

The Right to Information Commission

M.R.Y Riffay

Convenor - People's Movement

Against Corruption

No. 03

6th Lane

Colombo 03

RTIC Appeal No: 05/2023

-Appellant-

Vs.

Bank of Ceylon (BOC)

Head Office

No. 01

'BOC Square'

Bank of Ceylon Mawatha,

Colombo 01

-Public Authority-

Before :

1. Justice Upaly Abeyrathne (Rtd.)		- Chairman
2. Ms. Kishali Pinto-Jayawardena (Attorney-at-Law)		- Commissioner
3. Mr. Jagath Liyana Arachchi (Attorney-at-Law)		- Commissioner
4. Mr. A.M Nahiya		- Commissioner

Appearance : The Appellant is present.

The Public Authority represented by Mrs. W.K.L.B.N Samanthie,
Asst. General Manager (Branch Credit Range II) / Information
Officer & Mrs. D.P Rathnayake, Asst. Manager

Written Submissions :

The Appellant	-	20.04.2023 & 13.06.2023
The Public Authority	-	17.04.2023

Date of Hearing : 27.04.2023

Decided on : 06.11.2024

Decision of the Commission:

Brief Factual Background:

The Appellant by information request dated 30.08.2022 requested for the following information;

Year 2007

1. *Has BOC provided loans, overdrafts and/or credit facilities to Informatics Group of Companies (Informatics Pvt Ltd, Informatics International Ltd, Informatics Institute of Technology, Informatics Agrotech, Informatics Holdings Ltd, Visual Computing Systems Ltd and/ or Converse Solutions Ltd) in 2007?*
2. *What were the amounts of each loan/s, overdrafts and credit facilities provided to Informatics Group of Companies (Informatics Pvt Ltd, Informatics International Ltd, Informatics Institute of Technology, Informatics Agrotech, Informatics Holdings Ltd, Visual Computing Systems Ltd and/ or Converse Solutions Ltd) in 2007?*
3. *What were the documents disclosed to provide such loans for the abovementioned Informatics Companies? Request to disclose documents.*
4. *Did BOC provide loans, overdrafts and/or credit facilities in 2007 to Gamini Wickramasinghe - BOC Chairman at the time, his family members - Hiran Wickramasinghe, Hasith Wickramasinghe, Kishanie Wickramasinghe/ Kishanie Perera, Janakie Wickramasinghe?*
5. *What were the documents disclosed to provide such loans to the abovementioned individuals?*
6. *What were the amounts of each loan/s, overdrafts and credit facilities provided to the above-mentioned individuals?*
7. *How many ATM machines in total were installed for BOC during the year 2006?*
8. *How many ATM machines in total were installed in 2007 for BOC?*
9. *Did Bank of Ceylon award the purchase and installation of Wincor-Nixdorf ATM machines to Informatics in 2007?*
10. *How many Wincor-Nixorf ATM machines in total did BOC purchase and install from Informatics during the year 2007?*
11. *What were the cost borne by BOC for the purchasing and installing of ATM machines from Informatics during 2007? Request for details documents and details related to invoice/s and transactions.*
12. *What was the tender procedure followed by BOC when awarding the installation of ATMs to Informatics? Request to disclose details related to the tender procedure, bids and bids made by competing vendors.*
13. *Was there a press advertisement published in any national newspaper or any other public notice calling for tenders for the installation of ATMs for BOC during the year 2007? Request to disclose press advertisement or public notice*
14. *What was the cost borne to maintain all ATM machines in 2007? Request to disclose documents*
15. *What was the cost incurred by BOC for obtaining the services from Informatics and Informatics subsidiary companies (Informatics Pvt Ltd, Informatics International Ltd,*

Informatics Institute of Technology, Informatics Agrotech, Informatics Holdings Ltd, Visual Computing Systems Ltd and/ or Converse Solutions Ltd) for the maintenance of ATMs in 2007? Request to disclose documents.

