

**C Amarasinghe v Board of Investment (BOI)**

RTIC Appeal (In-Person Hearing)/791/2018- Order/ Minute adopted as part of the formal meeting of the Commission on 26.02.2019

Record of Proceedings under Rule 28 of the Right to Information Rules of 2017 (Fees and Appeal Procedure)

**Commission Member:** Ms.Kishali Pinto-Jayawardena

**Commission Member:** Mr.S.G. Punchihewa

**Commission Member:** Dr. Selvy Thiruchandran

**Commission Member:** Justice Rohini Walgama

**Appellant:** C Amarasinghe

**Notice issued to:** Designated Officer, BOI

**Appearance/ Represented by:**

Appellant – C Amarasinghe

PA - Dulip Samarasinghe – Director (Media)/IO

<b>RTI Request filed on</b>	07.02.2017 and 07.03.2018
<b>IO responded on</b>	07.07.2017 and 04.06.2018
<b>First Appeal to DO filed on</b>	03.07.2018
<b>DO responded on</b>	No response
<b>Appeal to RTIC filed on</b>	30.10.2018

**Brief Factual Background:**

The Appellant by information requests dated 07.02.2017 and 07.03.2018 requested for the following item of information.

*“The following item of information regarding Melwire Rolling Ltd,*

- 1. Copy of the BOI approval letter encompassing the terms and conditions applicable to his industry.*
- 2. Details of survey plans submitted to the Investment and Engineering Departments.*
- 3. Has BOI given this Company permission to expand the factory area, if so, when and for what extra production capacity?*
- 4. Replies for our letters whose dates are embodied in our fax of 07.02.2017.*

5. *Has BOI inspected the factory location as it is now and is it satisfied with its proximity to the Ja Ela waterway especially in terms of SLLRDC regulations.*
6. *Has BOI investigated matters relating to the waste water and sewage and its disposal, from the dormitory and discharge of residue materials to the ground?"*

The IO on 07.07.2017 and 04.06.2018 responded with providing information on items 2, 4, 5 and 6. Dissatisfied with the response of the IO the Appellant lodged an appeal with the DO on 03.07.2018. As the DO failed to respond with the time period stipulated under the Act the Appellant preferred an appeal to the Commission on 30.10.2018.

**Matters Arising During the Course of the Hearing:**

Written submissions of the PA dated 26.02.2019 are accepted of record.

The Appellant in his submissions stated that Melwire Rolling Ltd, the company in question was an illegal establishment in Ekala, however, had been formed with the approval of the BOI. The Appellant further submitted that this request for information was made in order to assess the environmental impact and the PA had provided him with certain information.

With regard to item 1 of the request, the BOI stated that the investor in question is a stakeholder of the BOI and there is a binding obligation on the part of the BOI to protect the confidence of their stakeholders. The PA further submitted that projects of these nature obtains approvals after the conducting of the relevant Environmental Impact Assessment tests (EIA). On being inquired on the ground for refusal under the RTI Act, the PA submitted that it would plead commercial confidence in this regard.

The PA further submitted that there was a confidential clause in the contract with regard to item 3 of the request.

The Appellant submitted that he was satisfied with the information provided for items 5 and 6.

**Order:**

The PA is directed to substantiate its position with regard to the ability to provide information requested under items 1 – 4 of the request. The PA is further directed to appraise the Commission of any confidentiality clause in relation to the requested information and if such clauses so exists, to provide such documentation for the perusal of the commission.

The PA is informed of its ability to redact information amounting to commercial confidence, as pleaded under the RTI Act, in order to disclose information requested by the Appellant

The PA's attention to section 6 of the RTI Act is drawn in this regard;



information asked for by the Appellant, and if not precisely specify the extent to which this confidentiality clause applies.

This Appeal is adjourned for a final date.

.....  
RTIC Appeal (In-Person Hearing)/791/18 - Order adopted as part of the formal meeting of the Commission on 23.07.2019.

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 Member:** Mr. S.G. Punchihewa  
**Commission Member:** Dr. Selvy Thiruchandran  
**Commission Member:** Justice Rohini Walgama

**Appellant:** C Amarasinghe

**Notice issued to:** Designated Officer, Board of Investment of Sri Lanka

**Appearance/ Represented by:**

Appellant - C Amarasinghe  
PA - Dilip S Samarasinghe, Information Officer - Board of Investment of Sri Lanka

**Matters Arising During the Course of the Hearing:**

The PA submitted that it is willing to provide some of the information requested by the Appellant and but that it had reservations regarding item No 1 and No 2 in the information request.

The Appellant was unwilling to accept the PA's response and submitted that the BOI had given approval to the Company in question to build a factory in a Government property violating procedural conditions laid out by the Government.

The Commission observed that it appears that release of the information requested warrants a larger public interest.

The PA provided information requested in Items 2, 5 and 6 to the Appellant in the presence of the Commission and submitted that information Item 4, requested by the Appellant will be handed to the Appellant subsequently.

**Order:**

The Commission directs the PA to provide written submissions within 2 weeks addressing the issue of the precise exception under which it relies on to refuse the information in items 1 and 3 of the information request as aforesaid as the basis for such refusal is not clear along with the justification as per the legal burden placed on the PA under and in terms of Section 32 (4) of the Act that the public interest does not require the release of the said information.

The Appeal is adjourned.

Next date of hearing: 10.09.2019

\*\*\*\*\*