides to start drafting a law in which case, the ascertainment of whether that legal draft exists or not becomes an unquestionable matter of fact. A statutory duty has been prescribed by the DALL where Declarations of Assets and Liabilities are concerned and the Commission must be cognisant of the same. It is noted however that, at no point did the PA take up the objection in its responses by the IO or the DO that it did not, **in fact**, have the Declaration of Assets and Liabilities of the Prime Minister (emphasis added).

In the hearings before the Commission, Counsel on behalf of the Respondents pursued the argument that the DO is not 'recognized' under the DALL as an 'appropriate authority' under and in terms of Section 4 of DALL and that therefore the Declarations are not within his 'possession, custody and control' to hand over to any citizen requesting access to information under the RTI Act. However, this contention is defeated by the construction of certain provisions of the DALL, most particularly Section 5.

Section 5 (1) states that, ‘any person, body or authority responsible for the appointment, promotion, transfer or secondment, of a state officer or employee of a public corporation or local authority, shall for such purpose, have the right to call for and refer to any declaration of assets and liabilities of such state officer or employee.’ Section 5 (2) states that the Attorney-General, the Commission to Investigate Allegations of Bribery or Corruption, the Commissioner General of Inland Revenue and the Head of the Department of Exchange Control shall have the right ‘to call for and refer to any declaration of assets and liabilities.’ Most importantly for the context of this appeal, (by amendment brought in 1988), Section 5(3) states that ‘any person shall, on payment of a prescribed fee to the appropriate authority, have the right to call for and refer to any declaration of assets and liabilities and on payment of a further fee to be prescribed, shall have the right to obtain a certified copy of such declaration.

That being so, Section 8 (1) of the DALL also mandates that any person who obtains such information cannot communicate such matter to anyone except to the person the matter relates to. Contravention of Section 8 (1) is made an offence and subject to prosecution in the Magistrate’s Court under Section 8 (4) of the Act. Instances where such declarations obtained by any person under Section 5 (3) may be produced in court are limited to proceedings instituted under DALL, the Bribery Act, the Exchange Control Act, the Inland Revenue Act and the Customs Ordinance.

Taking the scheme of the DALL *simpliciter*, it is manifest that declarations of assets and liabilities may indeed be provided to certain individuals, officers and even ordinary citizens upon the payment of a fee. If so, to whom is entrusted these duties of

making available such declarations of assets and liabilities upon such a request under this Law if not, the responsible officers of the Public Authority under the direction of its head, namely the DO?

If so, should not the same officers (logically) be considered as having ‘possession, custody and control’ of the same under and in terms of Section 3 of the RTI Act? For the purposes of the instant component of this appeal (namely the Declaration of Assets and Liabilities of the Prime Minister), we therefore come to a finding that such Declaration is retained with the Public Authority named in this appeal, namely the Presidential Secretariat and the DO named in the appeal thereof. This, in our view, amounts to institutional possession of the information asked for, satisfying ‘possession, custody or control’ of the requested information as envisaged by Section 3 of the RTI Act. All powers, duties and responsibilities of the President prescribed in the Constitution and other relevant laws are vested on the President in his official capacity as President as opposed to his individual/private capacity as Maithripala Sirisena. Therefore, even in the given instance, when a declaration of assets and liabilities is made to the President, it is declared to him entirely in his official capacity because he holds the office of the President, which is to say that when the individual Maithripala Sirisena ceases to be the President of Sri Lanka, he cannot take with him the declarations so made.

Thus, as far as the possession, custody or control of such declarations is concerned, these would be with the office of the President, regardless of the individual who holds that office. As stated in its official website, the Presidential Secretariat “provides the administrative and institutional framework for the exercise of the duties, responsibilities and powers vested in the President.” Therefore, any document given to the President in

his official capacity ought to be in the lawful possession, custody and control of the Presidential Secretariat which is the physical embodiment of the office of the President, thus buttressing the institutional possession of the same.

The Ruling of the Speaker

A Ruling by the Speaker of Parliament on 27th of February 2017 stating that information pertaining to asset declarations of parliamentarians can only be released through the procedure laid down in the Declaration of Assets and Liabilities Law was made available to the Commission upon a direction to that effect being made on 26.06.2018.

Even though the IO of the PA had cited the Ruling of the Speaker as a reason for refusing the information (response dated 06.03.2017), it is of particular note that the DO's response (after the Speaker's ruling dated 27.02.2018) on 20.03.2017 did not refer to the said Ruling but instead, cited Sections 5(1)(a) and (g) to deny the information. Despite the DO urging a different ground of denial, Senior State Counsel was permitted to cite the said Ruling in the hearings in line with the practice adopted by the Commission that PAs seeking indulgence to raise an exemption under Section 5 (1) of the RTI Act, not previously raised by the DO, will be permitted to do so in consideration of the equities of the matter and in order to deliver a fair Order as required of this Commission under the Act.

Thus, Senior State Counsel relying on the Ruling of the Speaker, cited Section 3(2) of the RTI Act (that the Act "shall not be in derogation of the powers, privileges and practices of Parliament") and Section 5(1)(k) of the RTI Act, ("that a request for information under the Act shall be refused, where the disclosure of such information would infringe upon the

privileges of Parliament or of a Provincial Council as provided by Law’) to justify the denial.

Further reliance was placed on Article 4 (C) of the Constitution which exempts privileges, immunities and powers of Parliament and of its members from judicial scrutiny together with Standing Order 142 which mandates that Standing Orders “can be regulated in such a manner as Mr. Speaker may from time to time direct.” It was argued that the total of the constitutional and statutory provisions brings the Ruling of the Speaker within Section 5 (1) (k) of the RTI Act exempting information which would infringe the privileges of Parliament.

Assessing this reliance by the PA, we note that Section 4 (b) of the Declaration of Assets and Liabilities Law states that, “all other members of Parliament not referred to in Paragraph (a)” are required to declare their assets and liabilities to the Speaker. The word ‘other’ is included in this section because the preceding subsection *inter alia* refers to Cabinet of Ministers who are required to declare the same to the President. In other words, and even if that was to be conceded, the Speaker’s authority, if at all, would only apply to the class of persons who declare their assets and liabilities directly to him rather than in regard to those individuals who are required to declare to the President. This is so if we are to accept that an absurd situation should not arise where the Prime Minister makes two Declarations to both the President and the Speaker. Therefore, the Ruling issued by the Speaker appears not to be applicable to the Prime Minister who declares his assets and liabilities to the President under Section 4 (a) (ii) of the Law, consequently rendering the reliance by the PA before us on the said Ruling misconceived in law.

The question as to whether this Ruling applies to deny the

Declarations of Assets and Liabilities of those who declare to the Speaker under Section 4(b) remains to be considered by this Commission in an appropriate case.

Reliance on Section 5(1)(a)

The determining factor when there is a clash between the right to information and the right to privacy is undoubtedly the public interest. Thus, the question is whether the disclosure of the asset declaration of a high ranking elected official such as the Prime Minister serves the interest of the public?

In *Premalal Abeysekere v. Ministry of Education* (RTIC Minute of the Record, 20.04.2018), the Commission made a distinction between elected and unelected public officials and found that elected officials are subjected to higher levels of public scrutiny which principle may also apply to un-elected public officials but with more circumspection. The fact that stringent duties of transparency in regard to declarations of assets applies without exception to elected public officials (politicians) is a standard commonly accepted for long elsewhere as evidenced very well in a 2002 judgment of the Supreme Court of India (*Union of India (UOI) v. Respondent: Association for Democratic Reforms and Another; with People's Union for Civil Liberties (PUCL) and Another v. Union of India (UOI) and Another*; Decision: 2nd May, 2002, 2002 AIR 2112; 2002 (3) SCR 294).

Here (in a decision delivered before the Indian RTI Act was passed in 2005), the Court required all electoral candidates to make public and submit on oath, details of movable and immovable assets owned by them, their spouses and their dependents, including liabilities like loans from public sector banks and unpaid bills for public utilities such as electricity, water and telephone connections.

Indeed, the position taken up by the Respondents that a strict condition of privacy governs the keeping of these Declarations and that disclosure may be permitted only under limited circumstances to particular named officials appears not be sustainable on the DALL itself. Despite the restrictions imposed by DALL on the ‘communication’ of declarations of assets and liabilities obtained, as aforesaid under Section 5(3), it is evident that the fact that citizens can ask for and obtain these Declarations by paying a fee under the DALL speaks to the fact that a blanket prohibition of secrecy in respect of these declarations to members of the public was not contemplated by this Law in the first instance.

Even so, this Commission is obliged to apply the principles of the RTI Act and that Act alone in deciding appeals before us. Even though accountability of public officials is a common objective of both the DALL and the RTI Act, the two laws approach that common objective in vastly different ways, including, but not limited to the maximum disclosure principle embodied in the RTI Act and the ability to disseminate the information so obtained without hindrance. While the familiar maxim of *generalia specialibus non derogant* stipulates that a later general law cannot override a previous special law, this is however not an absolute. In *Commissioner of Inland Revenue v. The Woodland (K. V. Ceylon) Rubber & Tea Company Ltd.* (S.C. 3/66-Income Tax Case Stated, BRA/333) it was cautioned that “the rule *generalia specialibus non derogant* is only a presumption and cannot be elevated to a rule of law, because no Parliament (of Ceylon) can bind a future Parliament.” Indeed, there are additional exceptional circumstances during which a subsequent general law could override a previous special law as was made clear in *Ceylon Coconut Producers Co-operative Union v. C. Jayakody* (S. C. 14 of 1960-Labour Tribunal Case No. 2/1915);

“the legislature is reasonably presumed not to intend to alter that special provision by a subsequent general enactment unless that intention be manifested in explicit language, or there be something which shows that the attention of the legislature had been turned to the special Act and that the general one was intended to embrace the special cases provided for by the previous one, or there be something in the nature of the general one making it unlikely that an exception was intended as regards the special Act.” (emphasis added).

Ajoy Kumar Banerjee v. Union of India (1984 3 SCC 127, 153) is also relevant on this point, holding that;

“a prior special law would yield to a later general law, if either of the two following conditions is satisfied:

- (i) The two are inconsistent with each other.
- (ii) There is some express reference in the later to the earlier enactment.

If either of these two conditions is fulfilled, the later law, even though general, would prevail.”

This position is further buttressed by another principle of interpretation: *leges posteriores priores contrarias abrogant*, which states that when a new law conflicts with an old one on the same or similar subject matter, the later law takes precedence and the conflicting parts of the earlier law becomes inoperable. As stated in *Ranawanagedara Mudiyanse v. Municipal Council Kandy* (7 NLR 167) (quoting 1 L. R. Q. B., 1892, 658, *Churchwardens of West Ham v. Fourth City Mutual Building Society*):

“The test of whether there has been a repeal by implication is this: are the provisions of the later Act so inconsistent or repugnant to the provisions of the earlier

Act that the two cannot stand together? In which case, leges posteriores contrarias abrogant.”

The India CIC case of *Mr. M. R. Misra v. the Supreme Court of India*, (CIC/SM/A/2011/000237/SG) specifically dealt with laws that conflict with the RTI Act in that country:

“where there is any inconsistency in a law as regards furnishing of information, such law shall be superseded by the RTI Act. Insertion of a non-obstante clause in Section 22 of the RTI Act was a conscious choice of Parliament to safeguard the citizens' fundamental right to information...If the PIO has received a request for information under the RTI Act, the information shall be provided to the applicant as per the provisions of the RTI Act and any denial of the same must be in accordance with Sections 8 and 9 of the RTI Act only.”

Given the above, the Commission envisaged two scenarios:

1. An earlier law/ rule whose provisions pertain to furnishing of information and is consistent with the RTI Act: Since there is no inconsistency between the law/ rule and the provisions of the RTI Act, the citizen is at liberty to choose whether she will seek information in accordance with the said law/ rule or under the RTI Act. If the PIO has received a request for information under the RTI Act, the information shall be provided to the citizen as per the provisions of the RTI Act and any denial of the same must be in accordance with Sections 8 and 9 of the RTI Act only; and

2. An earlier law/ rule whose provisions pertain to furnishing of information but is inconsistent with the RTI Act: Where there is inconsistency between the law/ rule and the RTI Act in terms of access to information, then Section 22 of the RTI Act shall override the said law/ rule and the PIO would be required to furnish the information as per the RTI Act only.

We find these sentiments to be entirely applicable in the context of Sri Lanka's RTI Act. Otherwise, as this Commission observed during the course of the hearing of this appeal, (Minute of the Record 31/10/2018), allowing the existing range of special laws to supersede provisions of the RTI Act would ultimately render the RTI Act futile. This is a consideration that must anxiously weigh with us.

It is therefore our view that the spirit and letter of the RTI Act brought into Sri Lanka's statute books in 2016 with the modern objective of 'combating corruption and promoting accountability and good governance' (vide preamble to the RTI Act) cannot effectively operate if Section 8(1) of the DALL continues to be concurrently valid. It was precisely to address this situation that Section 4 of the RTI Act provides that; "The provisions of this Act shall have effect notwithstanding anything to the contrary in any other written law and accordingly in the event of any inconsistency or conflict between the provisions of this Act and such other written law, the provisions of this Act shall prevail." This, we find, falls within the four corners of the caution that, the *generalia* maxim will not apply if there is "...something in the nature of the general one making it unlikely that an exception was intended as regards the special Act." (*Ceylon Coconut Producers Co-operative Union v. C. Jayakody, supra*)

Applying Section 4 to its fullest extent is important because of what the RTI Act undertakes to achieve through fostering ‘a culture of transparency and accountability’ (*vide* preamble to the Act). If Parliament had intended to keep asset declarations out of the purview of the RTI regime, it could have explicitly mentioned it or included the same as an exemption under Section 5 of the RTI Act. That was not evidenced. In such circumstances, the Commission is duty bound to take into due account, the legislative intention in that regard.

We do not accept the argument advanced on behalf of the Respondents that existing law would suffice to curb corruption and the unexplained acquisition of wealth of elected public officials through scrutiny of declarations of assets and liabilities and that the provisions of the RTI Act need not therefore be used for this purpose. Existing laws, such as the DALL, would only come into play only upon complaints being received on corrupt acts of individuals or when the same is discovered inadvertently. As practice indicates, this occurs only in selected instances. In contrast, the RTI Act enables a powerful check to be exercised on even potential corruption as this would deter those otherwise enticed to amass public wealth for themselves.

In instances where Section 5(1)(a) is urged to deny information, it is an important factor that this Section contains the public interest embedded within the exemption itself. We find that, on a consideration of Section 5(1)(a) itself, that the public interest in this matter outweighs the claim of unwarranted invasion into the privacy of an individual. In any event, we find that Section 5(4) containing the general public interest override will apply to support the release of the information requested.

Reliance on Section 5 (1) (g) of the Act

The PA has cited the exemption under Section 5 (1) (g) of the

Act to deny the requested information, namely a fiduciary duty. It is, of course, clear that the constitutional scheme (in the wake of the 19th Amendment to the Constitution) does not contemplate that the President stands in a fiduciary relationship with the Prime Minister. In the hearings of the appeal, it was argued on behalf of the Respondents that the information held by the Secretary to the President was 'required to be kept confidential by reason of the existence of a fiduciary relationship' *vis a vis* the President and further, that the duty to uphold secrecy in Section 8(1) of DALL is encompassed within Section 5 (1)(g).

In *Reserve Bank of India v. Jayantilal N. Mistry* (16th December, 2015) the four scenarios in which a fiduciary relationship arises were laid out in the following manner;

- (1) when one person places trust in the faithful integrity of another; who as a result gains superiority or influence over the first,*
- (2) when one person assumes control and responsibility over another;*
- (3) when one person has a duty to act or give advice to another on matters falling within the (e.g., lawyer-client relationship) scope of the relationship, or*
- (4) when there is a specific relationship that has traditionally been recognized as involving fiduciary duties (doctor-patient relationship), as with a lawyer and a client, or a stockbroker and a customer."*

It is manifest that none of the above scenarios envisage a situation where the Secretary to the President (DO) stands in a fiduciary capacity to the President. Indeed, if this Commission were to hold that a fiduciary relationship arises between a superior official in a public authority and his subordinate who

is in possession of the information owing to administrative reasons, then the purpose and objective of the RTI Act would be rendered a dead letter as this could be, for example, pleaded by a Secretary to a line Ministry *vis a vis* the relevant Minister.

In any event, given that the DALL itself enables declarations of assets and liabilities to be provided to citizens by officers of the PA upon the payment of a fee (Section 5(3)), the argument that a fiduciary duty prohibits the same from being handed over by the Secretary to the President where the RTI Act is concerned, cannot be justified. We hold that Section 5(1)(g) is not applicable to deny the information requested. The findings of India's Central Information Commission (CIC), in *SC Agrawal v. Prime Minister's Office case* (Appeal No. CIC/WB/A/2009/00038 & WB/C/08/868 dated -7-2 09 & 25-8-2008) in regard to the assets details of Cabinet Members to the Prime Minister's Office (PMO) are very apt in the instant appeal as well;

“...to argue a fiduciary relationship in submission of such statements to PMO, when such statements have in any case under law also to be made available at the time of election before the Election Commission of India, is not in our view a valid argument.”

Conclusion

It is therefore evident that none of the exemptions pleaded by the PA stand.

Section 6 of the RTI Act allows for information to be redacted by the PA as it may deem fit. The Appellant had specifically pleaded before this Commission that the information asked for will be satisfied if the information relevant to the Prime Minister alone in the Declaration of Assets is directed to be released and any other parts of that Declaration may be redacted under

Section 6. We see no merit in the submission for the Respondents that pursuing severability at this stage would fundamentally alter the character of the information request. If that was to be upheld and considering the fact that, in many appeals before us (i.e. as one illustration, *Airline Pilots Guild v. SriLankan Airlines*, Order delivered on 12.06.2018), the decision as to severability arises upon the Commission's own assessment of the information that may or may not be disclosed under the RTI Act, the handling of the appeals process would be severely restricted.

Given that Section 6 would sufficiently safeguard the privacy rights of those related to the elected public official whose Declaration of Assets and Liabilities is being requested, the Public Authority is directed to hand over to the Appellant, those extracts of the Declaration of Assets and Liabilities of the Prime Minister with the redaction of the content relating to any other related individual for the years 2015 and 2016. It must be noted that this holding as to severability in terms of Section 6 is in consequence of the Appellant's submission in this instant appeal and that this is not to say that this will be applied as a general principle in appeals of this nature.

Finally, where the argument advanced on behalf of the PA that the Appellant has failed to demonstrate that the information sought is required for the exercise and protection of a citizen's right is concerned, we are of the view that this superimposition of an additional requirement to deny information apart from those specific exemptions listed in Section 5(1) is not tenable under the RTI Act.

- 2) In relation to the certified copy of the Declaration of Assets and Liabilities of President Maithripala Sirisena for the years 2015 and 2016**

As aforesaid, the DALL lists the specific classes and description of persons who are required to declare their assets and liabilities. This list exempts from mentioning the President of Sri Lanka *qua* President as one of the categories of persons who are required to declare his/her assets and liabilities. The only point at which the individual who is President of Sri Lanka is legally obliged to declare his/her assets and liabilities is under Section 4 (a) (ii) of the same law when he/she is a presidential candidate. Once such an individual is elected as President, he/she is exempted from making such declaration during the tenure of the Presidency.

We are in agreement with the submission of the state law office appearing for the Respondent that Section 4 (a) (ii) is inapplicable to the President once he assumed office on the 9th of January 2015.

In his appeal before the Commission, the Appellant had stated that the information requested ought to be available with the Commissioner of Elections to whom, the President should have declared his assets and liabilities as the leader of a recognized political party. It was contended that as per Regulation 4, Clause 6 of the RTI Regulations (gazetted under Gazette No. 2004/66 dated 03.02.2017)

“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 transfers the request to the concerned Public Authority and informs the citizen making the request accordingly within 7 days from the date of receipt of the request.”

However, this information request was not for the declaration of assets and liabilities of a presidential candidate but the

President *qua* President for the years 2015 and 2016 which the law does not oblige him to retain/give. In any event, such a document would certainly not be in the possession, custody or control of the Commissioner of Elections.

Therefore, given that there is no law which requires the President *qua* President of Sri Lanka to make a declaration of his/her assets and liabilities, the specific information requested by the appellant i.e., a certified copy of the Declaration of Assets and Liabilities of President Maithripala Sirisena for the years 2015 and 2016, the same cannot lawfully be in the possession, custody or control of the Presidential Secretariat or any other Public Authority.

That being so, it is relevant to state that the increasing trend among Heads of State is to proactively declare their assets and liabilities to foster a practice of transparency and public accountability. Therefore, even if the law as it is does not require the President to declare his assets and liabilities, amendments to the existing law to enable the same would undeniably foster a culture of public accountability and good governance as envisaged by the RTI Act. This is a lacuna in the law which should be redressed forthwith.

The decision of the DO is affirmed on this portion of the information request.

***Tharindu Jayawardena v. Bureau of the
Commissioner-General of Rehabilitation***⁶⁷

'There is little logical connection between the requested statistics in this information request (that do not pertain to the personal details of individuals) and national security, particularly given the fact that similar information had been released by the PA in relation to an earlier period. The distinction between the information already in the public domain and the information now asked for which is similar in nature being classified as attracting the exemptions in Section 5 (1)(a) and (b) (i) does not lend itself to an intelligible and rational differentiation in terms of the law...

..The exemption under which information may not be released if an unwarranted invasion of privacy is attracted under Section 5 (1) (a) is applicable only to individuals. Consequently, the PA cannot plead that the privacy of a community is affected as a ground to refuse the release of the information. In fact, the release of the information appears to be in the interest of, (rather than to the detriment), the functions of the PA and the Government where the public interest is concerned.'

⁶⁷ RTIC Appeal (In-Person)/119/2017 heard as part of a formal meeting of the Commission on 27.11.2017 and 22.01.2018.

Decision: Asking the Appellant for reasons as to why he is requesting the information is a violation of Section 24 (5) (d) of the Act/Public Authority directed to release statistical data on rehabilitated members of the LTTE up to 2017/Privacy exemption under Section 5 (1)(a) held to apply to individuals, not communities.

Key words: Information requester not required to give reasons (Section 24 (5)(d))/National Security (Section 5 (1)(b)(ii) / Privacy (Section 5(1) (a)/Public Interest/ Statistical data.

Brief Factual Background

Information requested on 08.05.2017:

The number of LTTE members rehabilitated (annually), the age group they belong to, their residence (according to district), and the number rehabilitated belonging to each sex (all data as recorded annually) up to 2017.

As there was no response by the Information Officer (IO), an appeal was made to the DO on 23.06.2017. The DO had acknowledged the receipt of the information request on 04.07.2017 but had failed to respond on the substantive issue in the request. As the DO too failed to respond, the Appellant appealed to the Commission on 29.08.2017.

Matters arising during the course of the hearing

When the Commission inquired as to the reason why the PA hesitated to release information as requested, given that information of a similar nature had already been released to international organizations, the IO of the PA stated that the

information affects rehabilitated persons who are attempting to re-integrate into society. The Commission then drew the attention of the PA to the fact that the information requested does not involve any personal details of individual persons but that it confines itself to statistics.

The inquiry was made why the information after 2014 cannot be released if the information up to 2014 had already been released publicly relating to rehabilitated persons classified under District, gender, age, etc. The IO clarified that the information requested had been declined on the basis of safeguarding the privacy of those rehabilitated. It was submitted that the rehabilitated individuals had been re-settled in districts different to those they were originally settled in and if statistics are released, it will enable anyone to trace where and how the population of rehabilitated persons is dispersed into the general populace which will in turn, have an adverse impact on those (including former child soldiers) trying to re-integrate into society subsequent to rehabilitation.

Order⁶⁸

Two pertinent issues in relation to the instant information request and the response by the PA are discernible in this case. First, by asking the Appellant for the reasons as to why he is requesting the information, the PA is in violation of Section 24 (5) (d) of the Act which states that the one who requests the information need not give reason for requesting the information.

Secondly, the argument put forward by the PA that a denial of the information requested which relates to statistical data offends the privacy exemption in S.5 (1) (a) of the Act appears to be unsustainable on the facts as presented before us.