16. *What were the IT related services BOC obtained from Informatics Group of Companies and its subsidiaries in 2007? Request for invoices and transaction details*
17. *What was the tender procedure followed by BOC when awarding IT related services to Informatics Group of Companies in 2007? Request to disclose documents and tender notice.*
18. *Was there a press advertisement published in any national newspaper or any public notices by BOC calling for tenders for IT services during 2007? (Provide copy of advertisement). Disclosure of details related to the tender bids and bids made by competing vendors*
19. *What was the total costs borne by BOC for obtaining IT services from Informatics for the year 2007? Request to disclose documents.*

Year 2008

20. *Has BOC provided loans, overdrafts and/or credit facilities to Informatics Group of Companies (Informatics Pvt Ltd, Informatics International Ltd, Informatics Institute of Technology, Informatics Agrotech, Informatics Holdings Ltd, Visual Computing Systems Ltd and/ or Converse Solutions Ltd) in 2008?*
21. *What were the amounts of each loan/s, overdrafts and/or credit facilities during the year 2008?*
22. *What were the documents disclosed/tendered to provide such loans? Request to disclose documents.*
23. *Did BOC provide loans, overdrafts and credit facilities in 2008 to Gamini Wickramasinghe - BOC Chairman at the time, his family members - Hiran Wickramasinghe, Hasith Wickramasinghe, Kishanie Wickramasinghe / Kishanie Perera and/ or Janakie Wickramasinghe? What were the amounts of each loan? Request to disclose documents.*
24. *During the financial year of 2008 how many ATM machines in total were installed by BOC?*
25. *How many ATM machines did BOC purchase and install from Informatics in 2008? What was the cost incurred by BOC in purchasing and installing ATM machines from Informatics in 2008? Request to disclose documents*
26. *What was the tender procedure followed in purchasing ATMs from Informatics? Request to disclosure details and documents related to the tender bids and bids made by competing vendors.*
27. *Was there a press advertisement published in any national newspaper or public notice calling for tenders for the installation of ATM machines during 2008? Provide copy of advertisement.
Request for disclosure of details related to the tender bids.*
28. *What were the IT projects awarded to Informatics or Informatics subsidiary companies during the year 2008 by BOC?*
29. *What was the total cost borne by BOC for IT services obtained from Informatics and/ or Informatics subsidiary companies during the year 2008? Request to disclose documents.*
30. *What was the tender procedure followed in awarding IT projects to Informatics or its subsidiaries in 2008? Request for the disclosure of details related to the tender bids and bids made by competing vendors.*

31. *What was the company BOC hired to install/ invest in state-of-the art IT systems which connects 303 branches and 117 extension offices making a total of 420 fully automated centralised customer service points and 253 ATMs on 222 locations as of 2008 as indicated in the 2008 BOC Annual Report? Request for the disclosure of details related to the tender bids and bids made by competing vendors.*
32. *What was the cost of the above-mentioned IT project and the tender procedure followed in awarding such an IT project? Request for the disclosure of details related to the tender bids.*

Year 2009

33. *Has BOC provided loans, overdrafts and/or credit facilities to Informatics Group of Companies (Informatics Pvt Ltd, Informatics International Ltd, Informatics Institute of Technology, Informatics Agrotech, Informatics Holdings Ltd, Visual Computing Systems Ltd and/ or Converse Solutions Ltd) in 2009?*
34. *What were the amounts of each loan/s, overdrafts and credit facilities given by BOC to the abovementioned companies in 2009?*
35. *What were the documents disclosed to BOC in order to facilitate such loans in 2009? Request to disclose documents.*
36. *Did BOC provide loans, overdrafts and/or credit facilities in 2009 to Gamini Wickramasinghe - BOC Chairman at the time and/ or his family members - Hiran Wickramasinghe, Hasith Wickramasinghe, Kishanie Wickramasinghe/ Kishanie Perera and/or Janakie Wickramasinghe?*
37. *What were the documents disclosed to provide such loans by the aforementioned individuals? Request to disclose documents.*
38. *During the financial year of 2009 how many ATM machines were purchased and installed by*
39. *How many ATM machines were purchased by BOC from Informatics in 2009?*
40. *What was the cost incurred by BOC in purchasing and installing ATMs from Informatics in 2009? Request for invoice and transaction details. Request for full documentary disclosure.*
41. *What was the tender procedure followed in purchasing and installation of ATMs from Informatics in 2009? Disclosure of details related to the tender bids and bids made by competing vendors. Request to disclose documents.*
42. *Was there a press advertisement published in any national newspaper or public notice calling for tenders for the installation of ATM machines during 2009? Provide copy of advertisement. Request to disclose documents.*
43. *What were the IT projects awarded to Informatics or Informatics subsidiary companies during 2009 by BOC? What was the cost borne by BOC for each IT project awarded to Informatics and their subsidiaries? Request to disclose documents.*
44. *What was the tender procedure followed in awarding IT projects to Informatics or its subsidiaries in 2009? Disclosure of details and documents related to the tender bids and bids made by competing vendors. Request to disclose documents.*
45. *What was the cost borne by BOC in obtaining the services of the Visual Computing Systems (Pvt) LTD and/or Informatics group subsidiaries to provide maintenance support on Tandem Servers in 2009? Request for full documentary disclosure and invoices.*
46. *What was the tender procedure followed by BOC in obtaining the services of Visual Computing Systems (Pvt) LTD, a subsidiary company of Informatics, to provide maintenance*

support on Tandem Server in 2009? Request for the disclosure of details and documents related to the tender bids and bids made by competing vendors. Request to disclose documents.

