

The Right to Information Commission

RTIC Appeal No: 1026/2021

Transparency International Sri Lanka

366,
Nawala Road,
Nawala,
Rajagiriya

-Appellant-

Vs.

Sri Lankan Airlines Ltd.

Airline Center,
Bandaranaike International
Airport,
Katunayake

-Public Authority-

Before : 1. Justice Upaly Abeyrathne (Rtd.) - Chairman
2. Kishali Pinto-Jayawardena (Attorney-at-Law) - Commissioner
3. Mr. Jagath Liyana Arachchi (Attorney-at-Law) - Commissioner

Appearance : The Appellant is represented by Ms. Piumi Madushani
The Public Authority is represented by Presidents' Counsel Palitha Kumarasinghe, Ms. Chathurika Gunasekara Attorney-at-Law, Mr. Punarjith Waidyathilaka Attorney-at-Law, Ms. Gayani Ariyaratne (Paralegal Officer/Information Officer) and Ms. Thushari Perera (Manager – Group Legal Affairs)

Written Submission: The Appellant on : Not submitted
The Public Authority on : 20.06.2022

Date of Hearing : 01.06.2022, 27.06.2022, 09.08.2022

Decided on : 09.08.2022

Decision of the Commission:

Brief Factual Background:

The Appellant by information requests dated 29.06.2021 requested for the following information.

1. *"On the case filed by Sri Lankan Airlines against Airbus SE with regard to the cancellation of purchasing of four A350 aircrafts and other losses, a copy of application/petition filed.*
2. *Documents indicating the amounts claimed as damages/compensation.*
3. *Documentation indicating the court in which the action has been filed.*
4. *Documentation indicating the country in which action has been filed."*

The Information Officer (IO) on 19.07.2021 responded as mentioned below;

" This is to inform you that we have decided to reject your requests for information (as those are exempted information covered by section 5 of the Right to Information Act (the "Act"). The applicable sub sections of Section 5(1) of the Act include section (d) and (f) and the reasons for justifying the decision to rely on are provided below.

This information is exempt under (d) as it constitutes commercial confidence and disclosure of same would prejudice the position of the Public Authority against Airbus.

This information is also exempt under (f) as it falls within the definition of confidential information by reason of communications, between a professional and the Public Authority to whom such professional provided services, which is not permitted to be disclosed under any written law."

Dissatisfied with the response of the Information Officer the Appellant lodged an appeal with the DO on 02.08.2021. The DO responded on 19.08.2021 stating that, *".... In any event I have considered the contentions made by you and the Airlines and am of the view that I maintain the same reasons communicated in the decision of the Information Officer dated 25.05.2021 and 19.07.2021 (attached) as disclosure would contravene sec. 5 (1) (d) and sec 5 (1) (f) of the RTI Act. A premature release of information would result in many negative ramifications including to the public at large who are the stakeholders. As you may be aware the current stakeholders of the Airline are: (1) Secretary to the Treasury on behalf of the Government of Sri Lanka (majority shareholder), (2)*

Employees' Provident Fund, (3) Peoples' Bank and (4) Employees who had been issued shares under an employee share ownership scheme.

Accordingly I am inclined to affirm the decision of the Information Officer."

Dissatisfied with the response of the DO the Appellant preferred an appeal to the Commission on 18.10.2021.

By complying with the direction of the Commission dated 01.06.2022, the PA has submitted their Written Submissions and the statement of objection to the Commission on 20.06.2022 stating, *inter alia*, below;