⁶⁸ As per the website, this Order was directed on the 27.11.2017.

The exemption under which information may not be released if an unwarranted invasion of privacy is attracted under Section 5 (1) (a) is applicable only to individuals. Consequently, the PA cannot plead that the privacy of a community is affected as a ground to refuse the release of the information. In fact, the release of the information appears to be in the interest of, (rather than to the detriment of), the functions of the PA and the Government where the public interest is concerned.

On the facts currently before us, the application of the exemption contained in Section 5 (1) (b) (i) of the Act is equally unsustainable. There is little logical connection between the requested statistics in this information request (that do not pertain to the personal details of individuals) and national security, particularly given the fact that similar information had been released by the PA in relation to an earlier period. The distinction between the information already in the public domain and the information now asked for which is similar in nature being classified as attracting the exemptions in Section 5 (1)(a) and (b) (i) does not lend itself to an intelligible and rational differentiation in terms of the law. If such a reasoned differentiation is made by the PA, this may be further considered in terms of this appeal.

The PA is directed to release the information/data recorded up to 2014 which is already in the public domain, as classified annually to which direction the PA is amenable.

The PA is also directed to produce before the Commission, the requested information in relation to the period after 2014 and up to 2017 as per the contents of the instant information request.

Upon perusal of the same and further written submissions of the parties, the Commission will decide whether the information is of such a nature that warrants disclosure in the public interest under and in terms of the Act. The PA states of record that it is amenable to release the information on an order of the Commission.

The decision of the DO is reversed.

***Thilak Ranjith Silva v. Sri Lanka Police-
Headquarters***⁶⁹

‘If the exception in Section 5(1) (j) is invoked to justify refusal, there must be a real risk (emphasis ours), as opposed to a remote possibility, that interference or prejudice would result in ‘contempt of court’ or be ‘prejudicial to the maintenance of the authority and impartiality of the judiciary.’

Decision: Public Authority directed to release certified copies of the extracts of notes recording the production of the accused lorry driver to the court and other appearances made by the driver before the Court, certified copies of the notes made by the police officers who conducted the investigation on that day on their pocket information books, the times when the police officers who conducted the investigation went off duty on the same day after conducting the investigation and copies of the photos obtained by the police officers regarding the accident.

Keywords: Contempt of court, maintenance of the authority and impartiality of the judiciary (Section 5 (1) (j))/ Failure to appear constituting an offence (Section 39(1) (c)) / Offences / Police / Investigation/ Public Interest/ sub judge .

Brief Factual Background

Information requested on 21.11.2017:

The Appellant had requested the following information in relation to an accident that had occurred on 13.02.2017 at Ruhunuketha Junction in Batticaloa- Polonnaruwa Road:

⁶⁹ RTIC Appeal (In-Person)/142/2018 heard as part of a formal meeting of the Commission on 09.05.2018,30.05.2018.

1. Certified copies of the rough notes and investigation report which recorded the place and the way in which the accident occurred
2. Certified copies of the extracts recording the date and the time on which the lorry driver and/or his assistant was arrested to the Right to Information Commission of Sri Lanka
3. Certified copies of the extracts recording the time when the lorry driver had been produced to the District Medical Officer to obtain the Medical Report
4. Certified copies of the G.H.T. inclusive of the Medical Report of the Lorry driver
5. Certified copies of the extracts of notes recording the production of the accused lorry driver to the court and other appearances made by the driver before the court
6. Certified copies of the extracts of the post mortem report conducted on 14.02.2017 at the Polonnaruwa Hospital
7. Certified copies of entries made in the Productions Book concerning the Motorcycle and the Lorry
8. Investigation Report made by the vehicle inspector pertaining to the investigation
9. Certified copies of the notes made by the police officers who conducted the investigation on that day on their pocket information books
10. The times when the police officers who conducted the investigation went off-duty on the same day after conducting the investigation
11. A certified copy of the Temporary license issued to the driver inclusive of the number of the same and the date issued
12. Copies of the photos obtained by the police officers regarding the accident

The response of the Public Authority

Upon receiving no response from the Information Officer (IO), the Appellant had made an appeal to the Designated Officer (DO) on 30.12.2017. Upon receiving no response from the DO, the Appellant made an appeal to the Commission by letter dated 09.01.2018.

Matters arising during the course of the hearing

The Appellant informed the Commission that subsequent to his appeal to the Commission, the IO of the PA had provided him with a response to his information request dated 21.11.2017 on 17.01.2018. Therein, the Appellant submitted that he was satisfied with the information received pertaining to items 1, 2, 4, 6, 7, 8 and 11. With regards to items 3, 5 and 11 of the information request, the Appellant claimed that the information provided by the PA was incomplete and misleading and that the PA had failed to provide the information requested under items 9 and 12 of the information request.

The PA by letter dated 08.05.2018 sent *via* fax addressed to the Commission, copied to the Appellant, had informed the Commission that the information requested by the Appellant was refused under Section 5(1)(j) of the Right to Information Act, No.12 of 2016. Furthermore, the PA submitted that action had been instituted in the Magistrate's Court of Manampitiya against the accused driver in the investigation regarding which the information had been sought and on 23.04.2018 the Magistrate had ordered all 3 files maintained on the investigation by the PA to be forwarded to the Attorney General's Department to decide on further action to be taken.

Therefore, the PA stated that granting the information requested by the Appellant would cause prejudice and affect adversely on the impartiality of the court proceedings.

Interim Order⁷⁰

In the instant matter, failure to adhere to the proper procedure mandated by the RTI Act, No. 12 of 2016 (the Act) and RTI Regulations gazetted on February 3rd 2017 (Gazette No. 2004/66) is evidenced on the part of the Public Authority.

In the first instance, the DO has failed to appear before this Commission or send a representative on his behalf, despite being noticed to do so under the RTI Act and the Rules of the Commission gazetted on February 3rd 2017 (Gazette No. 2004/66). The Public Authority has provided no explanation as to the failure thereof. This constitutes an offence under and in terms of Section 39 (1) (c) of the Act, incurring specific legal consequences in terms of that Section.

In such an eventuality, the Commission is empowered under Section 39(4) to initiate a prosecution in the relevant court. Section 39 further specifies that the conviction of such an offence carries with it the penalty of a fine and/or imprisonment for a term not exceeding two years.

The PA has refused the information requested by the Appellant under Section 5(1)(j) of the RTI Act, which reads as follows;

“the disclosure of such information would be in contempt of court or prejudicial to the maintenance of the authority and impartiality of the judiciary.”

In *Ceylon Bank Employees Union v. People’s Bank* (RTIC Minutes 30.01.2018), this Commission noted that information may only be refused strictly within the four corners of Section 5(1), which refusal is finally subject to the public interest override in Section 5 (4) in terms of which, information cannot

⁷⁰ Order of 09.05.2018.

be declined ‘where the public interest in disclosing the information outweighs the harm that would result from such disclosure.’

If the exception in Section 5(10)(j) is invoked to justify refusal, there must be a real risk (emphasis ours), as opposed to a remote possibility, that interference or prejudice would result in ‘contempt of court’ or be ‘prejudicial to the maintenance of the authority and impartiality of the judiciary.’

We are mindful that in assessing the relevance of the exemption set out in Section 5(1)(j) of the Act and in the light of the principle of maximum public disclosure that the Act is premised on, this Commission is called upon to apply the primary principle of the Right to Information against the exceptions set out in Section 5(1) of the Act which must be narrowly interpreted.

The Public Authority’s submissions in this regard conspicuously lack the establishing of a connection between this requested information and the manner in which ‘a real risk’ may therein be posed to the ‘authority and impartiality of the judiciary’ so that ‘prejudice’ is caused thereby...

Order⁷¹

...Upon the OIC, Legal of the PA confirming following appearance before the Commission that the information that is available in the records of the PA could be supplied to the Appellant, the PA is directed to provide responses to the information requested by the Appellant which includes certified copies of the extracts of notes recording the production of the accused lorry driver to the court and other appearances made by the driver before the Court, certified copies of the notes made

⁷¹ Order of 30.05.2018.

by the police officers who conducted the investigation on that day on their pocket information books, the times when the police officers who conducted the investigation went off duty on the same day after conducting the investigation and copies of the photos obtained by the police officers regarding the accident.

The decision of the Public Authority is reversed.

***V. Y. Sabaratnam v. Sri Lanka
Insurance Corporation Ltd.***⁷²

‘A disputed question of competency is not for this Commission to decide. However, it is our considered view that disclosure of the information requested in the first limb of this appeal comes legitimately within the province of information that can be released under this Act, as this comprises an essential basis of the Appellant’s right to know as well as information vital in the public interest as it relates to the transparent and accountable functioning of the Public Authority.’

Decision: Decision of Designated Officer varied to the extent that disclosure of information pertaining to the names of the panelists who made relevant decisions in relation to the Appellant’s insurance claim was directed.

Keywords: Burden of Proof / Institutional decisions / Professional communications – written law (*Section 5(1)(f)*)/Public Interest override (*Section 5 (4)*).

Brief Factual Background

Information requested on 17.12.2017:

An information request had been filed by the Appellant asking for the following information relating to his insurance claim;

1. The names of the persons who had made the decisions on his claim. If a medical team or a doctor was involved their names, designation and qualifications as well.

⁷² RTIC Appeal (In-Person)/117/2018 heard as part of a formal meeting of the Commission on.09.05.2018, 26.06.2018, 17.07.2018 and 28.08.2018.

2. Certified copies of all the relevant decision-making documents

This was in the context of the Appellant stating that he had been diagnosed with cancer on 31.10.2017 and stating further, that he needed the said information expeditiously and that the Public Authority (PA) has asked him for another medical report in 6 months.

On 26.12.2017, the Information Officer responded to him denying the information sought on the panelists who decided on the claims under Section 5 (1) (f) of the RTI Act, No.12 of 2016. Dissatisfied with this response, the Appellant appealed to the Designated Officer (DO), on 03.01.2018 and he received a response on 04.01.2018 that the decision to withhold the names of the panelists was based on the recommendation of the Chief Officer-Life and as decided by the Board on 28.12.2017. Therefore, it was stated that the decision was not taken by the IO arbitrarily but was a collective decision of the Chief Officer-Life and the Board. The Appellant filed an appeal with the Commission on 03.01.2018.

Matters arising during the course of the hearing

Counsel for the PA stated that the insurance policy stipulated a 6 months grace period to decide if this was a permanent disability and that this period would be over in approximately two months' time and that therefore it was premature to decide on the Appellant's claim since it yet had to be evaluated. He further submitted that this related to information that might have to be presented to courts if the matter went to court and that therefore, the PA had denied the release of the information.

The PA reiterated that the 6 months grace period was to evaluate the claim on the claimant and till the evaluation was over the

claimant was not entitled to any information and that a decision could not be taken without evaluating the claim. The PA emphasized that no decision had been taken on the Appellant's claim as yet. Later, the PA also contended that in any event, the evaluation had been made by the re-insurer, not by the PA.

Interim Order⁷³

The Public Authority's argument that the matter relates to a potential dispute which may go to court is not a valid exemption to deny information to an information requester. Section 5 (1) of the RTI Act No.12 of 2016 provides for specific exemptions and *sub judice* or a pending court case itself is not one of these exemptions. Consequently, the likelihood of a court case arising in the future cannot be construed as a valid exemption to deny information on an information request submitted under the Act.

Order⁷⁴

In this instance and as is evidenced in the initial responses of the PA to this information request as mandated by the RTI Act, particularly referencing the decision by the DO as aforesaid, the panelists involved in making whatever decision in relation to the Appellant's claim, (constituted as a panel or otherwise), functioned under the direction of the PA itself as opposed to professionals operating outside the ambit of the PA. Further, it must be reiterated that is insufficient to merely plead the exemption of professional privilege (Section 5 (1) (f).

Rather it must be established that the information requested is privileged under and in terms of 'written law' which burden the

⁷³ Delivered on 09.05.2018.

⁷⁴ Delivered on 16 .10.2018 Appearance for the parties – N. R. Sivendran PC (for the PA). On 15.11.2018, the Public Authority appealed against the decision of the Commission to the Court of Appeal, thus constituting the second appeal filed by a Public Authority in terms of Section 34 of the RTI Act.

PA has not satisfactorily discharged....

...As per the first limb of the information request dated 17.12.2017, the Appellant requests the names of the persons who had made the decisions on his claim, which can include decisions to deny or delay the said claim. While the PA has (later) relied on its submission that it did not make the relevant decision, it is evident by the responses of the IO and the DO and the information provided by the Insurance Regulatory Commission dated 06.09.2018 to the Appellant that a decision to review the claim in six months has been made by the medical panel of the PA.

The Commission accordingly deems that information in relation to this panel and its members thereof falls within the ambit of the information request of the Appellant. In this appeal, the names of the members constituting the panel examining the claim of the Appellant has been requested on the Appellant's contention that his claim was not reviewed by those competent to do so (*vide* proceedings of this Appeal on 17.07.2018 and written submissions of the Appellant filed on 18.09.2018).

A disputed question of competency is not for this Commission to decide. However, it is our considered view that disclosure of the information requested in the first limb of this appeal comes legitimately within the province of information that can be released under this Act, as this comprises an essential basis of the Appellant's right to know as well as information vital in the public interest as it relates to the transparent and accountable functioning of the Public Authority. This is differentiated from, as an example, an information request where the names of professionals are asked to be disclosed in a context where the primary issue is entirely different, such as disclosure of the sums of money paid out of public funds by Public Authorities for professional work.

We do not find that the information so requested comes within the ambit of Section 5(1)(f) in as much as the Public Authority has failed to establish the existence of ‘written law’ that pertains to such information being kept a secret. In any event, the public interest override will apply in Section 5(4) of the Act as we find that the public interest in the transparent and accountable functioning of a Public Authority such as the Sri Lanka Insurance Corporation outweighs the likely harm that may result from the disclosure. As such the PA is directed to release information pertaining to the names of the panelists who made relevant decisions in relation to the Appellant’s claim as per the response of its DO dated on 04.01.2018 stating that the decision to withhold the names of the panelists (emphasis ours), was based on the recommendation of the Chief Officer-Life and as decided by the Board on 28.12.2017.

In regard to the information requested in the second limb of the information request, the material before us is not sufficient to establish the applicability of Section 5(1)(f) to the release of the information requested. This Commission must consider the public interest override in Section 5(4) of the RTI Act given the fact that decisions made by a PA covered by the Act and operating on public funds must be made transparently and accountably. Further, these decisions amount to institutional decisions taken by Public Authorities which must be revealed (*vide CBEU v. Peoples Bank*, RTIC Minutes, 17.07.2018). Accordingly, it is further directed that certified copies of relevant decision-making documents in this regard be submitted to the Commission to assess their contents in order to arrive at a determination regarding the release of the same to the Appellant.

The decision of the DO is reversed.

***Verité Research Pvt. Ltd. v.
Central Bank of Sri Lanka⁷⁵***

‘In the Sri Lankan context, it is relevant that the Right to Information is a fundamental right guaranteed by Article 14A of the Constitution. Any restriction placed upon it through the Constitution or through any other statutory provision such as Section 5 of the RTI Act must be applied and interpreted in consonance with principles such as proportionality, as necessary in a democratic society and in furtherance of a legitimate aim to which the restriction bears a rational nexus.’

Decision: Public Authority directed to disclose the date of purchase, date of bill/ bond issue, ISIN number of the bill/bond, Coupon rate of the bill/bond, the yield to maturity (net of taxes) of the bill/bond, Face value of the bill/bond, Purchase cost of the bill/bond of primary market transactions held through auctions and direct placement, and secondary market transactions for 2015 and 2016.

Keywords: Article 14A of the Constitution/Commercial Confidence (Section 5 (1) (d))/ EPF / Market Sensitive Information/Pending investigation (Section 5 (1) (h) (i))/ Prejudice to the economy of Sri Lanka (Section 5 (1) (c))/ Privacy (Section 5 (1) (a))/Public Funds/ Public Interest override (Section 5 (4))/Public funds.

Brief Factual Background

Information requested on 15.05.2017;

1. Decision-making process for investment of EPF funds, including all committees and bodies involved, approval processes and structures, and any guidelines and rules to

⁷⁵RTIC Appeal (In-Person)/26/2018– heard on 16.03.2018, 09.05.2018, 03.07.2018, 07.08.2018 and 04.09.2018.

be followed. (if any of the formal structures and processes do not exist, give details of all alternative structures and processes by which the EPF funds are managed.)

2. Any guidelines and rules that govern the Investment Committee
3. Names and designations of members of the Investment Committee
4. Annual reports of the EPF Dept. from the years 2014, 2015 and 2016
5. A list of the following assets held by EPF as at 30.04.2017
 - All govt. securities categorized by maturity period and yield to maturity
 - All listed and unlisted equities (mentioning the name of the company, purchase cost and current market value)
 - All Rupee loans
 - All corporate debentures
6. A list of all govt. securities market transactions of the EPF from January 2015 to 30.04.2017. The list 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. The 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. The purchase cost of the bill/bond
- H. The price of each bill/bond
- I. Counter party (party with whom the transaction was held)

The IO responded on 30.06.2017 providing responses to all except item Nos. 4 and 6 and cited Section 5 (1) (a) regarding item 6. With regard to item 4 the PA maintained that the 2016 Annual Report of the EPF Department had not been finalized as yet.

The Appellant appealed to the DO on 24.07.2017. The DO responded that item 4 would be provided once the approval of Cabinet was received, and with regard to item 6 that there was an investigation of secondary market transactions on Government securities of EPF by the Presidential Commission of Inquiry (COI) to investigate, inquire and report on the issuance of Treasury Bonds (Bond Commission) during the period 1st January 2015 to 31st March 2016. The COI had requested similar information and the PA had provided the information to the Commission under the “Confidential and non-publishable” category. Therefore, the PA submitted that the Appellant’s request would be considered once the investigation by the Commission was completed.

Dissatisfied with the response, the Appellant preferred an appeal to the RTI Commission on 06.11.2017.

Matters arising during the course of the hearing

By consensus between both parties, it was agreed that both appeals RTIC Appeal/25/2018 and RTIC Appeal/26/2018 would be heard together but that the relevant Orders would be issued separately.

On 16.03.2018, the PA agreed to provide A and B of the information requested by item 6 (as highlighted below) namely, the date of purchase and the date of bill/ bond issue (if different from the date of purchase) in relation to primary market transactions held through auctions, primary market transactions held through direct placement, secondary market transactions of all government securities and market transactions of the EPF from January 2015 to 30.04.2017. In relation to item 4 the PA was directed to provide whatever information that would ordinarily be contained in the Annual Report relative to the year in question severed if so required as provided for in Section 6 of the RTI Act.

Subsequently, in its Written Submissions dated 06.04.2018, the PA emphasized that while it may not be possible to issue the entirety of the information requested, it would be able to release certain information and that it had identified several combinations of information which could be disclosed without affecting the rights of the EPF, and that the Appellant could choose from one of the combinations below as proposed;

- I. A B C D
- II. A B E
- III. A F
- IV. A G
- V. A H

The Appellant was however not amenable to the same but reiterated only that it was not pursuing the names of those who are transacting (counterparties) (Vide RTIC Minute of the Record, 03.07.2018). Several attempts were made by this Commission to arrive at a compromise between the parties as to what information could be released in a manner that is equitable in terms of the competing interests involved in this matter; i.e. the need for transparency and accountability in dealing with the EPF fund given the undoubted public interest implicit in the same and the need to preserve the competitive interests of the EPF in the financial market. On 07.08.2018, the Appellant submitted that it is willing to compromise if the PA agrees to provide one of the following combinations.

1. A B C D F G and E OR
2. A B C D F G and H

Following further questions being posed by the Commission to the PA, the PA then agreed to provide items of information in the request (excepting item No I) up to the year 2016 on the basis that the external audit was in progress for the year 2017, rendering the information for the said year incomplete. (*vide* RTIC Minute of the Record, 07.08.2018).

However by letter dated 17.08.2018 signed by Senior Deputy Governor Dr. P. N. Weerasinghe and at the hearing on 04.09.2018, the PA reverted to its original position that it was willing to disclose only items A, B, C, D, on the basis that disclosure of transaction wise information pertaining to information items E, H and G would 'expose EPF to a competitive disadvantage which will impact on operations in the primary and secondary market as well thereby causing irreparable harm to the EPF.'

By Order of 03.07.2018, the Commission detailed several questions to be answered by both parties with particular questions to be responded to by the Public Authority alone, including, *inter alia*, the following;

1. As the EPF Act has no exceptions on alleged “market sensitive information” how does the CBSL prevent disclosure of information termed “market sensitive” whilst complying with the legal requirements of the Act, especially §5(1)(h) in respect of “each investment”?
2. What guidelines/regulations have the CBSL prescribed to balance non-disclosure of information considered by the CBSL as “market sensitive” with transparency requirements associated with public debt (through issuance of Bonds)?
3. What criteria does the CBSL use to designate particular information as “market sensitive” whilst ensuring transparency and disclosure as also required under the EPF Act?
5. Using that set of criteria what of the information, as requested by the Appellant Organization can be categorized as “market sensitive” or included within the ambit of Section 5(1)(d) of the RTI Act and why?
6. How is the exemption of “commercial confidence” in Section 5(1)(d) of the Act, as claimed by the PA, linked to cash flow?
7. If a multiplicity of transactions in regard to EPF funds result in feasibility issues in the provision of the information claimed by the PA, then it must demonstrate this multiplicity with concrete facts supplied to this Commission following which a decision may be made in regard to

whether the same constitutes information that may be legitimately released under the RTI Act. In particular, it must show within the period set out in the said information request in issue, as illustrative of a general pattern, as to whether or not EPF purchased bonds in the secondary market, from whom and at what price, and what price these bonds were traded in the primary market?

These questions were answered by the parties to the appeal through Written Submissions of the PA, (dated 17.08.2018) and of the Appellant (dated 06.08.2018). In particular and answering question 1 posed above in regard to existing statutory duties prescribed on the PA, the PA stated that Section 5 (1)(h) of the EPF Act only required a statement of investment annually with face value, market value and purchase price (which information is contained in the Annual Reports in satisfaction of that statutory guarantee), which do not mean individual transactions as such, as the Appellant requests.

It was also claimed by the PA (*vide* paragraph 28 of the said Written Submissions) that disclosing items A to D.

As well as F in item 6 of the information request is not market sensitive as the respective counter parties and prices/cost is not disclosed but that ‘disclosing items E, G H and I thereto will affect investment strategies and further, if the counter party name is not to be disclosed, that should equally apply to the EPF too.’

Order:⁷⁶

In RTIC Appeal 26/2018 the information request pertaining to

⁷⁶Delivered on 27.11.2018 Appearances for the parties - Mr. Gehan Gunatilleke, AAL, Ms. Malsirini de Silva, AAL (Attorneys-at-Law for the Appellant), Mr. P. V. L. Nandasiri Director Legal CBSL (Attorney-at-Law for the PA).

the EPF fund termed as ‘the largest Social Security Scheme in Sri Lanka,’ (<http://www.epf.lk/>), is constituted by member accounts considered as consisting real savings members.

The Appellant has contended that the information is of significant public interest given that (*Vide* Written Submissions of 24th October 2018, para 1), the EPF is the ‘largest single fund in Sri Lanka with LKR 2 trillion worth of retirement funds and 17.3 million total member accounts, estimating to almost 80% of Sri Lanka’s population. Under the EPF Act, No. 15 of 1958 (the EPF Act), the Public Authority is required to invest the funds of the EPF in such securities as the Monetary Board may consider fit (Section 5(1)(e) of the EPF Act...

Applicability of Exemptions 5 (1)(a), 5 (1)(d) and 5(1)(h)(i)

General Observations

Section 5 (1) (a) is inapplicable in this instance as privacy rights of individuals are not attracted in the circumstances of the case, thus rendering the basis of the rejection of the information request/first appeal by the PA to be flawed in terms of the RTI Act. However, Section 5 (1) (h) (i) and 5 (1) (d) have been raised as applicable exemptions by the Public Authority (PA) to deny the information in the hearings before this Commission.

