

W. K. W. Deshapriya Information and Communication Technology Agency (ICTA)

RTIC Appeal (In-Person Hearing)/169/2021- Order adopted as part of the formal meeting of the Commission on 02.03.2021

Order under Section 32 (1) of the Right to Information Act, No. 12 of 2016 and Record of Proceedings under Rule 28 of the Right to Information Rules of 2017 (Fees and Appeal Procedure)

Chairperson: Mr.MahindaGammampila

Commissioner: Ms.Kishali Pinto-Jayawardena

Commissioner: Mr.S.G. Punchihewa

Commissioner: Justice RohiniWalgama

Director-General: Mr.D. G. M. V. Hapuarachchi

Appellant: W. K. W. Deshapriya

Notice issued to: Designated Officer (DO), Information and Communication Technology Agency (ICTA)

Appearance/ Represented by:

Appellant – W. K. W. Deshapriya

PA - Absent

RTI Request filed on	15.10.2020
IO responded on	02.11.2020
First Appeal to DO filed on	02.11.2020
DO responded on	No response
Appeal to RTIC filed on	09.12.2020

Brief Factual Background:

The Appellant by request dated 15.10.2020 requested the following;

“Salary details of the staff employed by ICTA from December 2019 to August 2020”

The Information officer (IO) via email dated 02.11.2020 sent the response dated 26.10.2020 as follows;

1. *“This is to inform you that in accordance with Section 25 (1) of the Act we have decided not to provide you with the information requested by you via application dated 15-10-2020 bearing registration number of ICTA/RTI/OCTOBER/2020/54 (the said application)*
2. *We have decided to not to disclose the information requested by you for the reason that the said information is considered exempted from being disclosed under & in terms of Section 5 (a) of the Right to Information Act No.12 of 2016.”*

Dissatisfied with the response of the IO the Appellant lodged an appeal with the DO on 11.02.2020. As the DO failed to respond with the time period stipulated under the Act the Appellant preferred an appeal to the Commission on 09.12.2020.

Matters Arising During the Course of the Hearing:

The Public Authority (PA) was not present.

It is noted that as per the written submission of the PA dated 18.02.2021 that the DO has responded after the Appellant has lodged an appeal to the Commission. Thus the DO has responded via email dated 22.12.2020 confirming the decision informed by the Information Officer.

Upon being queried by the Commission the Appellant explained the background on which the information request was based.

Order:

The PA has responded by email dated 22.12.2020 (the response of the DO) to the request of the Appellant but in so responding, has failed to adhere to the time frames stipulated under and in terms of the Right to Information Act No.12 of 2016. The strict attention of the PA is drawn to the fact that the Information and Communication Technology Agency comes within the purview of the Right to Information Act and therefore has a statutory duty to abide by its provisions, including responding within the timelines specified by the Act. Persistent failure to do so may result in this Commission having to take appropriate steps under and in terms of the Act.

The attention of the PA and the Appellant was drawn to the fact that the function of the Commission is to ascertain whether the information requested can be legitimately and in law, be made available to the Appellant, subsequent to a consideration of whether the information does not fall within the purview of the several exemptions detailed in Section 5 (1) of the RTI Act and further, and in the event that the information does fall within the purview of an exemption is Section 5 (1), based on whether the public override in Section 5 (4) is found to apply.

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It is noted that the PA by letter dated 25.02.2021 has requested further time to submit written submissions in relation to the information request. Thus the Public Authority is directed to produce a comprehensive response before the next hearing date.

The matter is re-fixed for hearing on 16.03.2021 at 11.00 am as an in-person hearing to ascertain further steps in relation to the release of the requested information.

The Appeal is adjourned.

