

Performing of the Official Information Board's Duties in Considering a Complaint^{*}

Supreme Administrative Court Judgment No. A. 181/2560, dated 20th February B.E. 2560 (2017)

Mr. S (P)

v.

Official Information Board (D1)

Director General of the Department of the Treasury (D2)

The Defendant No.1 did not fail to perform its duties as the Plaintiff claimed. It adequately inspected the existence of the information requested by the Plaintiff. It held two meetings in order to inspect the relevant information, requested the Department of the Treasury to provide facts for consideration, and notified the Plaintiff of the result of its consideration. In addition, Section 34 of the Official Information Act, B.E. 2540 (1997) provides that the Defendant No.1 shall have the power to appoint the sub-committee to consider any matter or perform any act assigned by the Defendant No.1. Thus, the sub-committee was lawfully appointed by the Defendant No.1 and had a delegated power to consider the Plaintiff's complaint.

Legal Principles: *Negligence of Official Duty, Performance of Official Duty with Unreasonably Delay, Disclosure of Official Information*

Administrative Court Procedure: *Act on Establishment of Administrative Courts and Administrative Court Procedure, B.E. 2542 (1999) : Section 9 paragraph one (2) and Section 42 paragraph one*

Legal Provisions: *Official Information Act, B.E. 2540 (1997) : Section 32, Section 33 and Section 34*

^{*} Summarized by Kitiwan Khantitirat, Bachelor of Laws (LL.B.), Chulalongkorn University, Master of Laws (LL.M.) in International Law, Thammasat University, Master of Laws (LL.M.), Georgetown University, United States of America, Administrative Case Official, Practitioner Level, Public Law Study Group 3, Bureau of Research and Legal Studies, the Office of the Administrative Courts.

Judgment (Summary)

The Plaintiff is a representative of the group who is a person interested in Talad Mai Don Muang Market which was built on *Ratchaphatsadu* land.¹ He made a request to the Defendant No.2 for official information relating to the *Ratchaphatsadu* land as follows: (1) Information specifies that the Royal Thai Air Force returned the *Ratchaphatsadu* land where Talad Mai Don Muang Market is located (the total lot size is 21 Rai 43 6/10 Square Wah) to the Department of the Treasury and (2) The location of the *Ratchaphatsadu* land that the Royal Thai Air Force returned to the Department of the Treasury. However, the Defendant No.2 did not find the information as the Plaintiff requested. It merely possessed a letter of the Directorate of Logistics of the Royal Thai Air Force and a *Ratchaphatsadu* land return form. The Defendant No.2 notified the Plaintiff of the fact with a detailed explanation but the Plaintiff did not believe so. Thus, the Plaintiff lodged a complaint with the Defendant No.1 to consider whether such information exists.

To consider the Plaintiff's complaint, the Chairman of the official information board (the Defendant No.1) appointed an ad-hoc sub-committee to examine official information, pursuant to Section 33 of the Official Information Act, B.E. 2540 (1997). The president of the sub-committee notified the Plaintiff that the sub-committee found one piece of the requested information which indicates that the Royal Thai Air Force returned the *Ratchaphatsadu* land to the Department of Treasury but the information concerning the location of the *Ratchaphatsadu* land that the Royal Thai Air Force returned to the Department of the Treasury was not found. The Plaintiff, however, was not satisfied with the result of the examination. He claimed that the Defendant No.1 had not inspected the existence of the requested information. As a result, the Defendant No.1 neglected his duties to perform under the law, wrongfully implemented an inspection procedure, failed to respond to the Plaintiff's request and intentionally impeded the Plaintiff's right under the administrative proceeding. The Defendant No.1 unlawfully performed its duties by refusing to provide the Plaintiff the requested information.

¹ Ratchaphatsadu Land Act, B.E. 2518 (1975)

Section 4. "*Ratchaphatsadu Land*" means every kind of immovable property which is State property except the following *domaine public* of State:

(1) waste land and land surrendered, abandoned or otherwise reverted to the State according to the land law;

(2) immovable property which is in use for the people or reserved for the common use of the people such as foreshores, water-ways, highways, lakes.

An immovable property of State enterprise being a juristic person or an immovable property of local government organization shall not be deemed as *Ratchaphatsadu* land.

The Supreme Administrative Court held that the Defendant No.1 adequately performed its duties. It held two meetings in order to inspect the relevant information, requested the Department of the Treasury to provide facts for consideration and informed the Plaintiff of the result of its consideration. It proves that the Defendant No.1 appropriately inspected documents possessed by the Department of the Treasury, in accordance with Section 33 of the Official Information Act. The Defendant No.1 did not fail to perform its duties. Pursuant to Section 34 of the Official Information Act, the Defendant No.1 shall have the power to appoint the sub-committee to consider any matter or perform any act assigned by the Defendant No.1. The Defendant No.1 issued an order to designate the ad-hoc sub-committee and to delegate the power to inspect the requested official information to the sub-committee and to summon any person to give statements or provide an object, document or evidence for its consideration, and lastly, to make a final report on the inspection and inform the Plaintiff and the Defendant No.1 of the result of the inspection, and perform other tasks relating to the complaint as assigned by the Defendant No.1. Therefore, the Defendant No.1 lawfully delegated its authority to the sub-committee. The Supreme Administrative Court affirmed the Administrative Court of First Instance's decision to dismiss the case.