...What is in issue is the disclosure of information during 2015 and 2016 given the aforesaid agreement of the PA as of record during the appeal hearing of this Commission (*vide* RTIC Minute of the Record, 07.08.2018) that it was amenable to the same being disclosed which was acceded to by the Appellant, but which agreement was subsequently withdrawn from by the PA.

The PA has strenuously contended that real prejudice to the competitive interest of the EPF will be sustained if the said information is disclosed. However, it is an accepted principle that information requests pertaining to completed transactions/past data will be responded to differently as compared to ongoing transactions which carry with them particular sensitivities. This principle was acknowledged by this Commission in its decision in *Airline Pilots Guild v. SriLankan Airlines* (Order delivered on 12.06.2018) ...

In the present appeal, the transactions relating to the information that was initially agreed to be disclosed before us (i.e.; up to the year 2016) took place more than two years ago. The Public Authority has failed to demonstrate how it would be prejudicial to the competitive interests of the third party, i.e. the EPF assuming that the EPF is, in fact, a third party falling within the scope of Section 5 (1) (d). Furthermore, based on the facts before this Commission, the added disclosure would seem to lead to better investments and more or equally importantly, prevent disadvantageous transactions. It would appear to hold the PA more accountable to the EPF members. Accordingly, it is our view that this contention has been insufficiently substantiated in its merits.

It is also noted that under Section 5(1)(e) of the EPF Act, only the moneys of the Fund as are not immediately required may be invested in such securities as the Monetary Board may consider fit and may sell such securities. This means that the objectives of EPF seem to be long term investments, which are much less sensitive to market when compared to short term investments. The said Section empowers “investment” in “securities”. This is capable of being interpreted as even covering situations where a number of investments, from the perspective of the EPF members, could be made in a single security. This distinction is

relevant, as subsequently discussed in this Order...

The relevance of the Exemption in Section 5 (1) (d) of the RTI Act

...The thrust of the Appellant's argument was that the EPF being the single largest fund in the country, holding probably over 90% of the local borrowings of the government and being mostly active only in the primary market – (i.e., buying directly from the government, and not third parties in the secondary market); any secondary market activity of the EPF is of significant public interest;

“as it could be a means to move public money to private hands (whereas primary dealings are a cost or benefit to the government only ‘the government, in turn, taxes the public to pay their debts).’ (Vide Written Submissions of the Appellant dated 13th April 2018, at paragraph 14).”

Refuting the above, the PA argued that the provision of the information would result in investment strategies and patterns adopted by EPF becoming accessible by competitors through the disclosure of transactions that may affect the movements of price levels of holdings thus becoming price/market- sensitive information. With respect to the submission by the Appellant that the information is already in the public domain *via* the Bloomberg platform, the PA submitted that market participants are not able to trace the parties who are transacting, although the fact of the transaction of a particular bond maybe available.

Having considered the submissions of both parties it appears that although the PA has repeatedly claimed that the information is market sensitive and falls within the protection of Section

5 (1)(d) of the RTI Act, it has failed to demonstrated **exactly** (emphasis ours) this information impacts on the competitiveness of the EPF in the market or rather how it falls within Section 5 (1)(d).

It must be noted that this Commission took special effort to ascertain the same including querying (order dated 03.07.2018) the exact criteria used by the CBSL to designate particular information as “market sensitive” whilst ensuring transparency and disclosure as also required under the EPF Act. The PA was asked to identify what items of the information requested can be categorized as “market sensitive” or included within the ambit of Section 5 (1) (d) of the RTI Act and why the said information would be market sensitive. In response, the PA submitted (*vide* written submissions of the PA dated 17.08.2018) that;

“ day-to-day investment strategies and investment pattern of the EPF can be exploited by other parties due to the disclosure of such information and that can adversely affect the market competitiveness of EPF. Using this information, anyone can identify the position of the EPF, i.e. percentage holdings of a security. Similarly, investment and trading strategies such as profit margin adopted in trading can be used by competitors for their advantage and also for front running activities.

Accordingly, market participants can judge the requirements of the EPF and future dealings strategy. Therefore, anticipating EPF transactions, others can try to buy which escalates the prices unnecessarily causing a higher price for EPF and its members and vice versa. Ultimately this situation would bring an adverse situation to the members of the fund.”

It was reiterated that if information in relation to the EPF is in the possession of a third party compromising the EPF's ability to compete or deal effectively and which prompts other competitors to act prior to the EPF investment actions, market prices can move adversely. Further, it was submitted that as the 'EPF is a counterparty in the market the release of details pertaining to counterparties allow competitors to act maximizing their profits. Investment strategies and patterns adopted by the EPF can be accessible by competitors through the disclosure of transactions that may affect the movements of price levels of holdings and therefore are price/market sensitive' (*vide* written submissions of the PA dated 17.08.2018).

Similarly, the PA stated that the information could be used by competitors to their advantage and also for front running activities and that market participant can accordingly judge the requirements of the EPF and future dealings strategy.

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 ours)**, the identification of the position of the EPF in the market in terms of percentage holdings of a security would affect its competitiveness in the market, especially when EPF is, as stated by the PA, the dominant player.

It is our view that the PA has failed to demonstrate how that information, in this instance completed transactions/ past data can be used with certainty by competitors to their advantage and the disadvantage of the EPF. The illustration provided, along with the response of the PA, is unhelpful in that regard as it is a generalized response and in our opinion, would be more

applicable to future/ongoing transactions rather than those already completed.

Furthermore, the response of the PA to the query by the Commission whether disclosure should not be mandated for the very purpose of preventing the obtaining of an unfair competitive advantage through, limited and/or non-disclosure, is circuitously phrased as follows;

“The purpose of disclosure is the reduction of asymmetry, thereby the prevention of unfair competitive advantage. However, the non-disclosure of the counterparty, ownership and transactions envisages the maintenance of privacy and confidentiality where such information does not affect the market competitiveness. (vide written submissions of the PA dated 17.08.2018, paragraph 26) ”

The Appellant’s response affirms that since the establishment of the Bloomberg Platform, all market participants have access to data (which includes items of the information requested directly or indirectly except counterparties). It may therefore be concluded that it is illogical to argue that the older transactions (i.e., between January 2015 and 15th July 2016 when the Bloomberg platform was introduced) are more market sensitive. (emphasis ours). It is generally understood that in a competitive market deals cannot be confidential and counterparties can share deal information.

Furthermore, we are inclined to agree with the argument of the Appellant in the appeal hearings that it is an established principle of efficient markets that equal public disclosure is the best way to promote the proper functioning of the market, as it is in the absence of public disclosure that data can be shared privately and exploited unequally.

The Commission also notes the salutary disclosure requirements as contained in Section 5(1)(h) of the EPF Act, where the law clearly 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 ours). This, we take to mean each investment in security...

The relevance of Section 5 (1) (h) of the RTI Act

The PA denied the information to the Appellant on the basis that there was an investigation of secondary market transactions on government securities of EPF by the Presidential Commission of Inquiry (COI) to Investigate, Inquire and Report on the issuance of Treasury Bonds (hereinafter COI) during the period 1st January 2015 to 31st March 2016. The PA further stated that the COI requested similar information and the PA had provided the information to the COI under the “confidential and non-publishable” category and that the Appellant’s request would be considered once the investigation by the COI was completed.

During the proceedings before the RTI Commission, the PA pleaded Section 5 (1) (a) once again along with Section 5 (1) (h) (i) of the RTI Act which exempts information where disclosure ‘*would... cause grave prejudice to the prevention or detection of any crime or the apprehension or prosecution of offenders;*’ (vide RTIC Minute of the Record of 16.03.2018). In both these respects, there is a statutory burden on the PA which needs to be discharged. This is not a requirement peculiar to the Sri Lankan law and in fact, is a common statutory provision in other comparable jurisdictions.

In *Smt. Ashwini Dixit v. Reserve Bank of India* (decided on 12 March, 2012) the Central Information Commission of India was of the view that the mere cursory argument that information sought is protected under Section 8 (1) (d) is insufficient and that the burden of proof cast on the PA in terms of Section 19 (5) must be discharged. The Commission stated that;

In order to claim the exemption under Section 8(1)(d) of the RTI Act, the PIO must establish that disclosure of the information sought (which may include commercial or trade secrets, intellectual property or similar information) would result in harming the competitive position of a third party. As per Section 19(5) of the RTI Act, the burden of establishing the applicability of the exemption lies on the PIO.

In ascertaining the applicability of Section 5 (1) (h), it is of note that the corresponding Section of the Indian Act (Right to Information Act No. 22 of 2005) Section 8 (1) (h) which exempts ‘information which would impede the process of investigation or apprehension or prosecution of offenders’ is similar in content to Section 5 (1) (h) of Sri Lanka’s RTI Act. In comparable instances in terms of the Indian law, a strict position has been taken by the relevant statutory agencies.

In *Rajeev Kumar Jain v. Delhi Jal Board, Gncd* (decided on 19th January 2011) the Central Information Commission (CIC) directed the release of information an instance where the PA has claimed the benefit of Section 8 (1) (h). The CIC decided that ‘the PIO has not shown any specific ground on which he can show the process of investigation would be impeded by releasing information.’ This was based on the fact that ‘Section 8 (1) (h) of the RTI Act uses the word... 'would' impede and not 'may' impede.’ It was thus concluded that ‘there has to be reas-

onable possibility of the investigation being impeded and a mere conjecture that there is some possibility of further investigation being held and being impeded does not meet the requirements of Section 8(1) (h) of the RTI Act.’

In *B S Mathur v. Public Information Officer of Delhi HC* (decided on 3rd June, 2011) the Delhi High Court held that,

“As regards Section 8 (1) (h) of the RTI Act, which is the only provision invoked by the Respondent to deny the Petitioner the information sought by him, it will have to be shown by the public authority that the information sought “would impede the process of investigation.” The mere reproducing of the wording of the statute would not be sufficient when recourse is had to Section 8 (1) (h) of the RTI Act. The burden is on the public authority to show in what manner the disclosure of such information would “impede” the investigation.

Further, in *Shri. S Satyanarayana v. Reserve Bank of India* (decided on 24th August, 2011) it was observed by the CIC that;

“Merely because the process of investigation or prosecution of offenders is continuing, the bar stipulated under Section 8(1)(h) of the RTI Act is not attracted; it must be clearly established by the PIO that disclosure of the information would impede the process investigation or apprehension or prosecution of offenders...”

...Applying the aforesaid principles to the facts of this appeal, it is evident that the burden is on the PA to demonstrate the ‘grave prejudice to... the apprehension or prosecution of offenders.’ However, apart from the inquiry posed to the Attorney-

General's Department requesting the status of the investigation to which no response had been received at the close of submissions, the PA has been unable to demonstrate the prejudice that may conceivably be caused.

In its written submission dated 19.06.2018, the PA has stated that 'action' is being taken including action to recover undue gains obtained by counterparties and criminal investigations to ensure that the secondary market dealings of the EPF are devoid of malpractice. On this basis, the PA denied the information. We find that this bare denial is not capable of being sustained as a basis to refuse to give the information under and in terms of Section 5(1)(h) of the Act.

The Public Authority is under a duty to specify as to how 'serious prejudice' may be caused in respect of the same as required in terms of that Section, if the information is released in relation to the specific items of information asked for rather than a generalized citation of the said exemption. (*vide RTIC Order dated 16.03.2018*).

Whereas the Bond Commission ended during the pendency of this Appeal culminating with the release of the report of the said Commission of Inquiry, the PA pleaded that investigation are ongoing by the CID consequent to which certain individuals have been arrested and remanded(*vide RTIC Minute of the Record of 03.07.2018*). Having been directed by this Commission to obtain from relevant law enforcement / prosecutorial agencies, concrete/specific examples of case/s where 'grave prejudice to the prevention or detection of any crime or the apprehension or prosecution of offenders' in terms of Section 5(1)(h)(I) of the RTI Act would occur following the release of the information in relation to the two Appeals before us (*vide RTIC Minute of the Record of 03.07.2018*) the PA submitted that is had inquired from the Attorney-General's Department as to the status of the investigation by letter dated

12.06.2018 and that it had not received a response on the matter to date (*vide RTIC Minute of the Record of 04.04.2018*).

The Public Interest in the Disclosure of the Information

We are of the view that, in the circumstances of this appeal ‘the public interest in disclosing the information outweighs the harm that would result from its disclosure’ as mandated in Section 5(4) would apply.

The fact that there was an investigation of secondary market transactions on Government securities of the EPF by the Commission of Inquiry (PCOI) appointed to investigate, inquire and report on the issuance of Treasury Bonds during the period 1st January 2015 to 31st March 2016 adds to the public interest in the matter.

While it is evident that the PA will only be disclosing information in relation to the EPF in whose interests it is bound to act by protecting *inter alia* the competitive advantage the EPF like any other counterparty commands in a market, this has to be weighed with the requirement of maintaining transparency and accountability which is also in the interests of the EPF and its members, as the PA is investing the monies of 17.3 million EPF members collectively, i.e. public money, who are mandated by law to contribute to this retirement fund and who do not have the choice of investing their money in other places. Thus, context in which the EPF operates is itself sufficient to justify the public interest. The Commission is compelled to note that the PA is performing multiple roles; Manager and Investor of EPF Funds; Market developer and banking regulator; and agent of Government in raising financing for governmental expenditure through the Bond market. If the PA chooses or is required to perform these multiple roles, it must acknowledge and implement common as well as standalone multiple reporting and accountability requirements specific to each of these roles.

Furthermore, the fact that the EPF, during 2015 and 2016, transacted in the secondary market buttresses the public interest in disclosure of the information requested. When an explanation was sought from the Appellant in relation to its submission that ‘investments in EPF funds are held long term with few transactions,’ (*vide RTIC Minute of the Record of 03.07.2018*) the Appellant responded as follows;

...The EPF Fund is a retirement fund that obtains monthly contribution from the members, and pays back the members on retirement, which is typically more than 20-30 years later.

The theory on investing retirement funds is that contributions to the Fund should be invested targeting long-term returns and not short-term returns. Typically, long-term investments are mostly held to maturity and are not traded frequently – in finance jargon, investments targeting short-term returns are held in a ‘trading portfolio’ and those targeting long term returns are held in an ‘investment portfolio’. It is only the trading portfolio that is subject to frequent transactions.

In the Sri Lankan context, it is relevant that the Right to Information is a fundamental right guaranteed by Article 14A of the Constitution. Any restriction placed upon it through the Constitution or through any other statutory provision such as Section 5 of the RTI Act must be applied and interpreted in consonance with principles such as proportionality, as necessary in a democratic society and in furtherance of a legitimate aim to which the restriction bears a *rational nexus*.

Even prior to the constitutional enshrining of the right to information, the Supreme Court had recognized this right as a necessary corollary of the freedom of expression (*Environmental Foundation Ltd. v. Urban Development Authority* SC (FR) Application No. 47/04: SCM 28.11.2005).

In language closely reflecting the constitutional right to information in Sri Lanka, it was observed by the Supreme Court in *Sunila Abeysekara v. Ariya Rubasinghe, Competent Authority and Others* [2000] 1 Sri LR 314, that restrictions to rights ‘must be proportionate and closely tailored to the accomplishment of the legitimate governmental objective necessitating it,’ (at page 375). These restrictions must be necessary in a democratic society. Further, the Court observed that,

It is only by informed discussion that proposals adduced can be modified so that the political, social and economic measures desired by voters can be brought about ...

...Moreover, in a representative democracy, there must be a continuing public interest in the workings of government which should be open to scrutiny and well-founded constructive criticism.

These are admirable sentiments that must weigh with this Commission in deciding the disclosure of information in line with the avowed aims of Sri Lanka’s RTI Act being, the fostering of a ‘culture of transparency and accountability in public authorities’ as articulated in the preamble to the Act.

In the aforesaid circumstances, it is our view that release of the information requested in A B C D E F and G of item 6 in this appeal, in so far as the said information pertains to the years 2015 and 2016 will suffice the requirements of transparency and accountability as envisaged in the RTI Act’s preamble, that the same is not impeded from release by the operation of Sections 5 (1) (a), 5 (1) (d) and 5 (1) (h) (i) of the Act and that, in any event, the public interest override in Section 5 (4) will prevail. Accordingly, we direct that the said information be released and reverse the decision of the Designated Officer in that regard.

The decision of the DO is reversed.

Note on the RTI Commission, Sri Lanka

The Right to Information Commission is the central oversight and enforcement agency established under Section 11 of the Right to Information Act, No. 12 of 2016. It is a statutorily independent body with powers to hold inquiries into complaints on non-compliance [Section 15], to recommend disciplinary actions against offending officials [Section 38], to prosecute those who commit offences defined in the Act [Section 39 (4)] and to determine the fees upon which information is to be released [Section 14(e)].

The Commission consists of a Chair and 4 Members appointed by the President upon the recommendation of the Constitutional Council from nominees of Bar Association of Sri Lanka, publishers/editors/media organizations and other civil society organizations [Section 12 (1)]. The recommended persons should have distinguished themselves in public life and have experience and eminence in their chosen field, not hold political, public or judicial office or any office of profit, not be connected to any political party and not be carrying out any business or pursuing a profession [Section 12 (2)]. The Commissioners hold office for 5 years [Section 12 (6)]. The Commission has its own Fund into which sums of money voted for its use by Parliament and any donations, gifts, or grants from outside sources are credited [Section 16 (1)].

The current Chair and Commissioners of the RTI Commission of Sri Lanka are; Mr. Mahinda Gammampila (Chair) & Commissioners, senior attorney-at-law Kishali Pinto-Jayawardena, senior attorney-at-law S.G Punchihewa, Dr. Selvy Thiruchandran and Justice Rohini Walgama.

TABLE OF REFERENCES

1. Case Law

1.1. Cases - Sri Lankan

- *Attanayake v. Commissioner General of Elections*, (2011) 1 Sri LR 220
- *Atukorale & Others v. The Attorney General* (SD 1/97-15/97, SCM 5 May 1997)
- *Ceylon Coconut Producers Co-operative Union v. C. Jayakody* (S. C. 14 of 1960-Labour Tribunal Case No. 2/1915)
- *Chelliah v. Ponnambalam* (1986) Sriskantha's Law Reports vol. IV 61
- *Commissioner of Inland Revenue v. The Woodland (K. V. Ceylon) Rubber & Tea Company Ltd.* (S.C. 3/66-Income Tax Case Stated, BRA/333)
- *Edward v. de Silva* 46 NLR 342
- *Environmental Foundation Ltd. v. Urban Development Authority* SC (FR) Application No. 47/04: SCM 28.11.2005
- *Fernando v. Sybil Fernando* (1996) 2 SLR 169
- *Ghany v. Dayananda Dissanayake* (2004) SC Appeal 37/2003
- In re bill titled '*Budgetary Relief Allowance of Workers*' (SC.SD 19/2016, SCM 23.02.2016)
- In re bill titled '*Office for Reparations*' (S.C.S.D. 19/2018, SCM 26.07.2018)
- *Kariyawasam Widanarachilage Gathidu Ugeeshwara Perera and Another v. Upali Gunasekera, Principal, Royal College and Others* (S.C.F.R. Application 27/11, SCM 18.09.2014)
- *Karunadasa v. Wijesinghe* (1986) 1 Sri LR 358
- *Kiriwanthie and Another v. Navaratne and Another* (1990) 2 SLR 393

- *Munasinghe Leela Nanda Silva v. TG Chandrawathie Wijesekera and Others* (S.C. H.C. C.A. L.A. Application No. 449 /2014, WP/HCCA/KAL/128/2007(F); D.C. Kalutara Case No.6040/P; SCM 02nd September 2016)
- *Mundy v. Central Environmental Authority* (2004) SC Appeal 58/2003
- *Nicholas v. Marcan Marker* (SC/Appeal No 30/81; SCM 24.3.1982 (1986) B. L. R.. Vol. 1. part VI at 245)
- *Nicholas v. Marcan Marker Ltd* (1981) 2 SLR 1
- *Packiyanathan v. Singarajah* (1991) 2 SLR 205
- *Perera v. the Commissioner of National Housing* 77 NLR 361
- *Ranawanagedara Mudiyanse v. Municipal Council Kandy* 7 NLR 167
- *Sri Lanka General Workers Union v. Samaranayake* (1996) 2 Sri LR 268
- *Sunila Abeysekera v. Ariya Rubasinghe, Competent Authority and Others* (2000) 1 Sri LR 314

1.1.Cases - Foreign

- *Ajoy Kumar Banerjee v. Union of India* (1984) 3 SCC 127, 153
- *B. S. Mathur v. Public Information Officer of Delhi HC* (decided on 3rd June, 2011) W. P. (C) 295/2011
- *Bihar Public Service Commission v. Saiyed Hussain Abbas Rizwi and another* [2013-2-L.W. 293 (Part 4)]
- *Churchwardens of West Ham v. Fourth City Mutual Building Society* 1 L. R. Q. B., 1892, 658
- *Heydon's Case* [1584] 76 ER 637, 3 CO REP 7a
- *Maxwell v. Pressdram Ltd* (1987) 1 All ER 656
- *Nokes v. Doncaster Amalgamated Collieries* (1940) AC 1014
- *Reserve Bank of India v. Jayantilal N. Mistry* (Supreme Court 16th December, 2015)
- *Ridge v. Baldwin* (1964) AC 40

- *Rob Evans v. Information Commissioner* (the UK, Upper Tribunal Administrative Appeals Chamber, [2012] UKUT 313 (AAC))
- *Shannon Realities Ltd v. Ville de St Michel* (1924) AC 185
- *State of Bihar v. Kameshwar Singh* (AIR 1952 SC 252) (1952) 62 L.W. 527
- *Sunday Times v. United Kingdom*, (26 April 1979 Series A No. 30, 14 EHRR 229)
- *Transnet Ltd. and Another v. SA Metal Machinery Co (PTY) Ltd* (2005) 147/05
- *Union of India (UOI) v. Respondent: Association for Democratic Reforms and Another; with People's Union for Civil Liberties (PUCL) and Another v. Union of India (UOI) and Another*, Decision: 2nd May, 2002, 2002 AIR 2112; 2002 SCR 294

2. RTI Decisions

2.1. RTI Decisions- Sri Lankan

- *Air Line Pilots Guild of Sri Lanka v. SriLankan Airlines* RTIC Appeal (In-Person) /99/2017
- *B.A.J. Indrathilaka v. Visakha Vidyalaya/ Ministry of Education* RTIC Appeal (In-Person) /63/2018
- *Basheer Segudawood v. Presidential Secretariat* RTIC Appeal (In-Person) /22/2017
- *Ceylon Bank Employees' Union v. People's Bank* RTIC Appeal (In-Person) /58/2018
- *Dialog Axiata v. Telecommunications Regulatory Commission of Sri Lanka (TRCSL)* RTIC Appeal (In-Person) /09/2018
- *Dilangani Niroschika v. Bogambara Prison* RTIC Appeal (In-Person) /228/2018

- *Dr. Mario Gomez v. Ministry of Social Empowerment, Welfare and Kandyan Heritage* RTIC Appeal (In-Person) /51/2018
- *Dushyanthi Suriyapperuma v. Sri Lanka Medical Council* RTIC Appeal (In person) / 36/2017
- *Feizal Samath v. Sri Lankan Bureau of Foreign Employment* RTIC Appeal (In-Person) /201/2017
- *G. Dileep Amuthan v. Northern Provincial Council* RTIC Appeal (In-Person) /21/2017
- *G. Dileep Amuthan v. Secretary, Chief Minister's Ministry, Northern Provincial Council,* RTIC Appeal 21/2017
- *G.Dileep Amuthan v. Ministry of Defence* RTIC Appeal (In person) 70/ 2018
- *H.C.S. de Zoysa Siriwardena v. Sri Lanka Army* RTIC Appeal (In-Person) 89/2017
- *Independent Employees Union v. Ceylon Fisheries Harbour Corporation* RTIC Appeal/112/2018
- *Kumarasiri Manage v. Secretary of Education* (RTIC Appeal/65/2017)
- *L.D.N. Kumarasiri v. Mahanama College, Colombo/ Ministry of Education* RTIC Appeal (In-Person) 44/2017
- *O.W.K. Gnanadasa v. Bank of Ceylon* RTIC Appeal (In-Person) /131/2017
- *P. Thangamayl v. National Water Supply & Drainage Board* RTIC Appeal (In-Person)/78/2017
- *P. U. Rangabandara v. The Mahaweli Authority of Sri Lanka* RTIC Appeal (In-Person) /55/2017
- *Premalal Abeysekere v. Ministry of Education* RTIC Appeal/25/2017
- *Raisa Wickrematunga v. Telecommunications Regulatory Commission of Sri Lanka (TRCSL)* RTIC Appeal (In-Person)/106/2018
- *Shreen Saroor v. Prime Minister's Office* RTIC Appeal (In-Person)/1/2018