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RTIC Appeal (In-Person Hearing)/ 169/2021- Order adopted as part of the formal meeting of the Commission on 16.03.2021

Order under Section 32 (1) of the Right to Information Act, No. 12 of 2016 and Record of Proceedings under Rule 28 of the Right to Information Rules of 2017 (Fees and Appeal Procedure)

Commissioner: Ms.Kishali Pinto-Jayawardena

Commissioner: Mr. S.G. Punchihewa

Commissioner: Justice RohiniWalgama

Director-General: Mr.D. G. M. V. Hapuarachchi

Appellant: W. K. W. Deshapriya

Notice issued to: Designated Officer (DO), Information and Communication
Technology Agency (ICTA)

Appearance/ Represented by:

Appellant – W. K. W. Deshapriya

PA – Mahinda B. Hearth, CEO/ICTA

Hafeel Farisz, Attorney-at-Law

Jagath Seneviratne, Information Officer

Matters Arising During the Course of the Hearing:

Upon being queried as to the reasons for the denial of the release of the information requested, the Attorney-at-Law representing the PA submitted the following;

- That the information is confidential to the extent that the PA is the main digital service body in Sri Lanka.

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- That each employee is subjected to a confidentiality clause in their respective employment contract.
- That a salary offered to each employee of the PA differs based on the specialization of each employee. For example, two employee in the same level and division will have different salaries due to this differentiation.
- That the PA is cognisant of the risk that this information asked for, once released, may not be used in a *bona fide* way including replication in different forums (such as social media) which would cause disruption to the activities of the PA.
- Of consent that the PA is agreeable to provide the information requested, namely, ‘*Salary details of the staff employed by ICTA from December 2019 to August 2020*’ in the spirit of transparency and good business practices if the Appellant is willing to enter into an undertaking that the Appellant will use the said information in a *bona fide* manner..

Further, the PA elaborated on the position taken in the letter dated 09.03.2021 by Eng. Mahinda B. Hearth CEO/Designated Officer of ICTA to Director-General of the RTI Commission as follows;

“.....The request is as follows;

“Salary details of the staff employed by ICTA from December 2019 to August 2020”

As Mr. Deshapriya has been a member of the Board of Directors of ICTA during the above mentioned period, we are advised that he is entitled to the requested information. In addition, he was also Secretary to the Ministry of Digital Infrastructure and Telecommunications, during which period “Remuneration of Consultants” hired by ICTA have been provided to him. (see attached letters dated 2.05.2017 and 01.11.2017)

Therefore, notwithstanding the provisions of Section 5(1) (a), which would cause “unwarranted invasion of the privacy” of the individual consultants having fixed term contracts, we have decided to provide this information to Mr. Deshapriya based on such legal advice.

Providing of such information is in the spirit of transparency and good business practices. We are aware that the Appellant may not be bona fide in his claims and accordingly reserve the right to pursue available legal remedies in the event the information is used for purposes which would violate the At and/or other Law of the Republic.”

In consequence thereof, the PA provided the following documents to the RTI Commission for perusal;

1. Documents named ‘*ICTA pay bands- Basic Salary*’ and ‘*ICTA pay bands- Basic Salary & fixed allowances*’ containing the salary scales and job positions and;

2. A document named '*ICTA Remuneration Details*' including details of all active employees as at August 31, 2020.

In response to the above, the Appellant submitted the following;

- There should not be any secrecy in relation to remuneration paid to the public servants as such remuneration is paid from public funds.
- That the Appellant should have been aware of the salaries of the ICTA employees for the duration he was part of ICTA as an employee as well as a member of the Board of Directors but that he had been unable to obtain those details.
- That the PA has failed to adhere to the proactive disclosure requirement under the Regulation 20 as its official website link does not provide information relating to the salary scales of the executive officers of the ICTA.
- That Article 169 of Articles of Association of the ICTA must be amended or removed as it contemplates that the directors of the ICTA have no right to access the expenses of the ICTA.

Order:

In response to the information request of the Appellant which has come before this Commission on appeal, Counsel representing the PA placed documents titled '*ICTA pay bands- Basic Salary*' and '*ICTA pay bands- Basic Salary & fixed allowances*' containing the salary scales and job positions before us. The said document titled '*ICTA pay bands- Basic Salary*' was handed over to the Appellant at the RTI Commission today (16.03.2021) as of record.

