

Mario Gomez v Ministry of Social Empowerment, Welfare and Kandyan Heritage

RTIC Appeal (In person)/51 /2018 (*Order adopted as part of a formal meeting of the Commission on 27.02.2018*)

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

Chairperson: Mr. Mahinda Gammampila

Commission Members: Ms. Kishali Pinto-Jayawardena

Mr. S.G. Punchihewa

Dr. Selvy Thiruchandran

Justice Rohini Walagama

Present: Director-General Mr. Piyathissa Ranasinghe

Appellant: Dr. Mario Gomez

Notice issued to: Shirani Weerakoon, Secretary, Ministry of Social Empowerment, Welfare and Kandyan Heritage

Appearance/ Represented by:

Appellant - Dr. Mario Gomez

PA - S. D. Udawatta, Additional Secretary, Ministry of Social Empowerment, Welfare and Kandyan Heritage

RTI Request filed on:	13.07.2017 (reminders on 23.08.2017 and 29.08.2017)
IO responded on:	11.10.2017
First Appeal to DO filed on:	25.10.2017
DO responded on:	08.11.2017
Appeal to RTIC filed on:	05.12.2017

Brief Factual Background

The Appellant by request dated 13.07.2017 and subsequent reminders dated 23.08.2017 and 29.08.2017 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. 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.

Since the PA did not respond after 30.11.2017 the Appellant lodged an appeal with the Right to Information Commission on 05.12.2017.

Matters Arising During the Course of the Hearing

Responding to a query by the Commission as to the current status of the draft as the dates mentioned in the responses of the Designated Officer to the Public Authority as aforesaid for the completion of the process had long since lapsed, Mr. S. D. Udawatta, Additional Secretary, Ministry of Social Empowerment, Welfare and Kandyan Heritage clarified 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 clarified further that this was why the Public Authority had been unable to provide the Appellant with a copy of the

draft. He stated however that if the Commission issued an Order to that effect, the said draft could be provided to the Appellant. Mr. Udawatta further stated that, given the uncertainty in the process, the Public Authority was regrettably not in a position to state as to when the draft legislation will be approved by the Cabinet and presented in Parliament.

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

Order

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 Appeal is concluded.