- *Tharindu Jayawardena v. Bureau of the Commissioner-General of Rehabilitation* RTIC Appeal (In-Person)/119/2017
- *Thilak Ranjith Silva v. Sri Lanka Police-Headquarters* RTIC Appeal (In-Person)/142/2018
- *Transparency International Sri Lanka v. PMO/Presidential Secretariat* RTIC Appeal/05/2017 & RTIC Appeal/06/2017
- *Y. Sabaratnam v. Sri Lanka Insurance Corporation Ltd.* RTIC Appeal (In-Person)/117/2018
- *Verité Research (Pvt.) Ltd. v. Central Bank of Sri Lanka* RTIC Appeal (In-Person)/26/2018

2.2. RTI Decisions - Foreign

- *M. R. Misra v. the Supreme Court of India* (CIC/SM/A/2011/000237/SG)
- *Rajeev Kumar Jain v. Delhi Jal Board, Gnctd* (decided on 19th January 2011) (Decision No. CIC/SG/A/2010/003491/11049)(Appeal No. CIC/SG/A/2010/003491)
- *SC Agrawal v. Prime Minister's Office* (Appeal No. CIC/WB/A/2009/00038 & WB/C/08/868 dated 7-2-09 & 25-8-2008)
- *Shri K. Balakrishna Pillai v. National Human Rights Commission* (No; CIC/OK/C/2008/00016, Minutes of 26th May 2008)
- *Shri Suhas Vaidya v. Bank of Maharashtra* (File No. CIC/MP/C/2014/900191/SH, File No. CIC/SH/A/2014/001847)
- *Shri. S Satyanarayana v. Reserve Bank of India* (decided on 24th August 2011)(Decision No. CIC/SM/A/2010/001239/SG/14214) (Appeal No. CIC/SM/A/2010/001239/SG)
- *Smt. Ashwini Dixit v. Reserve Bank of India* (decided on 12th March 2012) (Decision No. CIC/SG/A/2011/003293/17640) (Appeal No. CIC/SG/A/2011/003293)

3. Constitutions and Legislation

- Bribery Act No. 11 of 1954
- Commissions of Inquiry Act No. 17 of 1948
- Companies Act No. 7 of 2007
- Customs Ordinance No. 17 of 1869
- Declaration of Assets and Liabilities Law No. 1 of 1975
- Development Councils (Elections) Act No. 20 of 1981
- Employees' Provident Fund Act No. 15 of 1958
- Evidence Ordinance No. 14 of 1895
- Exchange Control Act No. 24 of 1953
- Freedom of Information Act 2000 (United Kingdom)
- Inland Revenue Act No. 10 of 2006
- Local Authorities Elections Ordinance No. 53 of 1946
- National Archives Law No. 48 of 1943
- Parliamentary Elections Act No. 1 of 1981
- Presidential Elections Act No. 15 of 1981
- Provincial Councils Elections Act No. 2 of 1988
- Sri Lanka Army Act No. 14 of 1949
- Right to Information Act No. 12 of 2016 (Sri Lanka)
- Right to Information Act No. 22 of 2005 (India)
- Sri Lanka Telecommunications Act No. 25 of 1991
- The Constitution of the Democratic Socialist Republic of Sri Lanka, 1978

4. Gazettes, Regulations, Policies & Draft Laws

- Cabinet Memorandum No. 18/0430/702/008 dated 5th March 2018
- Directives & Guidances on Pro-Active Disclosure under Sections 8 and 9 of the RTI Act, Sri Lanka
- Rights of Persons with Disabilities Act (Draft Law)
- Rules on Fees and Appeal Procedure of the Sri Lanka RTI Commission, The Gazette of the Democratic Socialist Republic of Sri Lanka No. 2004/66 (3 February 2017)
- Supreme Court Rules 1978
- Supreme Court Rules 1990

5. United Nations Documents/Resolutions

- Human Rights Council Resolution 30/1 (UN HRC 30/1)

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- *A. J. Mallawaarachchi v. Tower Hall Theatre Foundation*
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- *Airline Pilots Guild of Sri Lanka v. Sri Lankan Airlines Ltd*
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- *D. N. Liyange v. Wayamba University of Sri Lanka*
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- *D. N. Liyange v. Wayamba University of Sri Lanka*
(RTIC/66/2018)
- *Dushyanthi Suriapperuma v. Sri Lanka Medical Council*
(RTIC/36/2017)
- *P. D. M. Upashantha v. University of Sri Jayawardenapura*
(RTIC/124/2017)
- *R.G.R.N.B. Rathnayake v. Central Environmental Authority (CEA)*
(RTIC/219/2018)

⁷⁷ As at 31st December 2018, the Commission had 1030 appeals before it, out of which 654 appeals had been concluded. In the remainder of pending appeals, interim orders had been issued by the Commission in the majority of cases, releasing information in stages. This Index contains a broad selection of those decisions.

- *S. M. Manoj Prasanna v. District Secretariat Batticaloa* (RTIC/110/2017)
- *W. M. D. B. Abeyrathna v. Sri Lanka Agricultural Research Council* (RTIC/41/2018)
- *W. S. Hemakanthi v. Municipal Council Gampaha* (RTIC/463/2018)

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- *Transparency International Sri Lanka v. Prime Minister's Office/Presidential Secretariat* (RTIC/05/2017 & 06/2017)
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- *A. W. D. M. Senanayaka v. Divisional Secretariat Puttalam* (RTIC/134/2017)

VI. **DRAFT LAWS**

- *Mario Gomez v. Ministry of Social Empowerment, Welfare and Kandy Heritage* (RTIC/51/2018)
- *Shreen Saroor v. Prime Minister's Office* (RTIC/01/2018)

VII. **ENVIRONMENT RELATED POLICY & PERMITS**

- *A. B. Stembo v. Central Environmental Authority* (RTIC/249/2018)
- *A. M. Ahamed v. Divisional Secretariat, Manthai West* (RTIC/287/2018)
- *Purujoththaman Thangamayl v. National Water Supply & Drainage Board* (RTIC Appeal/78/2017)
- *Rajendra Wijesinghe v. Panadura Urban Council* (RTIC/1/2017)

VIII. EXAMINATIONS RESULTS

- *H. M. A. Suriyaarachchi v. Ministry of Public Administration and Management* (RTIC/177/2018)
- *H. P.R. Ponseka v. Registrar-General's Department* (RTIC Appeal 02/2018)
- *G. P. Amarasekara v. Department of Examinations Sri Lanka* (RTIC/23/2017)

IX. EXPENSES OF PUBLIC OFFICIALS

- *Danison Weerasuriya v. Department of Co-operative Development* (RTI/ 08/2017)
- *G. Dileep Amuthan v. Presidential Secretariat* (RTIC/114/2017)
- *G. Dileep Amuthan v Ministry of Education, Cultural Affairs and Sports, Northern Provincial Council* (RTIC/20/2017)
- *W.M.L.V.G. Fernando v. Department of Local Government, Western Province* (RTIC/03/2017)

X. HOSPITAL RECORDS

- *T. Amalan v. District General Hospital, Mullaitivu* (RTIC/66/2017)

XI. INSTITUTIONAL DECISIONS

- *D. Aishani Wijeratne v. Sri Lanka Law College* (RTIC/130/2018)
- *D. N. Liyange v. Wayamba University of Sri Lanka* (RTIC/126/2018)
- *H. B. J. Ranadeera v. Parliament of Sri Lanka* (RTIC 337/2018 423/2018); *H. B. P. Ranadheera v. Parliament of Sri Lanka* (RTIC 337A/2018, 424/2018)

- *H. M. C. A. Jayasiri v. Urban Council Seethwakapura* (RTIC/384/2018)
- *Independent Coast Conservation Union v. Coast Conservation and Coastal Resource Management Department* (RTIC/84/2018)
- *Raisa Wickrematunga v. Telecommunications Regulatory Commission of Sri Lanka (TRCSL)* (RTIC/106/2018)
- *V. C. A. de Mel v. Department of Ayurvedic Medicine* (RTIC/68/2018)
- *Y. N. M. Kulerathna v. Pradeshiya Sa bha Godakawela* (RTIC/99/2018)
- *Zacky Ismail v. Wakf Board of Sri Lanka* (RTIC/89/2018)

XII. INSTITUTIONAL POLICIES REGARDING RECRUITMENT, PROMOTION, EXTENSION, SUSPENSION & TERMINATION OF EMPLOYMENT

a. Recruitment

- *B.R.P.R. Gunasena v. Coconut Development Authority* (RTIC/60/2018)
- *L. Rajapakse v. Department of Agriculture, Peradeniya* (RTIC/48/2017)
- *C. P. Abeyratna v. University of Sri Jayawardenapura* (RTIC/222/2018)
- *E.A.N.D. Edirisinghe v. Department of Technical Education and Training* (RTIC/9/2017)
- *G.V.S.K. Kumari v. Judicial Service Commission* (RTIC/223/2018)

- *K. M. K. Kulatunga v. Department of Agrarian Development* (RTIC/244/2018)
- *M.M. Rizvi v. Ministry of Education* (RTIC/95/2018)
- *N. L. Tennakoon v. National Youth Services Council* (RTIC/172/2018)
- *O.W.K. Gnanadasa v. Bank of Ceylon* (RTIC/131/2017)
- *P Mallawaarchchi v. Sri Lanka Police* (RTIC/169/2018)
- *R.K. Ariyaratne v. Public Service Commission* (RTIC/166/2018)
- *Tharindu Jayawardena v. Ministry of Education* (RTIC/439/2018)
- *W.H.M.D. Wijekumari v. Wayamba University of Sri Lanka* (RTIC/124/2018)
- *W. M. A. Thotadeniya v. Regional Development Bank* (RTIC/14/2018)

b. Extensions

- *B.J. Rasanen v. Ministry of Education* (RTIC/64/2017)
- *C. J. Wijayawardhana v. SriLanka Telecom PLC (SLT)* (RTIC/295/2018, 298/2018, 299/2018, 319/2018 & 402/2018)

c. Promotions

- *B. M. N. Nageeb v. Institute of Indigenous Medicine University of Colombo* (RTIC/250/2018)
- *H. M. A. Suriyaarachchi v. Ministry of Public Administration and Management* (RTIC/177/2018)
- *H. M. Gratien Hewa v. Sri Lanka Police* (RTIC/59/2018)
- *H. M. Gratien Hewa v. Sri Lanka Police* (RTIC/97/2018)

- *H. M. N. Dehigama v. Sri Lanka Police* (RTIC/281/2018)
- *R. H. M. N. Rajakaruna v. Public Service Commission Wayamba Province* (RTIC/157/2018)

d. Retirement (Challenges/Process)

- *H. W. Rathnayaka v. Ministry of Education* (RTIC/116/2018)
- *K.W.S. Saddhananda v. Department of Census and Statistics* (RTIC/146/2018)
- *Sriranganathan Dharshanan v. University of Jaffna* (RTIC/54/2017)

e. Suspension

- *H. L. Karunaratna v. Judicial Service Commission* (RTIC/78/2018)

f. Termination of Employment

- *J. A. K. S. Jayasinghe v. University of Moratuwa* (RTIC/63/2017)

XIII. INSURANCE CLAIMS

- *V. Y. Sabaratnam v. Sri Lanka Insurance Corporation Ltd* (RTIC/117/2018)

XIV. INVESTMENT DETAILS

- *K.G Pematatne v. Ministry of Housing and Construction* (RTIC/16/2017)

XV. PENSION ANOMALIES / RELATED DECISIONS

- *H. B. Guneratna v. Department of Pensions* (RTIC/317/2018)
- *M. K. B. Jayasekera v. Ministry of Public Administration* (RTIC/282/2018)

- *M. K. B. Jayasekera v. People's Bank* (RTIC/266/2018)

XVI. PLANS/MAPS AND OTHER LAND RELATED DOCUMENTS

- *A. Mariathas v. Divisional Secretariat Maritimpattu, Mullaitivu* (RTIC 235/2018 & 236/2018)
- *B. G. Piyaseeli v. Municipal Council Dehiwala- Mt. Lavinia* (RTIC/79/2018)
- *B. G. Rathnayaka v. Divisional Secretariat Balangoda* (RTIC/212/2018)
- *C. D. Perera v. Urban Council Panadura* (RTIC/120/2017)
- *D.M. Somasinghe v. Sri Lanka Land Reclamation and Development Corporation* (RTIC/46/2018)
- *Dhammika Parana Yapa v. Sri Lanka Land Reclamation and Development Corporations* (RTIC/464/2018)
- *H. H. Sunil v. Land Commissioner General's Department* (RTIC/316/2018)
- *J.A.D.G.A. Jayakody v. Pradeshiya Sabha Pannala / Department of Local Government (Wayamba)* (RTIC/45/2017)
- *K. A. S. Damayanthi v. Deputy Land Commissioner's Office Trincomalee/ Divisional Secretariat Padavi Sri Pura* (RTIC/85/2018)
- *M. A. M. Jaffir v. Pradeshiya Sabha Manmunai* (RTIC/274/2018)
- *Mohideen Bawa Sara Umma v. Divisional Secretariat Pottuvil* (RTIC70/2017)
- *Muttutamby Tharmaratnam v. Municipal Council - Kaduwela* (RTIC/101/2017)

- *Nibras Mansoor v. Municipal Council of Kalmunai* (RTIC/46/2017)
- *P.U. Rangabandara v. The Mahaweli Authority of Sri Lanka* (RTIC/55/2017)
- *Rajendra Wijesinghe v. Panadura Urban Council* (RTIC/1/2017)
- *Rajendra Wijesinghe v. Urban Council, Pandura* (RTIC/100/2017)
- *S.A.D.F.P. Jayathilaka v. Department of Agrarian Development* (RTIC/41/2017)
- *U.P.A.K. Weerasuriya v. Divisional Secretariat Rambukkana* (RTIC/113/2017)
- *U. P. A. K. Weerasuriya v. Valuation Department* (RTIC/104/2018)
- *W.A.P. Wijewickrama v. Department of Valuation* (RTIC Appeal 196/2017)
- *W.R. Silva, P.H. Wijitha, P.H. Malani and Hilda Balasuriya v. Pradeshiya Sabha, Balapitiya* (RTIC /179/2018)
- *W. W. Gamini Wickraamarathna v. Urban Development Authority* (RTIC/158/2018)
- *Zacky Ismail v. Wakf Board of Sri Lanka* (RTIC/90/2018)

XVII. POLICE COMPLAINTS, INQUIRIES & RELATED DOCUMENTS/ COMPLAINTS IN GENERAL

- *B. A. B. S. Jayawardena v. Sri Lanka Police* (RTIC/264/2018)
- *B. G. C. S. Sumanasinghe v. National Police Commission* (RTIC/207/2018)
- *G. D. Maithreerathna v. Sri Lanka Police (Police Station, Horana)* (RTIC/171/2018)

- *G. Sunil Shantha v. Bank of Ceylon Southern Province Office* (RTIC 91/2018)
- *H. G. Ariyadasa v. Human Rights Commission of Sri Lanka* (RTIC/378/2018)
- *H. L. Karunasena v. Commission to Investigate Allegations of Bribery or Corruption* (RTIC/558/2018)
- *H. L. Karunasena v. Commission to Investigate Allegations of Bribery or Corruption* (RTIC/563/2018)
- *I. R. Chitrananda Kumara v. Department of Agrarian Development (District Office Kegalle)* (RTIC/49/2018)
- *Janidhu C. D. Seneviratne v. Sri Lanka Police-Mount Lavinia* (RTIC/160/2018)
- *P. B. I. Wanninayaka v. Commission to Investigate Allegations of Bribery or Corruption* (RTIC/134/2018)
- *Pemaraja Dahanayaka v. Labour Department* (RTIC/185/2018)
- *Peter Dias Amarasinghe v. Human Rights Commission of Sri Lanka* (RTIC/102/2018)
- *Sarojini Balasubramaniam v. National Police Commission* (RTIC/85/2017)
- *Thilak Ranjith Silva v. Sri Lanka Police-Headquarters* (RTIC/142/2018)

XVIII. POLICY DECISIONS

- *Dialog Axiata v. Telecommunications Regulatory Commission of Sri Lanka (TRCSL)* (RTIC/09/2018)
- *Dushyanthi Suriapperuma v. Sri Lanka Medical Council* (RTIC/36/2017)
- *M.H. Mohamed Hisham v. Department of Railways* (RTIC/143/2017)

XIX. QUALIFICATIONS (EDUCATIONAL AND PROFESSIONAL) OF PUBLIC OFFICIALS

- *G.D.R.U.U. Abeyrathna v. Department of Examination and Nishanta Hettiarachchi v. Department of Examinations* (RTIC Appeal 182/2017 & 183/2017)

XX. REPORTS (PRESIDENTIAL COMMISSION OF INQUIRY, PRELIMINARY INQUIRY REPORTS/DISCIPLINARY INQUIRIES)

- *B. R. M. D. R. K. Rathnayaka v. Department of Animal Production and Health (North Western Province)* (RTIC/ 206/2018)
- *Basheer Segudawood v. Presidential Secretariat* (RTIC/22/2017)
- *D. M. A. Ranatunga v. Sri Jayawardenapura General Hospital* (RTIC/278/2018)
- *D. N. Liyange v. Wayamba University of Sri Lanka* (RTIC/65/2018)
- *D. N. Liyange v. Wayamba University of Sri Lanka* (RTIC/66/2018)
- *Dinesh Kadadora v. Divisional Secretariat Doluwa-Gampola* (RTIC/265/2018)
- *G. Liyanage v. Consumer Affairs Authority* (RTIC/04/2018)
- *G. J. C. de Silva v. Sri Lanka Army* (RTIC/ 182/2018)
- *H. W. Rathnayaka v. Ministry of Education* (RTIC/116/2018)
- *H.C.S. de Zoysa Siriwardena v. Sri Lanka Army* (RTIC/89/2017)
- *Harindra Madanayake v. University of Moratuwa* (RTIC/195/2017)
- *J.A.D.G.A. Jayakody v. Department of Probation and Child Care Services* (RTIC/20/2018)

- *J. A. K. S. Jayasinghe v. University of Moratuwa* (RTIC/63/2017)
- *J.M.N.S. Jayasena v. Ministry of Transport and Civil Aviation* (RTIC/103/2018)
- *Jamaldeen Sarjoon v. Presidential Secretariat* (RTIC/60.2017)
- *J. Wickramasinghe v. Chief Secretary's Office Central Province* (RTIC/131/2018)
- *L. N. Dissanayake v. The Institute of Chartered Accountants Sri Lanka (ICASL)* RTIC/189/2018)
- *M. A. D. Sudath v. National Housing Development Authority* (RTIC/155/2018)
- *M. A. D. Wijesinghe v. Commission to Investigate Allegations of Bribery or Corruption* (RTIC/195/2018)
- *Mariyathanan Jegu v. Chief Secretary's Secretariat, Northern Province* (RTIC/188/2017)
- *N. Dharmakirti v. Ceylon Electricity Board* (RTIC/82/2018)
- *N. T. P. G. Lalith v. Department of Agrarian Development* (RTIC/199/2018)
- *P. M. U. K. Sirisena v. Sri Lanka Army* (RTIC/165/2018)
- *R. W. M. N. Wanigasekera v. Sri Lanka Ports Authority* (RTIC/258/2018)
- *Rohanthi Perera v. Ministry of Education* (RTIC/302/2018)
- *Sriranganathan Dharshanan v. University of Jaffna* (RTIC/327/2018)
- *Tharindu Jayawardena v. WP/ Gampaha Bandaranayaka College /Ministry of Education* (RTIC/42/2017)
- *W.G.M.T.G. Perera v. Chief Ministry, Sabaragamuwa Provincial Council* (RTIC/42/2018)

XXI. SALARY PARTICULARS/ ATTORNEY'S FEES

- *Airline Pilots Guild of Sri Lanka v. SriLankan Airlines Ltd* (RTIC/99/2017)
- *Ceylon Bank Employees Union (Regional Development Bank Branch) v. Regional Development Bank* (RTIC/160/2017)
- *Independent Employees Union v. Ceylon Fisheries Harbour Corporation* (RTIC/112/2018)
- *K. G. Pematratne v. Ministry of Housing and Construction* (RTIC/16/2017)
- *N. Munasinghe v. People's Bank* (RTIC/50/2018) (**ongoing**)

**XXII. SCHOOLS AND EDUCATIONAL INSTITUTIONS:
ADMISSION AND PROCEDURE**

- *B. A. J. Indrathilaka v. Visakha Vidyalaya/ Ministry of Education* (RTIC/63/2018)
- *D.D.N. Amarasekera v. Visakha Vidyalaya Colombo/Ministry of Education* (RTIC/121/2017)
- *H. A. D. K. M. Kalatuwawa v. St. Aloysius College Rathnapura* (RTIC/218/2018)
- *Kumarasiri Manage v. Secretary, Ministry of Education* (RTIC/65/2017)
- *K. V. K. Nawarathna v. Ministry of Education* (RTIC/15/2017)
- *L.D.N. Kumarasiri v. Mahanama College, Colombo/ Ministry of Education* (RTIC/44/2017)
- *Lokuge Don Sudath v. Zonal Education Office Ambalangoda* (RTIC/91/2017)
- *M.G. Lalith Ananda v. Ministry of Education* (RTIC/28/2017)

- *Premalal Abeysekera v. Ministry of Education* (RTIC/25/2017)
- *Suren D. Perera v. St. Sylvester's College Kandy* (RTIC/183/2018)
- *U. G. Sunethra v. Ministry of Education* (RTIC/168/2017)
- *Y. Nisha Padmali De Silva v. Thaxila Central College Horana / Ministry of Education* (RTIC/170/2017)

XXIII. STATISTICAL DATA

- *A.M. Nazeer v. Divisional Secretariat, Ampara* (RTIC/221/2018)
- *Dilangani Niroshika v. Bogambara Prison* (RTIC/228/2018)
- *F. Sabra Zahid v. Judicial Service Commission* (RTIC/237/2018)
- *P. G. Kulerathna v. Department of Pensions* (RTIC/18/2017)
- *Kumarasiri Manage v. Secretary, Ministry of Education* (RTIC/65/2017)
- *Tharindu Jayawardena v. Bureau of the Commissioner-General of Rehabilitation* (RTIC/119/2017)
- *Transparency International Sri Lanka v. Land Reform Commission* (RTIC Appeal 177/2017)

XXIV. TRAVEL EXPENSES BY POLITICIANS /PUBLIC OFFICIALS

- *G. Dileep Amuthan v. Governor's Secretariat, Northern Province* (RTIC 35/2017)
- *G. Dileep Amuthan v. Ministry of Education, Cultural Affairs and Sports, Northern Provincial Council* (RTIC/20/2017)
- *W.M.L.V.G. Fernando v. Department of Local Government, Western Province* (RTIC/03/2017)

B. SUBJECT OF APPEAL

I. EDUCATION

- *B. A. J. Indrathilaka v. Visakha Vidyalaya/ Ministry of Education*(RTIC/63/2018)
- *B.J. Rasanen v. Ministry of Education* (RTIC/64/2017)
- *D.D.N. Amarasekera v. Visakha Vidyalaya Colombo/Ministry of Education* (RTIC/121/2017)
- *G.D.R.U.U. Abeyrathna v. Department of Examination and Nishanta Hettiarachchi v. Department of Examinations* (RTIC Appeal 182/2017 & 183/2017)
- *H.P.R. Ponseka v. Registrar-General's Department* (RTIC Appeal 02/2018)
- *K. V. K. Nawarathna v. Ministry of Education* (RTIC/15/2017)
- *Kumarasiri Manage v. Secretary, Ministry of Education* (RTIC/65/2017)
- *L.D.N. Kumarasiri v. Mahanama College, Colombo/ Ministry of Education* (RTIC/44/2017)
- *Lokuge Don Sudath v. Zonal Education Office, Ambalangoda* (RTIC/91/2017)
- *M.G. Lalith Ananda v. Ministry of Education* (RTIC/28/2017)
- *Padmasena Dissanayaka v. Ministry of Education* (RTIC Appeal 32/2017)
- *Premalal Abeysekera v. Ministry of Education* (RTIC/25/2017)
- *U. G. Sunethra v. Ministry of Education* (RTIC/168/2017)
- *Y. Nisha Padmali De Silva v. Thaxila Central College, Horana / Ministry of Education* (RTIC/170/2017)