47. *Did BOC publish any press advertisement in any national newspaper calling for tenders for the maintenance support of Tandem servers during 2009? (Provide copy of advertisement)*
48. *What were the other IT related services BOC obtained from Informatics Group of Companies and its subsidiaries in 2009? Disclosure of details related to the tender bids and bids made by competing vendors.*

Year 2010

49. *Has BOC provided loans, overdrafts and/or credit facilities to Informatics Group of Companies (Informatics Pvt Ltd, Informatics International Ltd, Informatics Institute of Technology, Informatics Agrotech, Informatics Holdings Ltd, Visual Computing Systems Ltd and/ or Converse Solutions Ltd) in the year 2010?*
50. *What were the amounts of each loan/s, overdrafts and credit facilities in 2010 provided to the Informatics Group of Companies? Request to disclose documents.*
51. *Did BOC provide loans, overdrafts and/or credit facilities in 2010 to Gamini Wickramasinghe - BOC Chairman at the time, his family members - Hiran Wickramasinghe, Hasith Wickramasinghe, Kishanie Wickramasinghe/Kishani Perera and/or Janakie Wickramasinghe? What were the documents disclosed to provide such loans? Request to disclose documents.*
52. *During the financial year of 2010 how many ATM machines were installed by BOC in total?*
53. *How many ATM machines were purchased by BOC from Informatics in 2010?*
54. *What was the cost borne by BOC in purchasing and installing ATMs from Informatics in 2010? Request for invoice and transaction details*
55. *What was the tender procedure followed in purchasing and installation of ATMs from Informatics in 2010? Request for full disclosure of details related to the tender bids and bids made by competing vendors.*
56. *Was there a press advertisement published in any national newspaper calling for tenders for the installation of ATM machines during 2010? Request to provide copy of advertisement and full disclosure of details related to the tender bids.*
57. *What was the cost incurred by BOC in obtaining the services of the Visual Computing Systems (Pvt) LTD and/or Informatics group subsidiaries to provide maintenance support on Tandem Servers in 2010? Request for full documentary disclosure and invoices.*
58. *What was the tender procedure followed by BOC in obtaining the services of Visual Computing Systems (Pvt) LTD, a subsidiary company of Informatics, to provide maintenance support on Tandem Server in 2010? Disclosure of details related to the tender bids and bids made by competing vendors.*
59. *Was there a press advertisement published in any national newspaper calling for tenders for the maintenance support of Tandem servers during 2010? Request to provide copy of advertisement*
60. *What were the IT projects awarded to Informatics or Informatics subsidiary companies during 2010 by BOC? What was the cost incurred by BOC for each project? Request for full documentary disclose of details.*

61. *What was the tender procedure followed in awarding IT projects to Informatics or its subsidiaries in 2010? Disclosure of details related to the tender bids and bids made by competing vendors. Request for full documentary disclose of details.*