It is however also relevant that, under RTI Regulations in terms of Section 41(2) of the RTI Act (Gazette No. 2004/66, 03.02.2017) certain minimum disclosure requirements are imposed on the PA in Regulation 20 thereof;

Regulation 20 relates to the proactive disclosure of Budget information: Projected budget, actual income and expenditure (including salary scales pertaining to the emoluments and related allowances of officers and employees of executive rank and above).

The attention of the PA is drawn to that part of the said Regulation, "*.....salary scales pertaining to the emoluments and related allowances of officers and employees of executive rank and above*" in regard to which, all Public Authorities must adhere to.

Consequently the PA is called upon to update the link in its official website in regard to proactive disclosure under Regulation 20 as aforesaid in relation to making public all relevant information in regard to the applicable salary scales of employees of ICTA. This is of particular importance as, given its nature and function, ICTA must serve as a role model for other Public

Authorities in Sri Lanka. We note the agreement of the PA to update the relevant link in its official website.

With regard to the release of the document named '*ICTA Remuneration Details*' including details of all active employee as at August 31, 2020, the below is stated;

- In principle, confidentiality clauses in agreements do not, *per se*, constitute a ground under the RTI Act where the release of information can be denied. However, if the information is given on a confidential basis by a third party to the PA at the time of providing such information that will amount to a ground under Section 29 read with Section 5 (1)(i) of the RTI Act to deny release of information if the public interest override in Section 5(4) is held not to apply;
- The release of information under the RTI Act cannot be subjected to any undertaking and the RTI Commission cannot enforce or compel the Appellant to give an undertaking as to what purposes he or she may or may not use the information provided to him/her;
- In the circumstances of this case, notwithstanding the provisions of Section 5(1) (a), which may operate as a ground to deny the release of information on the basis of 'unwarranted invasion of privacy' we are of the opinion that the public interest in release of the details of remuneration paid from public funds to State Officers of the PA overrides any privacy concerns that may arise from individual employment contracts, in terms of Section 5 (4) of the RTI Act.
- This Commission has, in furtherance of the aims and objectives of the RTI regime established in Sri Lanka by the RTI Act, No 12 of 2016 read together with Regulations and Rules gazetted under Sections 41 and 42 of the Act as aforesaid, been particularly conscious of the need to enforce transparency and accountability in regard to the expenditure of public funds. In that regard, several rulings issued by the Commission under Section 32 of the RTI Act have directed the release of salaries and associated benefits of employees in consequence to which, the said information has been released (*vide Airline Pilots Guild of Sri Lanka v. Sri Lankan Airlines Ltd. RTIC Appeal (In-Person)/99/2017, RTIC Minute, 12.06.2018*).
- In the foregoing circumstances, the information pertaining to *Salary details of the staff employed by ICTA from December 2019 to August 2020* is released taking into account the position of the PA as reflected in letter dated 09.03.2021 by Eng. Mahinda B. Hearth CEO/Designated Officer of ICTA to Director-General of the RTI Commission in the context of the Appellant serving as a member of the Board of Directors of the Public Authority during the above mentioned period.

In consequence thereof, the following documents are released to the Appellant as of record;

1. The letter dated 09.03.2021 by Eng. Mahinda B. Hearth CEO/Designated Officer of ICTA to Director-General of the RTI Commission;

At the Right to Information Commission of Sri Lanka

2. Documents named *'ICTA pay bands- Basic Salary'* and *'ICTA pay bands- Basic Salary & fixed allowances'* envisaging the salary scales and job positions and;
3. A document named *'ICTA Remuneration Details'* including details of all active employee as at August 31, 2020.

The Appeal is concluded.

Order is directed to be conveyed to both parties in terms of Rule 27 (3) of the Commission's Rules on Fees and Appeal Procedures (Gazette No. 2004/66, 03.02.2017).

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Kishali Pinto – Jayawardena – Commissioner

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S.G. Punchihewa – Commissioner

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R. Walgama – Commissioner