II. ENVIRONMENT

- *Purojoththaman Thangamayil v. National Water Supply & Drainage Board* (RTIC/78/2017)
- *Rajendra Wijesinghe v. Panadura Urban Council* (RTIC/1/2017)

III. LAND

a. Acquisition of Land

- *D.M. Somasinghe v. Sri Lanka Land Reclamation and Development Corporation*(RTIC Appeal 46/2018)
- *M. N. Gunasekera v. Divisional Secretariat –Mirigama* (RTIC Appeal 15/2018)
- *Saman Kariyawasam v. Divisional Secretary, Gonapinuwala/Road Development Authority* (RTIC/50/2017)
- *T.H. Mahindapala v. Divisional Secretariat, Hikkaduwa* (RTIC/27/2017)
- *U.P.A.K. Weerasuriya v. Divisional Secretariat, Rambukkana* (RTIC Appeal 113/2017)

b. Other Land Related Issues

- *A. A. Manel Perera v. Valuation Department* (RTIC/373/2018)
- *Athula Perera v. Road Development Authority* (RTIC/37/2017)
- *B.G. Rathnayaka v. Divisional Secretariat, Balangoda*(RTIC Appeal 212/2018)
- *J.A.D.G.A. Jayakody v. Pradeshiya Sabha Pannala / Department of Local Government (Wayamba)* (RTIC/45/2017)
- *K.J. Wanniarachchi v. Road Development Authority* (RTIC 04/2017)

- *Mohideen Bawa Sara Umma v. Divisional Secretariat, Pottuvil* (RTIC 70/2017)
- *Muttutamby Tharmaratnam v. Municipal Council - Kaduwela* (RTIC Appeal 101/2017)
- *Nibras Mansoor v. Municipal Council of Kalmunai* (RTIC Appeal 46/2017)
- *P.U. Rangabandara v. The Mahaweli Authority of Sri Lanka* (RTIC Appeal 55/2017)
- *Rajendra Wijesinghe v. Urban Council, Pandura* (RTIC Appeal 100/2017)
- *S.A.D.F.P. Jayathilaka v. Department of Agrarian Development* (RTIC/41/2017)
- *Transparency International Sri Lanka v. Land Reform Commission* (RTIC Appeal 177/2017)
- *W.A.P. Wijewickrama v. Department of Valuation* (RTIC Appeal 196/2017)
- *W.W. Gamini Wickremeratne v. Department of Valuation* (RTIC/69/2017)

IV. LOCUS STANDI

- *Airline Pilots Guild of Sri Lanka v. SriLankan Airlines Ltd* (RTIC Appeal 99/2017)
- *Transparency International Sri Lanka v. Prime Minister's Office/Presidential Secretariat* (RTIC Appeal 05/2017 & 06/2017)

V. PRO-ACTIVE DISCLOSURE (Information release linked to matters falling within Regulation 20 of RTI Regulations)

- *Airline Pilots Guild of Sri Lanka v. SriLankan Airlines Ltd* (RTIC/99/2017) [Note – Salaries of Executive Management - Regulation 20 of the Gazette No. 2004/66, 03.02.2017]
- *A.J. Wijayawardhana v. Sri Lanka Telecom PLC (SLT)* (RTIC/295/2018, 298/2018, 299/2018, 319/2018 & 402/2018) [Note - Institutional policies Regarding Extensions – Regulation 20 of the Gazette No. 2004/66, 03.02.2017]
- *G. Dileep Amuthan v. Cultural Department Northern Province* (RTIC/69/2018) (Note - Information on Programmes conducted by Government Entities and Costs Incurred thereto)

VI. PUBLIC FUNDS

- *Airline Pilots Guild of Sri Lanka v. SriLankan Airlines Ltd* (RTIC/99/2017)
- *Ceylon Bank Employees Union v. People's Bank* (RTIC Appeal 301/2018)
- *Danison Weerasuriya v. Department of Co-operative Development* (RTIC Appeal 08/2017)
- *G. Dileep Amuthan v. Presidential Secretariat* (RTIC Appeal 114/2017)
- *G. Dileep Amuthan v. Governor's Secretariat, Northern Province* (RTIC 35/2017)
- *G. Dileep Amuthan v. Ministry of Education, Cultural Affairs and Sports, Northern Provincial Council* (RTIC/20/2017)
- *H. A. K. Jayaweera v. National Savings Bank* (RTIC Appeal 57/2018)

- *Independent Sevaka Sangamaya (of the Ceylon Fishery Harbours Corporation) v. Ceylon Fishery Harbours Corporation* (RTIC Appeal 112/2018)
- *M.D.S.A. Perera v. Divisional Secretariat Seethawaka – Hanwellla* RTIC Appeal 164/2017
- *N. Munasinghe .v People’s Bank* (RTIC Appeal 50/2018) (ongoing)

VII. PUBLIC INTEREST

- *B. A. J. Indrathilaka v. Visakha Vidyalaya/ Ministry of Education* (RTIC/63/2018)
- *Dialog Axiata v. Telecommunications Regulatory Commission of Sri Lanka (TRCSL)* (RTIC/09/2018)
- *G. Dileep Amuthan v. Governor’s Secretariat, Northern Province* (RTIC 35/2017)
- *G. Dileep Amuthan v. Ministry of Education, Cultural Affairs and Sports, Northern Provincial Council* (RTIC/20/2017)
- *G. Dileep Amuthan v. Ministry of Defence* (RTIC/70/2018)
- *Dushyanthi Suriapperuma v. Sri Lanka Medical Council* (RTIC/36/2017)
- *K.W.S. Saddhananda v. Department of Census and Statistics* (RTIC/146/2018)
- *M.H. Mohamed Hisham v. Department of Railways* (RTIC/143/2017)
- *Mario Gomez v. Ministry of Social Empowerment, Welfare and Kandyan Heritage* (RTIC Appeal 51/2018)

- *Premalal Abeysekera v. Ministry of Education* (RTIC/25/2017)
- *Purojoththaman Thangamayil v. National Water Supply & Drainage Board* (RTIC/78/2017)
- *Shreen Saroor v. Prime Minister's Office* (RTIC/01/2018)
- *Transparency International Sri Lanka v. Prime Minister's Office/Presidential Secretariat* (RTIC Appeal 05/2017 & 06/2017)
- *Verite Research (Pvt) Ltd v. Central Bank of Sri Lanka* (RTIC/25/2018)
- *Y. P. Wijewardena v. Pradeshiya Sabha, Gampaha* (RTIC/40/2017)

VIII. SEVERABILITY

- *Airline Pilots Guild of Sri Lanka v. SriLankan Airlines Ltd* (RTIC/99/2017)
- *Dushyanthi Suriapperuma v. Sri Lanka Medical Council* (RTIC/036/2017)
- *H.C.S. de Zoysa Siriwardena v. Sri Lanka Army* (RTIC/89/2017)
- *W.G.M.T.G. Perera v. Chief Ministry, Sabaragamuwa Provincial Council* (RTIC/42/2018)

IX. PROCEDURAL MATTERS

a. Appeal Mechanism

- *C. Sivasuthan v. Provincial Department of Education Northern Province* (RTIC/72/2017)
- *G. Saman Priyantha v. Municipal Council Matara* (RTIC/29/2017)

- *H.S. Chandrarathna v. Agrarian Development* (RTIC/43/2017)
- *Kumarasiri Manage v. Secretary, Ministry of Education* (RTIC/65/2017)
- *Lacille De Silva v. Ministry of Public Administration and Management* (RTIC/135/2017)
- *M. P. Thilakasuriya v. Department of Probation and Child Care Services- Uva Provincial Council* (RTIC/30/2017)
- *M. Ratnasbapathy v. Central Bank of Sri Lanka* (RTIC/96/2018)
- *Muttutamby Tharmaratnam v. Municipal Council – Kaduwela* (RTIC/101/2017)
- *Ronald Stanley v. Attorney General's Department* (RTIC/354/2018)
- *Suren D. E. Perera v. The Attorney General's Department of Sri Lanka* (RTIC/88/2017)
- *Terrence Priyantha Thirimanna v. Central Environmental Authority* (RTIC/24/2017)

b. Forwarding an information request by one Public Authority to the appropriate Public Authority- Regulation 4 (6) of the Regulations promulgated under the Act

- *N. M. Wijesena v. Divisional Secretariat, Mahawa* (RTIC/142/2017)

c. Information Requester not required to show reasons

- *Dilangani Niroshika v. Bogambara Prison* (RTIC/228/2018)
- *Tharindu Jayawardena v. Bureau of the Commissioner-General of Rehabilitation* (RTIC/119/2017)

- *G. Dileep Amuthan v. Ministry of Defence* (RTIC/70/2018)

d. Non-provision of grounds for denial of information by PAs

- *W.W. Gamini Wickremeratne v. Department of Valuation* (RTIC/69/2017)

e. No payment of fees upon a successful appeal - Rule 11 of the Right to Information Commission Rules 2017

- *N. K. P. K. Nagasinghe v. Department of Agrarian Development* (RTIC/52/2017)

f. Preliminary Requirements (Requirement of Citizenship)

- *Sri Lanka Red Cross Society v. Ministry of Home Affairs* (*ongoing*) (RTIC/113/2018)
- *Transparency International Sri Lanka v. Prime Minister's Office/Presidential Secretariat* (RTIC Appeal 05/2017 & 06/2017)

g. Preservation of documents-Section 7 (3) (a)

- *Wickramasinghe v. Divisional Secretariat, Maharagama* (RTIC/122/2017)
- *B. G. Rohana v. Divisional Secretariat Niyagama* (RTIC/123/2017)

h. Scope of RTI

- *C.L. Rajapaske v. Department of Agriculture Peradeniya* (RTIC/48/2017)

- *D.N. Liyanage v. Wayamba University of Sri Lanka* (RTIC/47/2017)
- *G. Liyanage v. The Office of the Financial Ombudsman of Sri Lanka* (RTIC/38/2017)
- *Jamaldeen Sarjoon v. Presidential Secretariat* (RTIC/60.2017)
- *S. Asokan .v Divisional Secretariat Karaveddy/District Secretariat, Jaffna* (RTIC/79 & 81/2017)
- *U.P.A.K. Weerasuriya v. Divisional Secretariat Rambukkana* (RTIC Appeal 113/2017)

C. EXCEPTIONS UNDER THE RIGHT TO INFORMATION ACT⁷⁸

I. CABINET MEMO AWAITING DECISION [S.5(1)(m)]

- *Airline Pilots Guild of Sri Lanka v. SriLankan Airlines Ltd* (RTIC/99/2017) (not found to be applicable)
- *Shreen Saroor v. Prime Minister's Office* (RTIC/01/2018) (not found to be applicable)

II. COMMERCIAL CONFIDENCE, TRADE SECRETS, INTELLECTUAL PROPERTY AND COMPETITIVE INTERESTS OF THIRD PARTY [S. 5(1)(d)]

- *Airline Pilots Guild of Sri Lanka v. SriLankan Airlines Ltd* (RTIC/99/2017)
- *Verité Research (Pvt) Ltd v. Central Bank of Sri Lanka* (RTIC/25/2018)

⁷⁸ The Appeals listed under this section have been categorized based on discussions of the relevant exemptions in Section 5(1) of the Right to Information Act by the RTI Commission. The referenced classification does not infer that the appeal decisions cited upheld the exemptions as classified.

III. CONFIDENTIAL INFORMATION PROVIDED BY A THIRD PARTY [S.5(1)(i)]

- *Asitha Abeygunawardena v. Elections Commission of Sri Lanka* (RTIC/ 31/2017)
- *B.A.S.C. Abeywardena v. National Housing Development Authority* (RTIC/174/2017)
- *B.M.I.C. Gunawardena v. Survey Department of Sri Lanka* (RTIC/104/2017)
- *Ceylon Bank Employees Union (Regional Development Bank Branch) v. Regional Development Bank* (RTIC/160/2017)
- *J.A.D.G.A. Jayakody v. Pradeshiya Sabha Pannala / Department of Local Government (Wayamba)* (RTIC/45/2017)
- *Premalal Abeysekera v. Ministry of Education* (RTIC/25/2017)
- *Rajendra Wijesinghe v. Urban Council, Panadura* (RTIC/100/2017)
- *T.H. Mahindapala v. Divisional Secretariat, Hikkaduwa* (RTIC/27/2017)

IV. DEFENSE OF STATE/TERRITORIAL INTEGRITY/NATIONAL SECURITY [S.5(1)(b)(i)]

- *G. Dileep Amuthan v. Ministry of Defence* (RTIC/70/2018)

V. FIDUCIARY RELATIONSHIP [S.5(1)(g)]

- *Airline Pilots Guild of Sri Lanka v. SriLankan Airlines Ltd* (RTIC/99/2017)
- *Ceylon Bank Employees Union v. People's Bank* RTIC/301/2018
- *Tharindu Jayawardena v. WP/Gampaha Bandaranayaka College /Ministry of Education* (RTIC/42/2017)

**VI. HARM THE INTEGRITY OF EXAMINATIONS
[S.5(1)(l)]**

- *G.D.R.U.U. Abeyrathna v. Department of Examination and Nishanta Hettiarachchi v. Department of Examinations* (RTIC Appeal 182/2017 & 183/2017)
- *C. P. Abeyratna v. University of Sri Jayawardenapura* (RTIC/222/2018)

VII. INFORMATION BETWEEN PROFESSIONALS AND PA'S[S.5(1)(f)]

- *Ceylon Bank Employees Union v. People's Bank* (RTIC Appeal 301/2018) (**Ongoing**)
- *J.C.R.I. Menike v. Ministry of Education* (RTIC Appeal 101/2018)
- *K.S.T. Jayasinghe v. Department of Co-operative Development Southern Province* (RTIC/119/2018)
- *P.U. Rangabandara v. The Mahaweli Authority of Sri Lanka* (RTIC/55/2017)

VIII. MEDICAL RECORDS [S.5(1)(e)]

- *T. Amalan v. District General Hospital, Mullaitivu* (RTIC/66/2017)

IX. OVERSEAS TRADE AGREEMENTS [S5(1)(c)]

- *Airline Pilots Guild of Sri Lanka v. Sri Lankan Airlines Ltd* (RTIC/99/2017)

X. PREJUDICE TO THE DETECTION OF CRIME, APPREHENSION OR PROSECUTION OF OFFENDERS [S.5(1)(h)]

- *K. Wijayagunawardena v. Central Bank of Sri Lanka (CBSL)* (RTIC/245/2018)

- *M. A. D. Wijesinghe v. Commission to Investigate Allegations of Bribery or Corruption* (RTIC/195/2018)
- *Verité Research (Pvt) Ltd v. Central Bank of Sri Lanka* (RTIC/25/2018)

XI. PREJUDICE TO THE MAINTENANCE OF THE AUTHORITY AND IMPARTIALITY OF THE JUDICIARY/ CONTEMPT OF COURT [S.5(1)(j)]

- *Ceylon Bank Employees Union v. People's Bank* (RTIC/58/2018)
- *F. Sabra Zahid v. Judicial Service Commission* (RTIC/237/2018)
- *K. D. C. P. Siriwardena v. Judicial Service Commission* (RTIC/31/2018)
- *K.S.T. Jayasinghe v. Cooperative Development Department* (RTIC/119/2018)
- *P.U. Rangabandara v. The Mahaweli Authority of Sri Lanka* (RTIC/55/2017)
- *Sriranganathan Dharshanan v. University of Jaffna* (RTIC/33/2017)

XII. PREJUDICE TO THE ECONOMY OF SRI LANKA [S.5(1)(c)]

- *Verité Research (Pvt) Ltd v. Central Bank of Sri Lanka* (RTIC/25/2018)

XIII. PREJUDICE TO SRI LANKA'S RELATIONS WITH OTHER STATES, INT'L LAW OR INT'L AGREEMENTS IN CONFIDENCE [S.5(1)(b)(ii)]

- *Airline Pilots Guild of Sri Lanka v. Sri Lankan Airlines Ltd* (RTIC/99/2017)

- *G. Dileep Amuthan v. Ministry of Defence* (RTIC/70/2018)

XIV. PRIVACY [S. 5(1)(a)]

- *A.S.M. Sadaaqath v. Divisional Secretariat, Sainthamaruthu* (RTIC/71/2017)
- *Airline Pilots Guild of Sri Lanka v. Sri Lankan Airlines Ltd* (RTIC/99/2017)
- *B. A. J. Indrathilaka v. Visakha Vidyalaya/Ministry of Education* (RTIC/63 /2018)
- *Ceylon Bank Employees Union (Regional Development Bank Branch) v. Regional Development Bank* (RTIC/160/2017)
- *Dushyanthi Suriapperuma v. Sri Lanka Medical Council* (RTIC/36/2017)
- *E.A.N.D. Edirisinghe v. Department of Technical Education and Training* (RTIC/9/2017)
- *H.C.S. de Zoysa Siriwarena v. Sri Lanka Army* ((RTIC/89/2017)
- *J.A.K.S. Jayasinghe v. University of Moratuwa* (RTIC/63/2017)
- *J.C.R.I. Menike v. Ministry of Education* (RTIC Appeal 101/2018)
- *K. G. Pematatne v. Ministry of Housing and Construction* (RTIC/16/2017)
- *L. N. Dissanayake v. The Institute of Chartered Accountants Sri Lanka (ICASL)*(RTIC/189/2018)
- *Saman Kariyawasam v. Divisional Secretariat, Baddegama* (RTIC/51/2017)
- *Saman Kariyawasam v. Divisional Secretary, Gonapinuwala /Road Development Authority* (RTIC/50/2017)

- *Tharindu Jayawardena v. Bureau of the Commissioner-General of Rehabilitation* (RTIC/119/2017)
- *Y. P. Wijewardena v. Pradeshiya Sabha, Gampaha* (RTIC/40/2017)

XV. PRIVILEGES OF PARLIAMENT/PROVINCIAL COUNCIL [S.5(1)(k)]

- *G. Dileep Amuthan v. Governor's Secretariat, Northern Province* (RTIC/35/2017)
- *G. Dileep Amuthan v. Ministry of Education, Cultural Affairs and Sports, Northern Provincial Council* (RTIC/20/2017)
- *G. Dileep Amuthan v. Secretariat, Northern Provincial Council* (RTIC/17/2017)
- *G. Dileep Amuthan v. Secretary, Chief Minister's Ministry, Northern Provincial Council* (RTIC/21/2017)
- *Transparency International Sri Lanka v. Prime Minister's Office/Presidential Secretariat* (RTIC Appeal 05/2017 & 06/2017)

Annexures

Annexure I - Right To Information Act No 12 of 2016



PARLIAMENT OF THE DEMOCRATIC SOCIALIST REPUBLIC OF SRI LANKA

RIGHT TO INFORMATION ACT, No. 12 OF 2016

[Certified on 04th August, 2016]

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Right to Information Act, No. 12 of 2016

[Certified on 04th August, 2016]

L.D.—O. 4/2015

AN ACT TO PROVIDE FOR THE RIGHT OF ACCESS TO INFORMATION; TO SPECIFY GROUNDS ON WHICH ACCESS MAY BE DENIED; TO ESTABLISH THE RIGHT TO INFORMATION COMMISSION; TO APPOINT INFORMATION OFFICERS; TO SET OUT THE PROCEDURE AND FOR MATTERS CONNECTED THEREWITH OR INCIDENTAL THERETO.

WHEREAS the Constitution guarantees the right of access to information in Article 14A thereof and there exists a need to foster a culture of transparency and accountability in public authorities by giving effect to the right of access to information and thereby promote a society in which the people of Sri Lanka would be able to more fully participate in public life through combating corruption and promoting accountability and good governance.

Preamble.

BE it therefore enacted by the Parliament of the Democratic Socialist Republic of Sri Lanka as follows:-

1. (1) This Act may be cited as the Right to Information Act, No. 12 of 2016.

Short title and
date of
operation.

(2) The provisions of this section, Part IV, sections 23, 36, 40, 41, 42, 43 and 44 shall come into operation on the date on which the certificate is endorsed in respect of this Act in terms of Article 79 of the Constitution.

(3) The provisions of all other sections of this Act, shall come into operation in respect of such public authorities or categories of public authorities and on such dates as may be prescribed by the Minister by Order published in the *Gazette*:

Provided however, that the dates so prescribed shall be at least six months after the certification referred to in subsection (2) above, and that all provisions of this Act shall be applicable to all public authorities no later than one year of such certification.

2—PL 009845—3, 161
(03/2016)

2 *Right to Information Act, No. 12 of 2016*

Responsibility to ensure effective implementation.

2. It shall be the responsibility of the Ministry of the Minister assigned the subject of mass media to ensure the effective implementation of the provisions of this Act.

PART I

APPLICATION OF THE PROVISIONS OF THE
ACT

Right of access to information.

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.

(2) The provisions of this Act, shall not be in derogation of the powers, privileges and practices of Parliament.

Provisions of this Act to prevail over other written law.

4. The provisions of this Act shall have effect notwithstanding anything to the contrary in any other written law and accordingly in the event of any inconsistency or conflict between the provisions of this Act and such other written law, the provisions of this Act shall prevail.

PART II

DENIAL OF ACCESS TO
INFORMATION

When right of access may be denied.

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

- (a) the information relates to personal information the disclosure of which has no relationship to any public activity or interest, or which would cause unwarranted invasion of the privacy of the individual unless the larger public interest justifies the disclosure of such information or the person concerned has consented in writing to such disclosure;

- (b) disclosure of such information—
 - (i) would undermine the defence of the State or its territorial integrity or national security;
 - (ii) would be or is likely to be seriously prejudicial to Sri Lanka's relations with any State, or in relation to international agreements or obligations under international law, where such information was given by or obtained in confidence;
- (c) the disclosure of such information would cause serious prejudice to the economy of Sri Lanka by disclosing prematurely decisions to change or continue government economic or financial policies relating to—
 - (i) exchange rates or the control of overseas exchange transactions;
 - (ii) the regulation of banking or credit;
 - (iii) taxation;
 - (iv) the stability, control and adjustment of prices of goods and services, rents and other costs and rates of wages, salaries and other income; or
 - (v) the entering into of overseas trade agreements;
- (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;

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- (e) the information could lead to the disclosure of any medical records relating to any person, unless such person has consented in writing to such disclosure;
- (f) the information consist of any communication, between a professional and a public authority to whom such professional provides services, which is not permitted to be disclosed under any written law, including any communication between the Attorney General or any officer assisting the Attorney General in the performance of his duties and a public authority;
- (g) the information is required to be kept confidential by reason of the existence of a fiduciary relationship;
- (h) the disclosure of such information would-
 - (i) cause grave prejudice to the prevention or detection of any crime or the apprehension or prosecution of offenders; or
 - (ii) expose the identity of a confidential source of information in relation to law enforcement or national security, to be ascertained;
- (i) subject to the provisions of section 29(2)(c), the information has been supplied in confidence to the public authority concerned by a third party and the third party does not consent to its disclosure;
- (j) the disclosure of such information would be in contempt of court or prejudicial to the maintenance of the authority and impartiality of the judiciary;
- (k) the disclosure of such information would infringe the privileges of Parliament or of a Provincial Council as provided by Law;

- (l) disclosure of the information would harm the integrity of an examination being conducted by the Department of Examination or a Higher Educational Institution;
- (m) the information is of a cabinet memorandum in relation to which a decision has not been taken; or
- (n) the information relates to an election conducted by the Commissioner of Elections which is required by the relevant election laws to be kept confidential.