Year 2011

62. *Has BOC provided loans, overdrafts and/or credit facilities to Informatics Group of Companies (Informatics Pvt Ltd, Informatics International Ltd, Informatics Institute of Technology, Informatics Agrotech, Informatics Holdings Ltd, Visual Computing Systems Ltd and/ or Converse Solutions Ltd) in 2011?*
63. *What were the amounts of each loan/s, overdrafts and/or credit facilities provided in 2011 to the abovementioned companies? Request for full documentary disclose of details.*
64. *Did BOC provide loans, overdrafts and credit facilities in 2011 to Gamini Wickramasinghe - BOC Chairman at the time, his family members - Hiran Wickramasinghe, Hasith Wickramasinghe, Kishanie Wickramasinghe/ Kishani Perera, Janakie Wickramasinghe?*
65. *What were the documents disclosed to provide such loans by the aforementioned individuals? Request for full documentary disclose of details.*
66. *During the financial year of 2011 how many ATM machines were installed by BOC in total?*
67. *How many ATM machines were purchased by BOC from Informatics in 2011?*
68. *What was the cost incurred by BOC in purchasing and installing ATMs from Informatics in 2011? Request for invoice and transaction details*
69. *What was the tender procedure followed in purchasing and installation of ATMs from Informatics in 2011? Disclosure of details related to the tender bids and bids made by competing vendors. Request for full documentary disclose of details.*
70. *Was there a press advertisement published in any national newspaper calling for tenders for the installation of ATM machines during 2011? Request for full documentary disclose of details.*
71. *What was the cost incurred by BOC in obtaining the services of the Visual Computing Systems (Pvt) LTD and/or Informatics group subsidiaries to provide maintenance support on Tandem Servers in 2011? Request for full documentary disclosure and invoices.*
72. *What was the tender procedure followed by BOC in obtaining the services of Visual Computing Systems (Pvt) LTD, a subsidiary company of Informatics, to provide maintenance support on Tandem Server in 2011? Disclosure of details related to the tender bids and bids made by competing vendors. Request for full documentary disclose of details.*
73. *Was there a press advertisement published in any national newspaper calling for tenders for the maintenance support of Tandem servers during 2011? Request to provide copy of advertisement. Request for full documentary disclose of details.*
74. *What were the IT projects awarded to Informatics or Informatics subsidiary companies during 2011 by BOC? What was the cost incurred by BOC for each project in 2011? Request for full documentary disclosure of details and invoices.*
75. *What was the tender procedure followed in awarding IT projects to Informatics or its subsidiaries In 2011? Request for disclosure of details related to the tender bids and bids made by competing vendors. Request for full documentary disclose of details.*

Year 2012

76. *Has BOC provided loans, overdrafts and/or credit facilities to Informatics Group of Companies (Informatics Pvt Ltd, Informatics International Ltd, Informatics Institute of Technology, Informatics Agrotech, Informatics Holdings Ltd, Visual Computing Systems Ltd and/ or Converse Solutions Ltd) in 2012?*
77. *What were the amounts of each loan/s, overdrafts and/or credit facilities in 2012? What were the documents disclosed to provide such loans? Request to disclose supporting documents.*
78. *Did BOC provide loans, overdrafts and credit facilities in 2012 to Gamini Wickramasinghe - BOC Chairman at the time, his family members - Hiran Wickramasinghe, Hasith Wickramasinghe, Kishanie Wickramasinghe, Janakie Wickramasinghe? What were the documents disclosed to provide such loans by the aforementioned individuals? (Request to disclose supporting documents)*
79. *During the financial year of 2012 how many ATM machines were installed by BOC in total?*
80. *How many ATM machines were purchased by BOC from Informatics in 2012?*
81. *What was the cost incurred by BOC in purchasing and installing ATMs from Informatics in 2012? Request for full documentary disclosure including invoice and transaction details.*
82. *What was the tender procedure followed in purchasing and installation of ATMs from Informatics in 2012? Request for full documentary disclosure of details related to the tender bids and bids made by competing vendors.*
83. *Was there a press advertisement published in any national newspaper calling for tenders for the installation of ATM machines during 2012? Request to provide copy of advertisement. Request for full documentary disclosure of details.*
84. *What was the cost borne by BOC in obtaining the services of the Visual Computing Systems (Pvt) LTD and/or Informatics group subsidiaries to provide maintenance support on Tandem Servers in 2012? Request for full documentary disclosure and invoices.*
85. *What was the tender procedure followed by BOC in obtaining the services of Visual Computing Systems Pvt) LTD, a subsidiary company of Informatics, to provide maintenance support on Tandem Server in 2012? Disclosure of details related to the tender bids and bids made by competing vendors.*
86. *Was there any press advertisement published in any national newspaper calling for tenders for the maintenance support of Tandem servers during 2012? Request to provide copy of advertisement.*
87. *What were the IT projects awarded to Informatics or Informatics subsidiary companies during the year 2012 by BOC? What was the cost incurred by BOC in obtaining the services of Informatics for IT projects in 2012? Request for full documentary disclosure of details.*
88. *What was the tender procedure followed in awarding IT projects to Informatics or its subsidiaries in 2012? Disclosure of details related to the tender bids and bids made by competing vendors.*
89. *In 2012 BOC had called for quotations to obtain an Anti Money Laundering (AML) software solution on Standalone Model basis. What were the companies that bided/ provided quotations for the Anti Money Laundering? Request for full documentary disclosure of details.*

90. Which IT company was eventually awarded the contract to develop an Anti Money Laundering (AML) software solution on Standalone Model basis for BOC and what was the cost of the entire project? Request for full documentary disclose of details.