- Without prejudice to the defenses taken up by the Information Officer and the Designated Officer of the Public Authority in response to the Requests and Appeals made by the Appellant, the Public Authority further states that;
 - a) In its decision pronounced by the Crown Court of Southwark in 2020, in criminal proceedings initiated by Serious Fraud Office of the United Kingdom, the President of the Queens' Bench Division of the Crown Court, disclosed certain findings in respect of Agreement signed by the Public Authority with Airbus SE and Airbus S.A.S.;
 - b) In view of the disclosure made in the said Legal Proceedings, a difference or dispute has arisen out of the said Agreements to purchase A350 aircrafts;
 - c) In terms of the Commercial Agreements signed by the Public Authority and Airbus SE and Airbus S.A.S, negotiations, and mutual discussions to resolve and difference or dispute is a condition precedent to any Alternative Dispute Resolution process;
 - d) Though, the Public Authority commenced negotiations with intention to resolve the dispute with Airbus SE and Airbus S.A.S in respect of the Agreement to Purchase Airbus 350 aircraft and consequential losses and entered into a specific condition of "Non-Disclosure Agreement" with Airbus SE and Airbus S.A.S;
 - e) Accordingly, if the information requested in respect of the possible legal proceedings and commercial confidence/market sensitive of such negotiations, the disclosure of which would prejudice the competitive interests of a third party, then such information is exempted from disclosure.
 - f) In the absence of a pending lawsuit, the Public Authority cannot provide the appellant with information requested.
- The Public Authority states that;
 - Since, the Public Authority has not filed any such Action, the public Authority is not in position to adduce proof to prove the non-institution of a legal suit against Airbus SE or Airbus S.A.S, save and except making a Statement to that effect;

- In any event, the Public Authority has never made any official statement or any kind official publication regarding the institution of any legal suit against the Airbus SE or Airbus S.A.S in respect of the alleged cancellation of purchasing four A350 aircrafts.
- Without prejudice to the aforesaid and to the defenses taken up by the Information Officer and the Designated Officer of the Public Authority in response to the Requests and Appeals made by the Appellant, the Public Authority further states that the Public Authority is entitled in law to refuse to disclose the **information requested by the Appellant as the information so requested falls within the ambit of information exempted by section 5(1) of the Act in that**
 - a) As Public Authority has entered into negotiations for mutual resolution of the disputes with Airbus SE and Airbus S.A.S, the disclosure of any information requested will prejudice the position of the Public Authority against the Airbus SE/Airbus S.A.S thereby adversely affecting the impartiality of judiciary and due administration of justice in the event, the Public Authority legal proceedings, the information requested is exempted under section 5(1)(j);
 - b) The information requested is governed by a Non-Disclosure Agreement and relates to claims arisen from the Airbus Purchase Agreement which, despite its cancellation, is still being negotiated and in respect of which negotiations have not been concluded yet and therefore, consist of commercially sensitive information/commercial confidence;
 - c) Premature disclosure of the claim contemplated or premature disclosure of the documents in respect of any such prospective claim containing commercially sensitive information, will adversely prejudice the competitive position of the Airbus SE/Airbus S.A.S against the Public Authority and also in the benefit of other competitors and therefore, the information requested is, in any event, exempted under Section 5 (1) (a) of the Act.
- The Public Authority further states that the harm resulted from the disclosure of information requested is much higher and obviously outweighs the public interest in disclosure of the same and therefore, the Public Authority is well entitled under Section 5(4) of the Act to refuse to furnish the information requested.

Consideration:

According to the said information request the Appellant has requested, *inter alia* the copy of application/petition filed in the case filed against Air Bus SE.

Upon the receipt of this Appeal lodged by the Appellant both parties were granted opportunities to file their respective Written Submissions with regard to the matter before the Commission. The Public Authority has accordingly filed its Written Submissions dated 20.06.2022 with copies to the Appellant.

We note that, the Public Authority, in its said Written Submission in paragraph 6.3 has stated thus; “the Public Authority to date has not instituted any “court case” against the Air Bus SE with regard to the “cancellation of purchasing of four A350 Aircraft” as alleged by the Appellant.

In the absence of a pending court case, the Public Authority cannot provide the Appellant with information requested.”

We carefully observed the said submission of the Public Authority. When questioned, the Public Authority admitted the correctness of the said submission, that is to say, there is no case filed against Air Bus SE and there is no court case pending up to now.

Said position crystalizes the fact that the information request made by the Appellant cannot survive due to the fact that the base of the said information request is a non-existing fact.

Accordingly, we are of the view that the Appellant cannot have and maintain the present Appeal before the Commission. For the foregoing reasons, we make order to dismiss the Appeal.

The Director General is directed to convey the Order to the Appellant, the Information Officer and the Public Authority.

Appeal dismissed.