(2) Notwithstanding the provisions of subsection (1), a request for information shall not be refused on any of the grounds referred to therein, other than the grounds referred to in paragraphs (a), (b), (d), (e), (f), (g), (h) and (j) of that subsection, if the information requested for is over ten years old.

(3) Any information relating to any overseas trade agreement referred to in subsection (1) (c) (v) of this section, where the negotiations have not concluded even after a lapse of ten years shall not be disclosed.

(4) Notwithstanding the provisions of subsection (1), 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.

(5) An information officer may seek the advice of the Commission, with regard to an issue connected with the grant of access to any information which is exempted from being disclosed under subsection (1), and the commission may as expeditiously as possible and in any event give its advice within fourteen days.

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Severability
under certain
circumstances.

6. Where a request for information is refused on any of the grounds referred to in section 5, access shall nevertheless be given to that part of any record or document which contains any information that is not exempted from being disclosed under that section, and which can reasonably be severed from any part that contains information exempted from being disclosed.

PART III

DUTIES OF MINISTERS AND PUBLIC
AUTHORITIES

Public
authorities to
maintain and
preserve its
records.

7. (1) It shall be the duty of every public authority to maintain all its records duly catalogued and indexed in such form as is consistent with its operational requirements which would facilitate the right of access to information as provided for in this Act.

(2) In discharging its obligations under subsection (1), every public authority shall comply with any direction given by the Commission under section 14(h).

(3) All records being maintained by every public authority, shall be preserved—

- (a) in the case of those records already in existence on the date of coming into operation of this Act, for a period of not less than ten years from the date of coming into operation of this Act; and
- (b) in the case of new records which are created after the date of coming into operation of this Act, for a period of not less than twelve years from the date on which such record is created.

(4) No record or information which is the subject matter of a request made under this Act, shall be destroyed during the pendency of such request or any appeal or judicial proceeding relating to such request.

Right to Information Act, No. 12 of 2016 7

(5) Notwithstanding the provisions of subsection (2), every public authority shall endeavor to preserve all its records in electronic format within a reasonable time, subject to the availability of resources.

8. (1) It shall be the duty of every Minister to whom any subject has been assigned to publish biannually before the thirtieth of June and thirty first of December respectively of each year, a report in such form as shall be determined by the Commission as would enable a citizen to exercise the right of access to information granted under section 3 of this Act.

Ministers duty to publish a report.

(2) The report referred to in subsection (1) shall contain-

- (a) the particulars relating to the organisation, functions, activities and duties of the Ministry of such Minister and of all the public authorities falling within the functions so assigned;
- (b) the following particulars pertaining to the Ministry and the public authorities referred to in paragraph (a):-
 - (i) the powers, duties and functions of officers and employees and the respective procedures followed by them in their decision making process;
 - (ii) the norms set for the discharge of their functions, performance of their duties and exercise of their powers;
 - (iii) rules, regulations, instructions, manuals and any other categories of records, which are used by its officers and employees in the discharge of their functions, performance of their duties and exercise of their powers;

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- (iv) the details of facilities available to citizens for obtaining information;
- (v) the budget allocated, indicating the particulars of all plans, proposed expenditures and reports on disbursements made;
- (vi) the name, designation and other particulars of the information officer or officers appointed.

(3) Notwithstanding the provisions of subsection (1), it shall be the duty of every Minister, within six months of the date of coming into operation of this Act, to publish in such form as may be determined by such Minister, a report containing the information referred to in paragraphs (a) and (b) of subsection (2).

(4) The reports referred to in subsections (1), (2) and (3) shall be-

- (a) published in the official languages and be made available in electronic form; and
- (b) made available for public inspection and copies of the same may be issued to a citizen, on the payment of such fee as shall be determined by the Commission.

For the avoidance of doubt it is hereby declared that any reference to the Minister shall also include a reference to a Minister of a Provincial Council established under Chapter XVIII of the Constitution.

9. (1) (a) It shall be the duty of the Minister, to whom the subject pertaining to any project has been assigned, to communicate, three months prior to the commencement of such project, to the public generally, and to any particular persons who are likely to be affected by such project all information relating to the project that is available with the Minister, as on the date of such communication:

Duty of the Minister to inform public about the initiation of projects.

Provided however, in the event of an urgent project, information shall be provided one week prior to the commencement of such project and reasons for such urgency shall be communicated to the Commission.

(b) The Commission shall issue guidelines specifying the manner in which the communication referred to in paragraph (a) shall be made.

(2) (a) The Minister shall, on a written request made in that behalf by a citizen, make available updated information about a project referred to in subsection (1), throughout the period of its development and implementation.

(b) The information shall be made available on the payment of such fee, as shall be prescribed by the Commission for that purpose.

(3) For the purposes of this section, —project means any project the value of which exceeds—

- (a) in the case of foreign funded projects, one hundred thousand United States dollars; and
- (b) in the case of locally funded projects, five hundred thousand rupees.

For the avoidance of doubt it is hereby declared that any reference to the Minister shall also include a reference to a Minister of a Provincial Council established under Chapter XVIIA of the Constitution.

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Duty of public
authorities to
submit reports
etc.

10. Every public authority shall submit annual reports to the Commission before the thirty first day of December immediately succeeding the year to which the report relates which shall be made available to the public in its office and on its official website, furnishing information such as-

- (a) the total number of requests received during the year and information provided and rejected;
- (b) the amount of fees collected during the year;
- (c) the number of requests rejected under section 5;
- (d) the number of times information was provided at the direction of the Commission;
- (e) any suggestions for improving the effectiveness of the regime of transparency;
- (f) the number of appeals from refusal to communicate information;
- (g) practices relating to the maintenance, management and destruction of records; and
- (h) its activities under section 8.

PART IV

ESTABLISHMENT OF THE RIGHT TO INFORMATION COMMISSION

Establishment
of the right to
Information
Commission.

11. (1) There shall be established for the purposes of this Act, a body called the Right to Information Commission (in this Act referred to as the —Commission).

(2) The Commission shall by the name assigned to it by subsection (1), be a body corporate with perpetual succession and a common seal and may sue and be sued in its corporate name.

12. (1) The Commission shall consist of five persons appointed by the President upon the recommendation of the Constitutional Council. In making such recommendations, the Constitutional Council shall recommend one person nominated by each of the following organisations or categories of organisations:-

Constitution of
the Commission.

- (a) Bar Association of Sri Lanka which shall nominate an Attorney-at-Law of eminence or a Legal Academic in consultation with Attorneys -at-Law and Legal Academia;
- (b) organizations of publishers, editors and media persons;
- (c) other civil society organizations.

(2) (a) In making recommendations under subsection (1), the Constitutional Council shall ensure that the persons who are being recommended are persons who-

- (i) have distinguished themselves in public life with proven knowledge, experience and eminence in the fields of law, governance, public administration, social services, journalism, science and technology or management;
- (ii) are not Members of Parliament, any Provincial Council or a local authority;
- (iii) do not hold any public or judicial office or any other office of profit;
- (iv) are not connected with any political party; or
- (v) are not carrying on any business or pursuing any profession.

(b) In nominating persons for the consideration of the Constitutional Council the organizations referred to in subsection (1) shall ensure that the persons nominated meet

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the criteria specified herein. In the event the Constitutional Council is of the opinion that the nominees do not meet the criteria set out herein fresh nominations shall be called for.

(3) The Constitutional Council shall make its recommendations under subsection (1), within one month of the date of coming into operation of this Act or the date of a vacancy arising in the Commission. In the event, any or all of the organisations concerned fail to make nominations within such period, the Constitutional Council shall make its own recommendations after the expiry of the said period. In the event any nominations are rejected the Constitutional Council shall make its own nominations if no acceptable nominations are resubmitted within two weeks from the rejection.

(4) Where a member of the Commission while holding such office becomes a Member of Parliament, any Provincial Council or a local authority or appointed to any public or judicial office or an office bearer of any political party such member shall cease to be a member of the Commission on such appointment.

(5) The President shall nominate one of the members appointed to the Commission to be its Chairperson.

(6) The members of the Commission shall hold office for a period of five years.

(7) A member of the Commission shall not disclose any information that cannot be disclosed under the provisions of this Act.

(8) The provisions of the Schedule to this Act shall apply to and in respect of the members of the Commission and the conduct of its meetings.

13. (1) The Commission shall appoint-

Appointment of
officers and
employees of the
Commission.

- (a) a Director-General who shall be the Chief Executive Officer of the Commission;
- (b) such officers and other employees as it considers necessary.

(2) The Director-General shall be responsible for the general supervision, direction and management of the affairs of the Commission and exercise disciplinary control over the officers and employees of the Commission.

(3) The Director-General and other officers and employees appointed under subsection (1), shall be subject to such terms and conditions of service as shall be determined by the Commission and be paid such remuneration as determined by the Commission in consultation with the Minister assigned the subject of Finance.

Duties and
functions of the
Commission.

14. The duties and functions of the Commission shall be, to –

- (a) monitor the performance and ensure the due compliance by public authorities, of the duties cast on them under this Act;
- (b) make recommendations for reform both of a general nature and those in regard to any specific public authority;
- (c) issue guidelines based on reasonableness, for determining fees to be levied by public authorities for the release of any information under this Act;
- (d) prescribe the circumstances in which information may be provided by an information officer, without the payment of a fee;
- (e) prescribe the fee Schedule based on the principle of proactive disclosure, in regard to providing information;

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- (f) co-operate with or undertake training activities for public officials on the effective implementation of the provisions of this Act;
- (g) publicise the requirements of this Act and the rights of individuals under the Act;
- (h) issue guidelines for the proper record management for public authorities.

Powers of the
Commission.

15. For the purpose of performing its duties and discharging of its functions under this Act, the Commission shall have the power-

- (a) to hold inquiries and require any person to appear before it;
- (b) to examine such person under oath or affirmation and require such person where necessary to produce any information which is in that person's possession, provided that the information which is exempted from disclosure under section 5 shall be examined in confidence;
- (c) to inspect any information held by a public authority, including any information denied by a public authority under the provisions of this Act;
- (d) to direct a public authority to provide information, in a particular form;
- (e) to direct a public authority to publish any information withheld by a public authority from the public, subject to the provisions of section 5;
- (f) to hear and determine any appeals made to it by any aggrieved person under section 32; and
- (g) to direct a public authority or any relevant information officer of the authority to reimburse fees charged from a citizen due to any information requested for not been provided in time.

16. (1) The Commission shall have its own Fund into which shall be credited-

Fund of the
Commission.

- (a) all such sums of money as may be voted upon from time to time by Parliament for the use of the Commission; and
- (b) donations, gifts or grants from any source whatsoever, whether in or outside Sri Lanka.

(2) Where any money is received by way of donations, gifts or grants under subsection (1)(b), the sources and purpose for which such donation, grant or gift was made available shall be made public.

(3) There shall be paid out of the Fund all such sums of money required to defray the expenditure incurred by the Commission in the exercise, discharge and performance of its powers, duties and functions.

17. (1) The financial year of the Commission shall be the calendar year.

Financial year
and audit of
accounts.

(2) The Commission shall cause proper books of accounts to be maintained of the income and expenditure and all other transactions of the Commission.

(3) The provisions of Article 154 of the Constitution relating to the audit of the accounts of public corporations shall apply to the audit of the accounts of the Commission.

18. The provisions of Part II of the Finance Act, No. 38 of 1971 shall, *mutatis mutandis* apply to the financial control and accounts of the Commission.

Part II of the
Finance Act, No.
38 of 1971
to apply.

19. The members and officers and all other employees of the Commission shall be deemed to be public servants within the meaning and for the purposes of the Penal Code (Chapter 19) and every inquiry held by the Commission under this Act shall be deemed to be a judicial proceeding within the meaning of the Code of Criminal Procedure Act, No. 15 of 1979.

Members etc., of
the Commission
deemed to be
public servants.

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Application of the
Bribery Act.

20. The Commission shall be deemed to be a scheduled institution within the meaning of the Bribery Act (Chapter 26) and the provisions of that Act shall be construed accordingly.

Expenses
incurred in any
suit or
Prosecution.

21. Any expenses incurred by any member, officer or employee of the Commission in any suit or prosecution brought by or against such person before any court in respect of any act or omission which is done or purported to be done by such person in good faith for the purpose of carrying out the provisions of this Act shall, if the court holds that such act or omission was done in good faith, be paid out of the fund of the Commission unless such expenses are recovered by him in such suit or prosecution.

Procedural
Requirements
to be published.

22. The Commission shall within six months of its establishment, formulate and give adequate publicity to the procedural requirements for the submission of appeals to the Commission under section 32.

PART V

APPOINTMENT OF INFORMATION OFFICERS AND PROCEDURE
FORGAINING ACCESS TO
INFORMATION

Appointment of
Information
officers and
designated
officers.

23. (1) (a) Every public authority shall for the purpose of giving effect to the provisions of this Act, appoint, within three months of the date of coming into operation of this Act, one or more officers as information officers of such public authority and a designated officer to hear appeals.

(b) Until such time that an information officer is appointed under paragraph (a) the Head or Chief Executive Officer of the public authority shall be deemed to be the information officer of such public authority, for the purposes of this Act.

(2) Every information officer shall deal with requests for information made to the public authority of which he or she has been appointed its information officer, and render all necessary assistance to any citizen making such request to obtain the information.

(3) The Information Officer may seek the assistance of any other officer as he or she may consider necessary, for the

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 proper discharge of the duty imposed on him under this Act,
 and where assistance is sought from any such officer, it shall
 be the duty of such officer to provide the required assistance.

24. (1) Any citizen who is desirous of obtaining any
 information under this Act shall make a request in writing to
 the appropriate information officer, specifying the
 particulars of the information requested for:

Procedure for
 obtaining
 information.

Provided that where any citizen making a request under
 this subsection is unable due to any reason to make such
 request in writing, such citizen shall be entitled to make the
 request orally and it shall be the duty of the appropriate
 information officer to reduce such request to writing on
 behalf of the citizen.

(2) Where a citizen –

- (a) wishes to make a request to a public authority;
 or
- (b) has made a request to a public authority which
 does not comply with the requirements of this
 Act,

the information officer concerned shall take all necessary
 steps to assist the citizen, free of charge, to make the request
 in a manner that complies with this Act.

(3) On receipt of a request, an information officer shall
 immediately provide a written acknowledgement of the
 request to the citizen.

(4) Where an information officer is able to provide an
 immediate response to a citizen making a request and such
 response is to the satisfaction of the requester, the
 information officer shall make and retain a record of the
 request and the response thereto.

(5) A citizen making a request for information shall:–

- (a) provide such details concerning the information
 requested as is reasonably necessary to enable

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- the information officer to identify the information;
 - (b) identify the nature of the form and language in which the citizen prefers access;
 - (c) where the citizen making the request believes that the information is necessary to safeguard the life or liberty of a person, include a statement to that effect, including the basis for that belief; and
 - (d) not be required to give any reason for requesting the information or any other personal details except those that may be necessary for contacting him or her.
- (6) For the purpose of this section –
- writing^l includes writing done through electronic means; and
 - appropriate information officer^l means the Information Officer appointed to the public authority from which the information is being requested for.

Decision on requests submitted under section 24.

25. (1) An information officer shall, as expeditiously as possible and in any case within fourteen working days of the receipt of a request under section 24, make a decision either to provide the information requested for on the payment of a fee determined in accordance with the fee schedule referred to in section 14(e) or to reject the request on any one or more of the grounds referred to in section 5 of this Act, and shall forthwith communicate such decision to the citizen who made the request.

(2) Where a decision is made to provide the information requested for, access to such information shall be granted within fourteen days of arriving at such decision.

(3) Where the request for information concerns the life and personal liberty of the citizen, the response to it shall be made within forty-eight hours of the receipt of the request.

(4) Notwithstanding the requirement made for the payment of a fee under subsection (1), the Commission may specify the circumstances in which information may be provided by an information officer, without the payment of a fee.

(5) The period of fourteen days referred to in subsection (2) for providing access to information may be extended for a further period of not more than twenty one days where-

- (a) the request is for a large number of records and providing the information within fourteen days would unreasonably interfere with the activities of the public authority concerned; or
- (b) the request requires a search for records in, or collection of records from, an office of the public authority not situated in the same city, town or location as the office of the information officer that cannot reasonably be completed within the fourteen days.

(6) Where a period for providing information is to be extended for any of the circumstances referred to in subsection (5), the information officer shall, as soon as reasonably possible, but in any case within fourteen days, notify the citizen concerned of such fact giving the following reasons:-

- (a) the period of the extension; and
- (b) reasons for the extension.

(7) A citizen who is dissatisfied with the reasons given under subsection (6) may lodge an appeal with the designated officer.

26. (1) Every public authority shall display in a conspicuous place within the official premises and on a website of such public Authority if any, a notice specifying-

- (a) contact details of the Commission and the members of the Commission;

Public authority to display details of information officers and fees to be charged.

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- (b) contact details of the information officer;
- (c) contact details of the designated officer;
- (d) fees to be charged for obtaining any information from such public Authority.

(2) The fee referred to in subsection (1)(d), shall be determined in accordance with the fee scheduled formulated by the Commission under section 14(e).

Manner in which information is to be provided.

27. (1) Where decision has been made to grant a request for information, such information shall be provided in the form in which it is requested for, unless the information officer is of the view that providing the information in the form requested for would not be detrimental to the safety or preservation of the relevant document or record in respect of which the request was made.

(2) Where an information officer is unable to provide the information in the manner requested for, it shall be the duty of such officer to consult the citizen and render all possible assistance to the citizen to determine an appropriate alternative means of providing access to the information and to facilitate compliance with such request.

(3) Subject to the provisions of subsection (1), a citizen, whose request for information has been granted, is entitled to:—

- (a) inspect relevant work, documents, records;
- (b) take notes, extracts or certified copies of documents or records;
- (c) take certified samples of material;
- (d) obtain information in the form of diskettes, floppies, tapes, video cassettes or any other electronic mode or through printouts where such information is stored in a computer or in any other device.

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28. Where a request for information is refused by an information officer, such officer shall specify the following information in the communication to be sent under section 25(1), to the citizen who made the request—

Refusal of a request to be communicated.

- (a) the grounds on which such request is refused; and
- (b) the period within which and the person to whom an appeal against such refusal may be preferred under section 32 of this Act.

29. (1) Where a request made to an information officer by any citizen to disclose information which relates to, or has been supplied by a third party and such information has been treated as confidential at the time the information was supplied, the information officer shall, within one week of the receipt of such request, invite such third party by notice issued in writing, to make representation for or against such disclosure, within seven days of the receipt of the notice.

Where Information requested for was supplied by a third party.

(2) An information officer shall be required in making his decision on any request made for the disclosure of information which relates to or has been supplied by a third party, to take into consideration the representations made by such third party under subsection (1), and shall, where the third party—

- (a) does not respond to the notice, disclose information requested for;
- (b) responds to the notice and agrees to the disclosure of the information requested for, disclose such information;
- (c) responds to the notice and refuses to the disclosure of the information requested for, deny access to the information requested for:

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Provided however, the Commission may on the application made in that behalf by the citizen making the request, direct the disclosure of the information in question notwithstanding any objections raised by such third party against its disclosure, where the release of the information concerned demonstrably outweighs the private interest in non disclosure.

Exemption from suit or prosecution.

30. No liability, whether civil or criminal, shall attach to any public authority or any information officer or any other officer of such public authority, for anything which in good faith is done by such officer in the performance or exercise of any function or power imposed or assigned to such officer under this Act.

PART VI

APPEALS AGAINST
REJECTIONS

Appeals against a rejection of a request.

31. (1) Any citizen who is aggrieved as a result of—

- (a) refusing a request made for information;
- (b) refusing access to the information on the ground that such information is exempted from being granted under section 5;
- (c) non- compliance with time frames specified by this Act;
- (d) granting of incomplete, misleading or false information;
- (e) charging an excessive fees;
- (f) the refusal of the information officer to provide information in the form requested; or
- (g) the citizen requesting having reasonable grounds to believe that information has been

deformed, destroyed or misplaced to prevent such citizen from having access to the information,

may, prefer an appeal to the designated officer within fourteen days of the refusal, act or date of becoming aware of the grounds on which the appeal is sought to be made, as the case may be:

Provided however, that the designated officer may admit the appeal after the expiry of the period of fourteen days if he or she is satisfied that the appellant was prevented by a reason beyond his or her control from filing the appeal in time.

(2) The designated officer shall issue a receipt on the acceptance of the appeal, to the citizen making the appeal, and in any case within three working days.

(3) The decision on any appeal preferred under subsection (1), shall be made by the designated officer within three weeks of the receipt of the appeal and shall include the reasons for the said decision including specific grounds for the same.

(4) The right of a citizen to prefer an appeal under subsection (1) shall be without prejudice to his or her right to make an application to the Commission.

(5) The designated officer may where reasonable cause is given for failure to submit an appeal within a period specified by subsection (1) by the citizen making such an appeal may at his discretion hear the appeal notwithstanding such delay.

32. (1) Any citizen aggrieved by:—

Appeals to the Commission.

- (a) the decision made in respect of an appeal under section 31(1), may within two months of the communication of such decision; or

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(b) the failure to obtain a decision on any appeal made within the time specified for giving the same under section 31(3), may within two months of the expiry of the period so specified, may appeal against that decision or the failure, to the Commission and the Commission may within thirty days of the receipt of such appeal affirm, vary or reverse the decision appealed against and forward the request back to the information officer concerned for necessary action.

(2) The Commission may admit the appeal after the expiry of the period of two months if the commission is satisfied that the appellant was prevented by a reason beyond his or her control from filing the appeal in time.

(3) The Commission shall give reasons for its decisions in writing, to the appellant, the information officer and the public authority concerned.

(4) 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.

Appeal may be made on behalf of an aggrieved party.

33. Where the aggrieved party is unable due to any reason to make an appeal under section 31 or section 32, as the case may be, such appeal may be made by a person duly authorized in writing by the aggrieved party to prefer the same.

Appeals to the Court of Appeal.

34. (1) A citizen or public authority who is aggrieved by the decision of the Commission made under section 32, may appeal against such decision to the Court of Appeal within one month of the date on which such decision was communicated to such citizen or public authority.

(2) Until rules are made under Article 136 of the Constitution pertaining to appeals under this section, the rules made under that Article pertaining to an application by way of revision to the Court of Appeal, shall apply in respect of every appeal made under subsection (1) of this section.

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PART

VII

GENERAL

35. Every officer in any public authority giving a decision which affects any person in any way, shall be required on request made in that behalf by the person concerned, to disclose to that person in writing the reasons for arriving at such decision.

Duty to disclose reasons for a decision.

36. Nothing in this Act is intended to prevent or discourage information holders from publishing or giving access to information or prevent any person from seeking and obtaining information, which may be provided in due compliance with the law.

Nothing in this Act to prevent or discourage Information from being published.

37. (1) The Commission shall cause to be prepared a report of its activities as often as it may consider necessary, so however, that it shall prepare at least one report in each calendar year. The Commission shall transmit a copy of every such report to be tabled before Parliament and a copy of same shall also be sent to the President.

Commission to prepare a report of its activities.

(2) A copy of the report prepared under subsection (1) shall, within two weeks of it being tabled before Parliament, be made available for public inspection at the office of the Commission and wherever possible, a copy of the same may be made available on its website.

38. (1) Where—

Commission to inform the appropriate disciplinary authority.

- (a) any information officer willfully -
 - (i) refuses to receive an application for information from any citizen;
 - (ii) refuses a request made for information, without giving reasons for such refusal;
 - (iii) stipulates excessive fees in breach of the fee Schedule referred to in section 14 (e);

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- (iv) otherwise fails to process a request in accordance with the provisions of this Act; or
- (b) any designated officer willfully –
 - (i) under section 31 refuses an appeal, made on any ground other than a ground specified in section 5 of this Act;
 - (ii) failed without any reasonable cause to make a decision on an appeal, within the time specified under section 31(3) for making such decision,

the Commission shall, bring the matter to the notice of the appropriate disciplinary authority.

(2) The relevant disciplinary authority shall inform the Commission of the steps taken in respect of any matter brought to the notice of such disciplinary authority within a period of one month.

Offences.