Information requested under RTI Act regarding conflict of interest arising from the issuing of debentures by BOC and the possible misuse of state property

- details related to the outcome of the issue of debentures by BOC in 2008? What was the purpose of issuing the debentures by BOC in 2008? Request for full documentary disclose of details.
- a breakdown on how the funds allocated from the 2008 debenture was utilized by BOC? Request for full documentary disclose of details.
- Was there a private placement for the issuing of BOC debentures in 2008?
- What was the market value of the BOC debentures issued in 2008? And was there a floating rate or a fixed rate? What was the rate? Request for full documentary disclose of details.
- Were the funds allocated from the 2008 debenture issue used to convert and capitalize the BOC branch in London, UK as a subsidiary operating under the direct supervision of the Financial Services Authority in the UK?
- How much has been invested in the BOC branch in London, UK since its commencement of operations up to date? How much of the debenture gains have been utilized for the BOC branch in London, UK? Request for full documentary disclose of details.
- Currently, how many account holders are there in the BOC branch in London, UK?
- What is the revenue/ profits made by the BOC branch in London, UK from 2008 to date? Request for full documentary disclose of details.
- At what rate was the BOC debentures issued at its private placement in 2008? Request for full documentary disclose of details.
- Who were the BOC directors that invested in the BOC debentures in 2008?
- Did Mr. Gamini Wickramasinghe who was the BOC Chairman at the time invest a sum of USD 349,000 in debentures issued by the Bank during the year 2008? Request for full documentary disclose of details.
- Did Mr. Gamini Wickremasinghe invest USD \$349,000 in debentures issued by BOC at a private placement? Request for full documentary disclose of details.
- Was there a review conducted by BOC regarding Mr. Gamini Wickremasinghe investing USD 349,000 in debentures? Were there any objections raised by BOC regarding the conflict of interest? Request for full documentary disclose of details.
- At what rate did Mr. Gamini Wickremasinghe invest USD \$349,000 in debentures issued by BOC and what was the return on investment?
- Were the debentures issued by BOC in 2008 listed in the Colombo Stock Exchange as a debenture stock?
- Did the former BOC Chairman, Mr. Gamini Wickramasinghe, and/or his family members - Hiran Wickramasinghe, Hasith Wickramasinghe, Kishanie Wickramasinghe/ Kishani Perera and/ or Janakie Wickramasinghe invest in debentures and/ or bonds issued by BOC between the period of 2007-2013? What were the amounts invested, rate and return on investment? Request for full documentary disclosure of details.

- *During the period between 2007-2013 did former BOC Chairman Mr. Gamini Wickramasinghe, and/or his family members - Hiran Wickramasinghe, Hasith Wickramasinghe, Kishanie Wickramasinghe/ Kishani Perera and/ or Janakie Wickramasinghe invest in any private placement related to the issuing of debentures and/or bonds issued by BOC? What were the amounts invested, rate and return on investment? Request for full documentary disclosure of details.*
- *During the period between 2007-2013 did Informatics Group of Companies (Informatics Pvt Ltd, Informatics International Ltd, Informatics International Lanka Ltd, Informatics Institute of Technology, Informatics Agrotech, Informatics Holdings Ltd, Visual Computing Systems Ltd and/ or Converse Solutions Ltd) invest in debentures and/ or bonds issued by BOC? What were the amounts invested, rate and return on investment? Request for full documentary disclosure of details.*
- *During the period between 2007-2014 did Informatics Group of Companies (Informatics Pvt Ltd, Informatics International Ltd, Informatics International Lanka Ltd, Informatics Institute of Technology, Informatics Agrotech, Informatics Holdings Ltd, Visual Computing Systems Ltd and/ or Converse Solutions Ltd) invest in any private placement related to the issuing of debentures and/ or bonds issued by BOC? What were the amounts invested, rate and return on investment? Request for full documentary disclosure of details.*
- *When did BOC start providing special student loan facilities for students following degree programmes at the Informatics Institute of Technology (IIT)? How many such special student loans have been provided to students following their degree at Informatics Institute of Technology (IIT)?*
- *From 2007-2013, how many promotions has IIT conducted at the BOC head office premises or at other BOC branches?*
- *Kindly provide details related to the dates when the main auditorium/ conference halls/ conference rooms or the BOC premises was used to carry out marketing and promotions for Informatics Institute of Technology?*