39. (1) Every person who–

- (a) deliberately obstructs the provision of information or intentionally provides incorrect, incomplete or inaccurate information;
- (b) destroys, invalidates, alters or totally or partially conceal information under his or her custody, or to which he or she has access to or knowledge of due to the exercise of his or her employment in such public authority;
- (c) fails or refuses to appear before the Commission when requested to do so by the Commission;

- (d) appears before the Commission, and fails or refuses to be examined by the Commission or to produce any information which is in that persons possession or power or deliberately provides false information under oath or affirmation;
- (e) fails or refuses to comply with or give effect to a decision of the Commission;
- (f) resists or obstructs the Commission or any officer or other employee of the Commission, in the exercise of any power conferred on the Commission or such officer or employee, by this Act;
- (g) discloses any information in contravention of the provisions of section 12(7) of this Act,

commits an offence under this Act and shall on conviction after summary trial by a Magistrate be liable to a fine not exceeding fifty thousand rupees or to imprisonment for a term not exceeding two years or to both such fine and imprisonment.

(2) Any officer whose assistance was sought for by an information officer under section 23(3) and who fails without reasonable cause to provide such assistance, shall commit an offence under this Act, and shall on conviction after summary trial by a Magistrate be liable to a fine not exceeding ten thousand rupees.

(3) A fine imposed for the commission of an offence referred to in subsection (1) or (2) of this section, shall be in addition to and not in derogation of any disciplinary action that may be taken against such officer by the relevant authority empowered to do so.

(4) A prosecution under this Act shall be instituted by the Commission.

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Release or disclosure of information by an employee of a public authority.

40. Notwithstanding any legal or other obligation to which a person may be subject to by virtue of being an officer or employee of any public authority, no officer or employee of a public authority shall be subjected to any punishment, disciplinary or otherwise, for releasing or disclosing any information which is permitted to be released or disclosed under this Act.

Regulations.

41. (1) The Minister may in consultation with the Commission make regulations in respect of all matters required by this Act to be prescribed or in respect of which regulations are necessary to be made in order to give effect to the principles and provisions of this Act.

(2) Every regulation made under subsection (1) shall be published in the *Gazette* and shall come into operation on the date of such publication or on such later date as may be specified in the regulation.

(3) Every regulation made under subsection (1) shall, forthwith after its publication in the *Gazette* be brought before Parliament for approval and any regulation which is not so approved shall be deemed to be rescinded as from the date of such disapproval but without prejudice to anything previously done thereunder.

(4) The date on which any regulation is deemed to be so rescinded shall be published in the *Gazette*.

Rules.

42. (1) The Commission may make rules concerning any of the following matters:-

- (a) the form and manner in which appeals may be made to the Commission;
- (b) the procedure for holding inquiries;
- (c) fee schedule in respect of providing information;

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 (d) the format of the reports to be prepared under section 10.

(2) No rule made under this section shall have effect until it is approved by the Minister and notification of such approval is published in the *Gazette*.

43. In this Act, unless the context otherwise requires— Interpretation.

—citizen^l includes a body whether incorporated or unincorporated, if not less than three-fourths of the members of such body are citizens;

—designated officer^l means a designated officer appointed under section 23 of this Act;

—Higher Educational Institution^l means a University, Campus or University College established or deemed to be established or made by the Universities Act, No. 16 of 1978 or acknowledged by the University Grants Commission or established under the provisions of any other Act;

—information^l includes any material which is recorded in, in any form including records, documents, memos, emails, opinions, advices, press releases, circulars, orders, log books, contracts, reports, papers, samples, models, correspondence, memorandum, draft legislation, book, plan, map, drawing, diagram, pictorial or graphic work, photograph, film, microfilm, sound recording, video tape, machine readable record, computer records and other documentary material, regardless of its physical form or character and any copy thereof;

—information officer^l means an information officer appointed under section 23 of this Act;

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—local authority^l means a Municipal Council, Urban Council or a Pradeshiya Sabha and includes any authority created or established by or under any law to exercise, perform and discharge powers, duties and functions corresponding or similar to the powers, duties and functions exercised, performed or discharged by any such Council or Sabha;

—non governmental organisation^l means any organization formed by a group of persons on a voluntary basis and receiving funds directly or indirectly from the Government or international organisations and is of a non governmental nature;

—public authority^l means—

- (a) a Ministry of the Government;
- (b) any body or office created or established by or under the Constitution, any written law, other than the Companies Act No. 7 of 2007, except to the extent specified in paragraph (e), or a statute of a Provincial Council;
- (c) a Government Department;
- (d) a public corporation;
- (e) a company incorporated under the Companies Act, No. 7 of 2007, in which the State, or a public corporation or the State and a public corporation together hold twenty five *per centum* or more of the shares or otherwise has a controlling interest;

- (f) a local authority;
- (g) a private entity or organisation which is carrying out a statutory or public function or service, under a contract, a partnership, an agreement or a license from the government or its agencies or from a local body, but only to the extent of activities covered by that statutory or public function or service;
- (h) any department or other authority or institution established or created by a Provincial Council;
- (i) non-governmental organisations that are substantially funded by the government or any department or other authority established or created by a Provincial Council or by a foreign government or international organisation, rendering a service to the public in so far as the information sought relates to the service that is rendered to the public;
- (j) higher educational institutions including private universities and professional institutions which are established, recognised or licensed under any written law or funded, wholly or partly, by the State or a public corporation or any statutory body established or created by a statute of a Provincial Council;
- (k) private educational institutions including institutions offering vocational or technical education which are established, recognised or

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licensed under any written law or funded, wholly or partly, by the State or a public corporation or any statutory body established or created by a statute of a Provincial Council;

- (l) all courts, tribunals and institutions created and established for the administration of justice;

44. In the event of any inconsistency between Sinhala and Tamil texts of this Act, the Sinhala text shall prevail.

Sinhala text to prevail in case of inconsistency.

SCHEDULE

[Section 12(8)]

PROVISIONS RELATING TO MEMBERS OF THE COMMISSION

(1) A member of the Commission shall cease to be a member, where such member:-

- (a) resigns his or her office earlier by writing addressed to the President;
- (b) is removed from office by the President;
- (c) is convicted by a court of law;
- (d) is deemed to have vacated office by absenting himself or herself from three consecutive meetings of the Commission, without obtaining prior leave of the Commission; or
- (e) engages in any employment outside the duties of his office, during the term of office.

(2) The President may on the recommendation of the Constitutional Council remove from office a member of the Commission, where:-

- (a) such member has become permanently incapable of performing his or her duties owing to any physical disability or unsoundness of mind ;

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- (b) such member is unfit to perform his or her duties on the basis of moral turpitude; or
- (c) such member is convicted of an offence by a competent court of law.

(3) The Chairperson or any other member of the Commission may resign from such office by letter in that behalf addressed to the President and the resignation shall become effective from the date of its acceptance by the President in writing.

(4) In the event of the vacation of the office of any member of the Commission, the President shall follow the same procedure as set out in section 12(1) and appoint another person to hold such office for the unexpired term of office of the member whom he succeeds.

(5) (a) Where a member of the Commission, is temporarily unable to discharge his or her duty due to ill health, absence from Sri Lanka or for any other cause, the President may on the recommendation of the Constitutional Council, appoint another person to act in place of such member during his or her absence.

(b) Where the Chairperson of the Commission, is temporarily unable to discharge his or her duty due to ill health, absence from Sri Lanka or for any other cause, the President shall appoint another member of the Commission, to act in place of such Chairperson during his or her absence.

(6) The members of the Commission, shall be paid such remuneration as shall be determined by the Minister in charge of the subject of Finance.

(7) (a) The Commission shall meet at least once in every month or as often as may be necessary.

(b) The quorum for any meeting of the Commission shall be three members.

(c) The Chairperson of the Commission shall preside at all meetings of the Commission, and in the absence of the Chairperson at any such meeting, the members present shall elect from amongst them, a member to preside at such meeting.

(d) The Chairperson or the person presiding at any meeting of the Commission, shall in addition to his vote, have a casting vote.

(e) The Commission shall regulate the procedure in regard to its meetings and the transaction of business at such meetings.

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(8) The seal of the Commission:—

- (a) shall be as determined from time to time by the Commission;
- (b) shall be in the custody of such person as the Commission shall determine;
- (c) may be altered in such manner as may be determined by the Commission; and
- (d) shall not be affixed to any document or instrument, except with the sanction of the Commission, and in the presence of the Chairperson and one other member of such Commission both of whom shall sign such document or the instrument in token of their presence

Annual subscription of English Bills and Acts of the Parliament Rs. 885 (Local), Rs. 1,180 (Foreign), Payable to the SUPERINTENDENT, GOVERNMENT PUBLICATIONS BUREAU, DEPARTMENT OF GOVERNMENT INFORMATION, No. 163, KIRULAPONA MAWATHA, POLHENGODA, COLOMBO 05 before 15th December each year in respect of the year following.

Annexure II - Rules On Fees and Appeal Procedure of the Sri Lanka RTI Commission, February 3rd 2017

Right to Information Commission Rules of 2017 Rules (2017)

The Right to Information Commission in exercise of the power conferred upon it by Section 42 of the Act prescribes the following rules:

1. Short Title and Commencement:

- (1) These Rules may be called "Right to Information Rules of 2017 (Fees and Appeal Procedure)".
- (2) These Rules shall come into force on February 3, 2017.

2. Definitions: Unless the subject or context otherwise requires, in these Rules-

- (a) "Act" means Right to Information Act No.12 of 2016.
- (b) "Commission", "Information Officer", "Designated Officer", and "Public Authority" will have the same meaning as defined in the Act.
- (c) "Appellant" means and includes any citizen who Appeals to the Right to Information Commission under Section 32 of the Act.
- (d) "Material" means information provided in response to a Right to Information request or an Appeal.
- (e) All other words or expressions used herein and not defined in these Rules shall have the same meanings assigned to them in the Act.

Fees

3. Application Fees:

- (1) No Public Authority shall charge any fee to provide a Right to Information Application Form to a citizen making an information request.

- (2) No Public Authority shall charge any fee to process a Right to Information request.

4. Fees for Information: Unless otherwise prescribed, the following Fees may be charged by a Public Authority for provision of information in response to a RTI request:

(i) Photocopying:

- (a) Rs. 2/- (one side) and 4/- (both sides) of one paper, for the information provided on A4 (21 cm x 29.7 cm)
- (b) and smaller size paper
Rs. 4/- (one side) and 8/- (both sides) of one paper for the information provided on paper that is Legal size
- (c) (21.59 cm x 35.56 cm) and upto A3 (29.7 cm x 42 cm)
Information provided on paper bigger than those mentioned above will be at actual cost.

(ii) Printout

- (a) Rs. 4/- (one side) and 8/- (both sides) of one paper, for the information provided on A4 (21 cm x 29.7 cm) and
- (b) smaller size paper
Rs. 5/- (one side) and 10/- (both sides) of one paper for the information provided on paper that is Legal size
- (c) (21.59 cm x 35.56 cm) and upto A3 (29.7 cm x 42 cm)
Information printed on paper bigger than those mentioned above will be at actual cost.

(iii) Rs. 20/- for copying information onto a Diskette, Compact Disc, USB mass drive, or similar electronic device, provided by the citizen making the request.

(iv) Actual cost for copying information onto a Diskette, Compact Disc, USB mass drive, or similar electronic device provided by the Public Authority.

- (v) Rs. 50/- per hour for the study or inspection of any document or material, or inspection of a construction site, if this takes longer than one hour, with the first hour of study/inspection being provided free of charge. This shall be without prejudice to the practice of public authorities which previously provided such inspection free of charge and which practice shall continue notwithstanding this sub-rule.
- (vi) Samples or models will be charged the actual cost.
- (vii) Information provided via e-mail will be free of charge.

5. Where there exists a previous Fee Schedule prescribed or issued by Public Authorities by way of circulars or regulations, that Fee Schedule shall continue to operate notwithstanding the Fees prescribed in Rule 4.

Provided that any dispute in regard to claims relating to existing Fee Schedules may be the subject of an Appeal to be determined by the Commission in accordance with these Rules on Fees and Appeals.

6. Information provided free of charge:

- (1) Notwithstanding anything contained in Rule 4 above, the Public Authority shall provide information prepared or contained on four pages (A4 size) of photocopies or printing, free of cost.
- (2) Information that is ordinarily available free of charge shall continue to be provided free of charge.

7. Mode of Payment of Fee:

- (1) Notwithstanding anything contained elsewhere in these Rules, the Public Authority may collect the Fees for information in the following manner:
 - (i) in cash paid to the Information Officer;
 - (ii) Bank Draft addressed to the Accounts Officer of the Public Authority;
 - (iii) post office payment slip or a postal order made payable to the Accounts Officer of the Public Authority.

- (2) The Information Officer shall issue a receipt against payment of a fee regardless of the manner in which it is paid.
8. **Access to Information:** (1) For larger volume requests, the information officer shall inform the citizen making the request prior to providing access to the information about the various formats through which access may be obtained and their associated costs, as well of the possibility of taking notes, copying extracts, including at the discretion of the Public Authority, the possibility of photographing the material with a phone or hand held camera.
- (2) Excepting the situations mentioned in Rules 5, and 6, the prescribed fee should be paid in full before access to the material is given to the citizen making the request.
9. **Proactive Disclosure:** (1) The Reports submitted by the Ministers pursuant to Section 8 of the Act and Public Authorities pursuant to Section 10 of the Act shall be publicly available for inspection free of charge and for free downloading from a website, and copies, including electronic copies, provided to a citizen making the information request in accordance with the Fees prescribed in the above Rules.
- (2) A Minister who is implementing a project should pursuant to Section 9 of the Act make publicly available all material relating to the project. Such material, shall be publicly available for inspection free of charge and for free downloading from a website, and copies provided to the citizen making the request in accordance with the Fees prescribed in the above Rules.
10. **Appeals regarding Fees:** (1) If the citizen making the request is of the opinion that the Fee charged by the Information Officer is in excess to the amount properly required he/she may appeal to the Designated Officer within fourteen days of being informed by the Information Officer of the fee payable as per Section 31 of the Act using the format prescribed in the RTI regulations.

- (2) If the citizen making the request is not satisfied with the decision of the Designated Officer, he/she may within two months of the decision appeal to the Commission following the Appeal procedure prescribed in Section 32 of the Act and relevant Rules thereto.
- (3) The making of an appeal to the Designated Officer and/ or Commission does not require the payment of a fee. Appeal forms are to be issued free of charge.

11. Exemption of Fee Charge upon Successful Appeal:

If a citizen making an information request is successful in an Appeal either to the Designated Officer or the Commission, the information requested by the citizen making the request should be provided free of charge.

12. Reimbursement of Fees:

The Commission may, in accordance with Section 15 (g) of the Act, direct a Public Authority to reimburse any Fees charged to a citizen making a request where any information is not provided within the time period specified in the Act.

Form and Manner of Appeals to the Commission

13. Appeal to the Commission:

- (1) Any Appellant who is aggrieved with the decision of the Designated Officer, or by a failure to obtain a decision from that officer within the prescribed time limit set out in the Act, may appeal to the Commission by furnishing the information required in the sample Form annexed to these Rules (Annexure 1).
- (2) The Appeal shall be lodged in the office of the Commission, and can be delivered in person or through registered post.
- (3) An Appeal in accordance with sub-rule (1) shall normally be required to be made within two months of the grounds for the Appeal, as specified in that sub-rule, having arisen.

- (4) Such Appeal shall be accompanied by the following documents duly verified as true copies by the Appellant;
 - (i) A copy of the request for information submitted under Section 24 of the Act
 - (ii) A copy of the reply, if any, received from the Information Officer
 - (iii) A copy of the appeal made to the Designated Officer under Section 31 of the Act
 - (iv) A copy of the order, if any, received by the Designated Officer
 - (v) Copies of other documents relied upon by the Appellant and referred to in his or her appeal along with an index of the documents referred to in the Appeal
- (5) An Appeal must be filed by the Appellant in duplicate.
- (6) The Commission may not ordinarily admit an Appeal unless the conditions set out in sub-rules (1–5) have been met.
- (7) The Commission may, admit the appeal after the two-month period specified in sub-rule (3) where the Appellant was prevented by a reason beyond his or her control from filing the appeal in time.

14. Making of the Appeal:

Where the aggrieved party is unable due to any reason to make an appeal under Section 32 of the Act, as the case may be, such Appeal may be made by a person duly authorized in writing by the aggrieved party to prefer the same.

15. No Dismissal on Technical Grounds:

- (1) Notwithstanding anything to the contrary above, any writing complying with the requirements of Rule 13 addressed to the Commission and signed by an Appellant containing the information set out in the sample Form annexed to these Rules (Annexure 1) shall constitute a valid Appeal.
- (2) No receipt of an Appeal shall be dismissed purely on technical grounds.

16. Receipt of an Appeal:

- (1) Upon the receipt of an Appeal, the Commission shall forthwith issue an acknowledgement in writing thereof to the Appellant, indicating the Appeal Number assigned to such Appeal.

- (2) There shall be a Register of Appeals maintained by the Right to Information Commission in the Form annexed to these Rules (Annexure 2) where such Appeals shall be entered in the chronological order in which they are received.
- 17. **Return of Appeal:** (1) An appeal to the Commission may be returned to the Appellant if the Appeal fails to provide the requisite information or is otherwise substantially deficient. The Commission shall specify the deficiency(ies) and the date by which the Appellant can submit the amended appeal.
 - (2) The return of an Appeal for specified deficiencies in terms of sub- rule (1) shall be effected as expeditiously as possible, through hand delivery, registered post with acknowledgement due or service by electronic mail where the electronic address is available with acknowledgement due.
 - (3) All such Appeals categorised as deficient shall be given a number and listed by Appeal Number as Deficient Appeals maintained by the Commission in the Register of Deficient Appeals according to the Format annexed to these Rules (Annexure 3), where such Deficient Appeals shall be entered in the chronological order in which they are received.

Provided that the above said entry of a Deficient Appeal may be cancelled upon the said deficiencies being cured by the Appellant in accordance with this Rule at which point, the Appeal will be transferred to the above stated Register of Appeals.

- 18. **Initial Assessment:** (1) On receipt of an Appeal, if the Commission is not satisfied that it is a fit case to proceed with, the Commission may thereupon call upon the Appellant and/ or the Public Authority and/or other relevant parties to show cause within seven days of the receipt of the Appeal as to why the Appeal should not be dismissed through the Notice annexed to these Rules (Annexures 4 & 5). After the expiration of the said period of seven days, the Commission shall make an appropriate order recording its reasons

Provided that no Appeal shall be dismissed only on the ground that it has not been made in the specified format.

- (2) The Commission may not ordinarily consider an Appeal unless it is satisfied that the Appellant has filed an appeal before the Designated Officer and:
 - (i) the Designated Officer or any other had made a final order on the Appeal; or
 - (ii) no final order has been made by the Designated Officer on the Appeal, and a period of 3 weeks from the date on which such Appeal was preferred has elapsed.
 - (3) Where the Commission is satisfied, upon proceeding to act under sub-rule (1) above, that it is a fit case to proceed with, the Commission may decide to hear the Appeal by either a Documentary Proceeding or an In-person hearing in accordance with Rule 19 or Rule 20 of these Rules.
- 19. Documentary Proceedings:** Where an Appeal is not dismissed on an initial assessment, the Commission may,
- (1) Decide to process the Appeal without an in-person hearing on the basis only of documentation, where the issues raised on the Appeal do not require the examination of parties in person.
 - (2) Where an Appeal is to be dealt with according to the action in sub-rule (1), the Appellant shall be forthwith informed of this through the Notice annexed to these Rules (Annexure 4) and:
 - (i) the Public Authority whose decision is being appealed against shall be forthwith informed of the Appeal and shall be forwarded a copy of the Appeal and any supporting documents lodged by the Appellant;
 - (ii) where the matter involves a third party(ies), that third party(ies) shall, forthwith and as far as this is practical, be informed about the Appeal and be provided with a copy of the Appeal and any supporting documents lodged by the Appellant.
 - (3) The Commission shall require the Public Authority and /or other relevant third party (ies) to file its statement of objections against the Appeal with a copy thereof to be served simultaneously on the Appellant in such a manner as to reach the Commission and the

- Appellant within seven days of being notified as per sub-rule (2) above.
- (4) All parties are required to submit their written submissions (if any) on the matter at least seven days before the date of consideration of the Appeal on documentation.
 - (5) The Commission may by notice require the parties to supply such additional information or documents relating to the appeal as it deems necessary, including any information claimed by the Public Authority to be exempt in accordance with Section 5 of the Act, and, where necessary, the Commission shall take the required steps to ensure the confidentiality of any such information. (Annexures 4 & 5)
 - (6) In the absence of any written submission and/ or such additional information, the Commission will make its decision on the material available.
 - (7) The Commission shall provide the parties with written notice of its decision with reasons, issued under the seal of the Commission, duly authenticated by the Commission.
 - (8) Where any party(ies) wishes to raise an objection to the hearing of the matter through documentation, the Commission may allow such party(ies) to make representations in that regard and record such objection but may, in its discretion and for reasons stated, decide to proceed with the hearing in terms of this Rule.
- 20. In-person hearings:** (1) An Appeal that is being dealt with through an in-person hearing, shall be heard by the Commission.
- (2) For an Appeal under sub-rule (1) above, the Commission shall inform the Appellant through the Notice annexed to these Rules (Annexure 4) and give the Public Authority and where applicable, any third party(ies) seven days notice to file documents and written submissions (if any) in opposition to the Appeal (Annexure 5).
 - (3) In the event of the Public Authority and/ or third party (ies) electing to file documents and written submissions (if any) as per sub-rule (2), the Appellant shall simultaneously be provided with a copy of such documents.
 - (4) The Appellant shall file his or her Written Submission at least seven days before the date of hearing.

- (5) The Commission may require the parties to supply such additional information or documents relating to the Appeal as it deems necessary, including any information claimed by the Public Authority to be exempt in accordance with Section 5 of the Act, and, where necessary, the Commission shall take the required steps to ensure the confidentiality of any such information.
- (6) (i) The Commission shall-
 - (a) fix a date, time and place for the hearing of an Appeal; and
 - (b) cause to be served a notice of hearing (in the format annexed to these Rules) (Annexures 4 & 5), informing the parties of the date, time and place so fixed.
 (ii) A notice of hearing shall be served so as to reach the parties not less than two weeks before the date of the hearing (hereinafter called the hearing date).
- (7) Any party may inspect any document provided by any other party at the premises of the Commission subject to restrictions placed on confidential information supplied by a Public Authority.
- (8) The Commission may, on the date scheduled for a hearing, proceed to hear and determine the Appeal notwithstanding that any of the parties fail to appear in person.
- (9) Subject to sub-rule (10), the Commission may, before the conclusion of its hearing:
 - (i) adjourn the proceedings; and
 - (ii) set another date for continuation.
- (10) On the date of the hearing of the Appeal, no postponement or adjournment shall be granted upon the application of a party, unless, for reasons recorded the Commission is of the opinion that an adjournment is necessary to meet the ends of justice.
- (11) The Commission may decide the matter within thirty days of having received the Appeal, and shall provide the parties with written notice of its decision with reasons, issued under the seal of the Commission duly authenticated by the Commission.

21. The Commission may, at its discretion, in deciding an Appeal,

- (i) receive oral or written evidence on oath or on affidavit from any party, including the Appellant, the Information Officer, the Designated Officer and/or any third party(ies);
- (ii) peruse or inspect documents, public records or copies thereof;
- (iii) inquire through authorized officers further details or facts;
- (iv) require any person to appear before the Commission; and
- (v) hold an inquiry at its discretion in accordance with these Rules and the Rules on Inquiry prescribed by the Commission.

22. Presence of the Appellant before the Commission: The Appellant may be present in person or through his or her duly authorised representative or through video conferencing, if the facility of video conferencing is available at the time of the hearing.

23. Representation of the Public Authority and/or Third Party(ies)(if any):

- (1) The Public Authority shall authorize the Information Officer, and/or the Designated Officer to represent the Public Authority. Provided that the Commission may, for reasons recorded, exceptionally permit the Public Authority to be represented through a duly authorised representative or through video conferencing if the facility of video conferencing is available at the time of the hearing.
- (2) The third party (ies) (if any) shall be represented by himself/ herself/ themselves before the Commission.

Provided that the Commission may, for reasons recorded, exceptionally permit the third party (ies) to be represented through a duly authorised representative or through video conferencing if the facility of video conferencing is available at the time of the hearing.

24. Burden of Proof: In a hearing before the Commission the burden of proof is on the Public Authority to show that it has acted in compliance with the Act.

25. Service of notice by Commission: The Commission shall issue notices by name, which shall be served in any of the following modes:

- (i) service by the party itself;
- (ii) service by hand delivery;
- (iii) service by registered post with acknowledgement due;
- (iv) service by electronic mail where the electronic address is available with acknowledgement due.

26. Matters Arising During Appeal for Inquiry:

- (1) Where the Commission deems it appropriate, it may, in deciding an Appeal, hold an inquiry as to whether an officer or officers of a Public Authority has committed inter alia any of the following actions;
 - (a) Disciplinary or penal action specified in Sections 38(1), 39(1)(a)–(f) and 39 (2) of the Act;
 - (b) Failed to comply with the mandatory duty specified in Section 35 of the Act which requires every officer in any Public Authority giving a decision which affects any person in any way, to disclose to that person in writing,
 - (c) the reasons for arriving at such decision on a request made in that behalf by the person concerned;
 Imposed any punishment, disciplinary or otherwise on an officer or employee of a Public Authority for releasing or disclosing any information which is permitted to be released or disclosed under the Act in contravention of Section 40 of the Act.
- (2) The above stated inquiry shall be held in accordance with these Rules and the Rules on Inquiry prescribed by the Commission.

27. Decision of the Commission: (1) In deciding an Appeal, the Commission may in affirming, varying or reversing the decision appealed against and forwarding the request back to the Information Officer concerned for necessary action in terms of Section 32(1) of the Act, make inter alia, the following orders:

- (a) Order the Public Authority to provide access to the requested information, where relevant in a particular form;

- (b) Order the Public Authority to reimburse any Fees received from a citizen making a request, on the basis that the
- (c) request was not processed within the time limit set established by the Act;
Direct better records management on the part of the Public Authority;
- (d) Direct greater proactive disclosure obligations to be adhered to by the Public Authority;
- (e) Direct enhanced training programmes to be conducted by a Public Authority for its officers and/or employees;
- (f) Bring the matter to the notice of the appropriate disciplinary authority in terms of recommended disciplinary action consequent to which the said disciplinary authority shall inform the Commission of the steps taken in that regard within one month of the said notification in terms of Section 38(2) of the Act;
- (g) Decide to institute a prosecution under the Act upon ascertaining that an offence has been committed in terms of Section 39 of the Act; or-
- (h) Reject the Appeal.
- (2) The Commission shall, provide its decision to all parties to the Appeal free of charge and subsequent copies may be obtained on payment of reproduction charges.
- (3) All parties to the Appeal will be notified of the Commission's decision as soon as possible and be sent the written decision through registered post.
- (4) Once the Commission pronounces a decision on an Appeal, such decision shall be published on the Commission's website, provided that in exceptional cases certain information may be redacted from the decision to protect information which is exempt by virtue of Section 5 of the Act.

28. Record of the Proceedings: The Commission in the course of hearing an Appeal shall cause to be maintained through the Director-General and/or other officers a written record of its proceedings.

29. **Preservation of Documentation:** (1) All documentation submitted in the course of an Appeal to the Commission shall be filed of record and kept under the direction of the Commission. (2) The Commission may order that the books, papers or other exhibits produced or used at a hearing shall be retained by the Commission until the time for appealing the decision has expired and, if notice Appeal is given, until the Appeal is heard or otherwise disposed of.
30. **Withdrawal:** (1) The Appellant, while an Appeal is pending, may at any time withdraw the Appeal by forwarding to the Commission a memorandum in writing with reasons stated signed by himself / herself a copy of which is served on the other party(ies), and the Commission shall forthwith inform every other party of the withdrawal.
- (2) The Commission may, at its discretion, on being satisfied that the application for withdrawal was made by the Appellant permit the Appellant to explain to the Commission the circumstances which led to the withdrawal of the Appeal (if necessary, in camera).
- (3) If the Commission is satisfied with the reasons stated for withdrawal in sub-rules (1) and (2) above, it shall allow the withdrawal of the Appeal.
- (4) If the Commission is not satisfied with the reasons stated in sub-rule (1), it shall make an appropriate order as it deems fit.
31. **Fees:** An appeal to the Commission is exempt from the payment of a fee.
32. **Further Appeal:** Any party dissatisfied with the decision of the Commission may appeal to the Court of Appeal within one month of becoming aware of the said decision in accordance with Section 34 of the Act.
33. The Commission shall conduct an Appeal hearing under the Act in open or closed (in camera) proceedings at its discretion, having regard to the need to protect information which is exempt by virtue of Section 5 of the Act and any other relevant confidentiality interests.

Annexure III - Directives & Guidances on Pro-Active Disclosure under Sections 8 and 9 of the RTI Act, Sri Lanka

Report published under Section 8 of the Right to Information Act No. 12 of 2016

Name of Ministry:

.....

Address / Telephone No. / Email Address / Website:

.....

- 1. Guidelines for Section 8(2)(a) and 8(2)(b)(i) of the Act –**
 ‘particulars relating to the organisation, functions, activities and duties’ and ‘the powers, duties and functions of officers and employees and the respective procedure followed by them in their decision making process’.

The elements of information required to be disclosed under sub-clauses 8(2)(a) and 8(2)(b)(i) must be disclosed in a manner to provide a citizen an understanding of the organisational structure (organograph) of the Ministry and the Public Authorities (as defined under the Act), which falls under the purview of the Ministry, key management persons, their principle functions, activities, duties and powers, including the reporting and supervision lines. The objective is to inform citizens the respective powers, duties and functions of the relevant officials and the internal supervisory and reporting lines. . Accordingly, the Ministers must endeavour to provide the following information accurately and update them forthwith upon any changes being made thereto. The following format is merely provided to facilitate disclosure process, and is not mandatory to adhere to, provided all information listed below is duly disclosed.

The Minister/Deputy Minister/Secretary	Official Contact details (Address / Telephone No. / Email)	Duties, Activities & Functions [Job description and how functions are distributed - identify key areas and major outputs/tangible results/entitlements of citizens/goods/services that the Minister, Deputy Minister and Secretary are responsible for providing to the public]	Powers & Decision Making Procedures [Identify the specific powers of the Minister, Deputy Minister & Secretary of the Ministry, with reference where possible to the applicable Acts, Regulations and Circulars and other legal instruments, from which they derive such powers and the decision making procedures. An explanation of the legal foundation of the Ministry's powers is required *include information relating to delegation of financial authority]
Name of Minister :			
Name of Deputy Minister:			
Name of Secretary :			

Name & Functional Designation of Additional Secretaries/Senior Assistant Secretaries/ Assistant Secretaries	Official Contact details (Address / Telephone No. / Email)	Duties, Activities & Functions [Job description and how functions are distributed - identify key areas and major outputs/tang ible results/entitl ements of citizens/ goods/servic es that the senior officials are responsible for providing to the public]	Powers &Decision making procedures [Identify the specific powers of the senior officials of the Ministry with reference where possible to the applicable Acts, Regulations and Circulars and other legal instruments, from which they derive such powers and their decision making procedures*inclu de information relating to delegation of financial authority]

Name & Functional Designation of Directors / Deputy Directors/Additional Directors/ Assistant Directors (if any)	Official Contact details (Address /Telephone No./ Email)	Duties, Activities & Functions [Job description and how functions are distributed - identify key areas and major outputs/tangible results/entitlements of citizens/goods/services that the senior officials are responsible for providing to the public]	Powers & Decision making procedures [Identify the specific powers of the senior officials, with reference where possible to the applicable Acts, Regulations and Circulars and other legal instruments, from which they derive such powers and their decision making procedures*include information relating to delegation of financial authority]

Name & Functional Designation of Department / Sectional Heads/Executive Grade Officers	Official Contact details (Address / Telephone No. / Email)	Duties, Activities & Functions [Job description and how functions are distributed - identify key areas and major outputs/tan- gible results/entitl- ements of citizens/ goods/servic- es that the senior officials are responsible for providing to the public]	Powers & Decision Making Procedures [Identify the specific powers of the senior officials with reference where possible to the applicable Acts, Regulations and Circulars and other legal instruments, from which they derive such powers and their decision making procedures include information relating to delegation of financial authority]

****PUBLIC AUTHORITIES**

Name of Public Authority

.....

Address / Telephone No. / Email Address / Website:

.....

Name & Functional Designation of Head of Public Authority/ Executive Grade Officers/Officers & employees with decision making powers [In descending order starting from head of the organization]	Official Contact details (Address / Telephone No. / Email)	Duties, Activities & Functions [Job description and how functions are distributed - identify key areas and major outputs/tangible results/entitlements of citizens/ goods/services that officers and employees are responsible for providing to the public]	Powers & Decision Making Procedures [Identify the specific powers of the officers and employees with reference where possible to the applicable Acts, Regulations and Circulars and other legal instruments, from which they derive such powers and their decision making procedures include information relating to delegation of financial authority]

Decision Making Procedures -The procedure followed in the decision-making processes, including the data and documents used as the basis for such decisions, delegation of financial authority, channels of supervision and accountability must be clearly disclosed based on the following guidelines;

- a) Decision-making procedure can be identified in the form of a flow chart explaining the rank /grade of the public functionaries involved in the decision making process and the specific stages in the decision-making hierarchy. The decision-making procedure must be presented in a simplified version for the benefit of the common citizen.
- b) The Supervision and Reporting lines of the officials can be identified in an easily understandable format, which may be in a tabular format, flow chart or organogram.
- c) The powers of each officer including powers of supervision over subordinates involved in the decision making process must also be spelt out next to the flow chart or in a simple bullet-pointed format. The exceptional circumstances when such standard decision making process may be overridden and by whom, should also be explained clearly. Where decentralization of decision-making has occurred in order to grant greater autonomy to Public Authorities, such procedures must also be clearly explained.
- d) In the event an existing decision-making process is changed or an entirely new process is adopted, such changes must be explained in simple language in order to enable people to easily understand the changes made.

Please add other officers of the Ministry/Public Authorities who are of executive grade or have decision making powers and provide the aforesaid information in respect of each such officer

Provide information relating to the approved cadre and existing cadre and Scheme of Recruitment (SOR)

List all Public Authorities within the purview of the Ministry –

Disclose a list of all Public Authorities (as defined under Section 43 of the Act), within the purview of the Ministry. Provide the information required to be disclosed under Section 8 of the Act in respect of each such Public Authority in accordance with the guidelines provided herein. Attach a separate annexure or provide the information in a separate page for each Public Authority, and cross refer to the annexure/separate page in respect of each Public Authority in the list as demonstrated below.

Example:

- Name of Public Authority – Refer to Annexure 1/page 1;
- Name of Public Authority – Refer to Annexure 2/page 2;

2. Guidelines for Section 8(2)(b)(ii) of the Act - “the norms set for the discharge of their functions, performance of duties and exercise of powers”.

Primarily, the intention of this sub-section is that every public authority must proactively disclose the standards by which its performance should be judged. Standards may be;

- a) Qualitative or quantitative in nature,
- b) Time-wise - for example the stipulated time within which a specific task is to be discharged/completed.

In order to ensure compliance with this sub-section, Ministers must disclose norms for major functions that are being performed by the Ministry/Public Authority. All Ministers should proactively disclose the following, as relevant:

- i) Policies/Vision/Mission/Objectives;
- ii) Strategies;
- iii) Development Outcomes and Key performance indicators;
- iv) Defining the key services and/or goods that the Ministry/Public Authority provides directly (or indirectly through any other agency/contractor);
Identify and describe the processes by which the public can access and/or receive the goods and/or services that they are entitled to. Provide detailed information on public procurement processes, criteria and outcomes on decision making on tender applications; copies of contracts, and reports on completion of contracts; ; and, information on any fair and transparent complaints handling mechanism within the Authority.
- v) In the event the Ministry/Public Authority has adopted practices in the discharge of functions, which are not formally provided for, please describe such current practices.
- vi) Describing the conditions, criteria and priorities under which a person becomes eligible for the goods and/or services, and consequently the categories of people who are entitled to receive the goods and/or services;
- vii) Proposed outputs, Deliverables;

- viii) Defining the quantitative and tangible parameters (weight, size, frequency etc.) and timelines that are applicable to the goods and/or services that are accessible to the public, in particular, the reports should specify the time within which officers should work and deliver goods and/or services to citizens;
- ix) Defining the qualitative and quantitative outcomes the Minister plans to achieve through the delivery of goods and/or services (Output indicator);
- x) Identify the norms/standards that inform the decision making processes.

Wherever norms/standards have been specified for the discharge of functions by any Statutes, Rules, Instructions, Circulars, Manuals or Government Orders, they should be proactively disclosed, linking them with the decision making processes as detailed above, where applicable. For example instruments such as the “Citizen’s Charter”, Code of Conduct, Code of Ethics, Service Manuals etc.;

3. Guidelines for Section 8(2)(b)(iii) of the Act – “rules, regulations, instructions, manuals and any other categories of records”.

List all Acts, Regulations, Financial Regulations, Rules, Manuals, Guidelines, Instructions, Circulars, Standard Operating Procedures (SOPs), Codes of Conduct, if any, and any other form of external or internal rules and provisions, which provide for, *inter alia*, public procurement processes, how public works must be carried out, how they must be sanctioned and

executed, how representations, petitions and applications from citizens must be dealt with, how duties and functions must be discharged, how specific powers and authority are to be exercised, fees and charges payable in respect of particular services, deadlines for applications etc., linking them with the subject matter such instruments address. Links to such instruments (online), wherever available, should be given. All information under this section should be made available online and updated regularly.

When such instruments are amended or updated, the amended/updated versions must be uploaded as soon as practicable, but no later than 3 weeks from the date of amendment/update.

Forms/Templates that are used for applying for and delivering services/goods by the Ministry/Public Authority must be uploaded to the Ministry websites. Links to such forms (online), wherever available, should be given.

Other categories of records maintained by the Ministry/Public Authorities, which contain information relating to the services and/or goods provided or which contain information relating to procurement of goods and/or services or works contracts entered, including annual reports, all publications, lists, registers, files, data bases maintained by the Ministry/Public Authority, minutes of meetings etc. must be duly identified to enable a citizen to request for such records when necessary.

Provide information as to if such documents are available on line, available free of charge, and fees payable, if any.

Provide an index of all such material held by a Ministry/Public Authority.

4. **Guidelines for Section 8(2)(b)(iv) of the Act** –
“details of facilities available to citizens for obtaining information”.

Identify facilities and sources within the Ministry and Public Authorities available for citizens to obtain information from, including website, booklets and pamphlets available to the public, availability of information desks and their operating times, names and official contact details of the officers in charge of providing information, the nature of the information accessible by a citizen, the procedure for obtaining such information, the timelines for getting the information, fees payable, if any, etc.

Similarly, the report must disclose particulars of any arrangements in existence for public participation, consultation with or representations by members of the public, including meetings open to the public and how to attend such meetings.

5. **Guidelines for Section 8(2)(b)(v) of the Act** –
“the budget allocated, indicating the particulars of all plans, proposed expenditures and reports on disbursements made”.

The intention of this clause is to foster a culture of fiscal transparency amongst public functionaries. Keeping in view

of the technical nature of the government budgets, it is essential that Ministries/Public Authorities prepare simplified versions of their budgets, financial allocations, including proposed expenditure, and reports of disbursements, which can be understood easily by general public and place them in public domain. Budgets may also be presented in a more user-friendly manner through graphs and tables etc. The following must be disclosed in terms of this sub-section 8(2)(b)(v) of the Act;

- Annual Budget Allocation and Budget Allocation for the preceding six months;
- Strategic Plan/ Corporate Plan;
- Annual Action Plan of the Ministry, inclusive of financial targets and physical targets;
- Projected Expenditure/Disbursements for the preceding six months;
- Actual Disbursements for the preceding six months, including;
 - Capital Expenditure;
 - Recurrent and other Expenditure/Disbursements for the preceding six months– Provide a breakdown of all costs and expenditure, including but not limited to, rentals, utility costs, salaries, emoluments and allowances, travel costs (both foreign and local, including cost of air travel and accommodation), stationary, fuel, cost of other facilities, such as repair of vehicles, repairs, renovations, improvements and refurbishments to buildings and structures;
 - procurement plan;
 - Summary of the Vote Ledgers;

Provide information on subsidy programmes: Information on the beneficiaries of subsidies, the objective, amounts and implementation, including the manner of execution of subsidy programmes.

6. **Guidelines for Section 8(2)(b)(vi) of the Act –**
“the name, designation and other particulars of the
information officer or officers appointed”.

Name and official contact details of the Information Officer and Designated Officer appointed under the Act and their respective dates of appointment must be disclosed.

The prescribed manner to request for information from the above sources must be set out.

In addition to the information listed above, Ministers shall endeavour to include in their Section 8 reports such information as may be of interest to the public, among other things so as to limit the need for members of the public to resort to the use of the Act to obtain that information.

The above information shall include all relevant facts taken into consideration while formulating important policies or announcing decisions which affect the public.

As a general rule, all information made available under these rules shall be relevant, meaningful, presented in an understandable manner that best provides a true and accurate view of the subject matter to which that information related to.

Guidelines issued by the Right to Information Commission in terms of Section 9(1)(b) of the Right to Information Act No. 12 of 2016

- *Communications under Section 9 of the Right to Information Act No.12 of 2016 is required only in respect of “projects”, the value of which exceeds USD 100,000/- (in case of foreign funded projects) and LKR 500,000/- (in respect of locally funded projects). Accordingly, the terms “proposed project” or “project” hereinafter refer to projects, the value of which exceeds the above thresholds.*
- *The disclosure requirements contained here are in addition to notice and disclosure requirements that are contained in other laws, regulations, and guidelines.*
- *The term “projects” for purposes of Section 9, includes all Capital expenditure or all procurement activities approved by Procurement Committees, but excludes recurrent expenditure.*

- *Please note as a rule that notice of a proposed project as prescribed under Section 9 of the Right to Information Act No. 12 of 2016 shall be given at least three months prior to the commencement of such project. A Minister may provide one week's notice of such a project only under exceptional circumstances, in the event of an urgent project. However, even in the case of urgent projects, the Minister shall communicate the following to the Right to Information Commission in writing;*
 - a) *The reasons for the urgency to implement the proposed project;*
 - b) *Evidence substantiating the aforesaid reasons must be provided.*
- *Disclose the following information relating to a proposed project to the public generally through the following mediums, and to any particular persons who are likely to be affected by such project.*
 - a) *In a digital electronic format on the Ministry web site in Sinhala and Tamil, and if feasible in English; and,*
 - b) *Additionally, in the case of proposed projects, which are to be implemented at specific locations, billboards must be erected at the project sites at places visible to the public, publishing information as prescribed in Annexure 1 hereto; and,*
 - c) *If the implementation of the project has implications in respect of areas and settlements where internet access is not readily available, information as set out in Annexure 1 hereto must be disseminated to the residents GramaSevaNiladharis, Divisional Secretariat and local authorities as far as practicable, and*
 - d) *Through any other manner and medium as the Minister deems fit.*

**Notice published under Section 9 of the Right to Information Act
No. 12 of 2016 relating to a Proposed Project**

Date:.....

Ministry:.....

Implementing Agency:.....

A. Details of the Proposed Project

1. Description of proposed project;
2. Project Location (indicate the place(s) where project activities take place, in terms of Province, District, Division, location – provide additional description if boundary cannot be clearly demarcated);
3. Proposed date of Commencement of project;
4. Projected date of Conclusion;

B. Rationale of the Project [If a Management for Development Results (MfDR) framework has been developed for the project, disclose the same]

5. Project Objectives/ Goals;
6. Expected Project Outputs/Benefits;
7. The target beneficiaries/ stake holders;
8. Is there a likelihood of any citizen being affected by the implementation of the proposed project (for example, acquisition of private property for the project, those whose livelihood may be affected, any other rights of any person being affected)? - ☐Yes / ☐No

9. If yes, has adequate notice been provided to them and/or have they been consulted in respect of the project? – ☒ Yes / ☐ No
10. If no, explain reasons for such omission.
11. Provide details/description of steps being taken to provide compensation/reparations to affected parties, if any, where applicable and details of the institution responsible for processing applications for compensation.
12. Justification (i.e. financial cost benefit, social cost benefit etc.);

C. Project Budget& Financial Information

13. Total estimated cost of Project
14. Agreed Amounts [state in currency payable as well as LKR equivalent]
15. Source of finance (Foreign/ Local/Other – for example Public Private Partnership) – Identify the foreign or local entities/institutions involved in financing the project.
16. If the proposed project is to be implemented on the basis of a Public Private Partnerships, provide the main terms and conditions of agreement between the Government and the private sector party, including details of equity and profit share bases, financial information such as fees, tolls, or other kinds of revenue that may be collected by private sector parties under authorization from the Government.

17. List all additional benefits/concessions, if any, offered to the contractor or private parties at the cost/expense of the State/Government of Sri Lanka in the implementation of the proposed project. For example, tax holidays, tax concessions, sale/lease of land at concessionary rates/prices etc.

D. Necessary Clearances

18. State the date when approval for the proposed project was received from Department of National Planning/Economic Development Committee/ the Cabinet/BOI/Provincial Council/Local Council/Relevant Authority, as relevant.
19. Where applicable have the following been carried out;
- a) Bid evaluations? ☐ Yes / ☐ No
 - b) Feasibility studies? ☐ Yes / ☐ No
 - c) Technical evaluations? ☐ Yes / ☐ No
 - d) Financial evaluations? ☐ Yes / ☐ No

Provide dates of above reports, in particular in respect of procurement committee reports, bid evaluations committee reports, technical evaluationcommittee reports, if any;

20. Describe the Environmental Impacts on physical, biological, socio-cultural or aesthetic status, if any?
21. Has an environmental impact assessment been carried out, where relevant? ☐ Yes / ☐ No

22. If yes, provide details of the institution/entity that carried out the environmental impact assessment and date(s) of report(s).
23. If no, provide reasons for the omission.
24. Have approvals from relevant regulatory agencies been obtained, where applicable? - ☐Yes / ☐No
25. If yes, from which agencies and dates of such approval.
26. What approvals are pending?

E. Supplier/Vendor/ Contractor

27. Was the project solicited or unsolicited?
28. If unsolicited, please provide details of the project proponent, project proposal, date when such proposal was made;
29. If funding for unsolicited projects are externally sourced;
 - 29.1Name of the funder ?
 - 29.2Conditions of financing ?
30. Provide details of the supplier/vendor/contractor who will implement the project;
31. Was the contract awarded?
32. If yes, date of execution of contract?
33. If not, proposed date of execution of contract?

34. State the number of bidders who submitted bids for the project.
35. Disclosethe decisions of the technical evaluation and procurement committees, together with reasons.
36. With regard to all of the above, please indicate if there is any complaints handling mechanism conforming to accepted standards of fairness and transparency which is accessible to the public.

Any further inquiries and clarifications may be directed to..... (designation of officer incharge of providing information on the project to the public); Telephone/ E-Mail.....

Annexure 1Information to be published on Billboards at the project site

Date:.....

Ministry:.....

Implementing Agency:.....

- Description of proposed project;
- Project Location (indicate the place(s) where project activities take place, in terms of Province, District, Division, Location – provide additional description if boundary cannot be clearly demarcated);
- Proposed date of Commencement of project;
- Projected date of Conclusion;
- Project Objectives/ Goals;
- Expected Project Outputs/Benefits;
- Provide details/description of steps being taken to provide compensation/reparations to affected parties, if any, where applicable and details of the institution responsible for processing applications for compensation.
- Total estimated cost of Project
- Agreed Amounts[state in currency payable as well as LKR equivalent]
- Source of finance (Foreign/ Local/Other – for example Public Private Partnership) – Identify the foreign or local entities/institutions involved in financing the project.
- Provide details of the supplier/vendor/contractor who will implement the project.

Any further inquiries and clarifications may be directed to
 (designation of
 officer in charge of providing information on the project to
 the public); Telephone/ E-Mail.....