Information requested under RTI Act regarding the obtaining of foreign syndicated loans in 2011 and 2012

- *What was the purpose of BOC obtaining a syndicated foreign loan worth USD \$190 million in 2012 which was facilitated by the Mashreqbank of Dubai? Request for full documentary disclosure of details.*
- *Was the syndicated foreign loan of USD \$190 million obtained in 2012 used to fund the short-term funding requirements and trade finance related needs of BOC? Kindly provide a breakdown of details on how the funds from the USD \$190 million loan was utilized? Request for full documentary disclosure of details including details on the terms of the loan, tenure and interest rate.*
- *In 2011 did BOC obtain a USD \$140 million syndicated loan facilitated by Mashreqbank?*
- *Kindly provide a breakdown of details on how the USD \$ 140 million syndicated loan obtained in 2011 was utilized and elaborate on the purpose of this loan? Request for full documentary disclosure of details including details on the terms of the loan, tenure and interest rate.*

- *In 2011 did BOC obtain a USD \$175 million syndicated loan facilitated by the Mashregbank?*
- *Kindly provide a breakdown of details on how the USD \$ 175 million syndicated loan obtained in 2011 was utilized and elaborate on the purpose of this loan? Request for full documentary disclosure of details including details on the terms of the loan, tenure and interest rate.*
- *Did Central Bank of Sri Lanka or the Ministry of Finance provide any written consent and/or review of the said syndicated loan and provide their observations prior to BOC obtaining the syndicated loan facilitated by Mashreqbank of Dubai? What were the observations made by CBSL and Ministry of Finance in obtaining the said syndicated loans? Request for full documentary disclosure of details on the review, recommendations, consent and/or observations made by CBSL and Ministry of Finance in obtaining the syndicated loan amounting to USD \$175 million, USD \$140 million and USD \$190 million obtained in 2011 and 2012.*
- *What were the foreign loans obtained by BOC during the period between 2007-2013? Request for full documentary disclosure of details regarding all types of foreign loans obtained by BOC including details on the terms of the loan, type of loan, loan tenure and interest rate.*

The Information Officer (IO) acknowledged the information request by a letter dated 31.08.2022 and requested an extension to provide information by a letter dated 19.09.2022. In a letter dated 28.09.2022, the Appellant requested the Public Authority to cooperate by 11.10.2022, taking into account the request for an extension.

The Public Authority by a letter dated 07.10.2022 had requested the following information from the Appellant.

*“..... whether ‘People’s Movement Against Corruption’ is coming under the interpretation of ‘Citizen’ under the Section 43 of the Act.
please provide us the following information of the ‘People’s Movement Against Corruption’, Statutes (Association/Society/etc.) Establishment details, Details of the members, name, national identity card number, present address and permanent address.
 If you have registered under any authority as required by the law, please provide such certificate/document for our perusal.”*

By letter dated 14.10.2022, the Appellant established that according to Section 43 of the Act the appellant is a citizen and further stated that Section 24 (5) (d) does not require to give any reasons or personal information for requesting information except those that may be necessary to contact him or her.

Subsequently, the IO furnished the following response *via* letter dated 18.10.2022.

“This refers to your information request dated 30 August 2022 addressed to the IO under the Right to Information Act No 12 of 2016.

In this connection, following are the responses for the queries raised.

No. 01-06, 20-23,33-37,49-51,62-65,76-78

Rejected under Section 5(1)(a) of Right to Information Act No 12 of 2016.

No. 8 - 17 no of machines

No. 07,09-19, 25-32, 39-48, 53-61,67-75, 80-90

No such information in bank possession as at date

No. 24 - 57 no of machines

No.38 - 74 no of Machines

No 52 - 27 no of machines.

No 66- 62 no of machines.

No.79 - 50 no of machines.

Subheading: Information regarding the issuing of debentures by the Bank

Query 1

- *Raised Rs. 4.2 billion via a listed subordinated rupee debenture of 5 years. Raised further US\$ 21.6 million via a private placement of 5-year subordinated dollar debenture.*
- *The purpose of the issuance was enhancing the capital, the single borrower limit and strengthen of the liquidity position of the Bank.*

Query 2- *Utilized to meet above mentioned requirements.*

Query 3- *USD debenture issuance was a private placement.*

Query 4

The market value of a LKR debenture was Rs. 100/-

Rate of Interest

Type A product - Fixed rate 19% p.a.

Type B product - Floating rate equal to 6M treasury bill rate +75 bps

Type C product - Zero coupon redeemable at LKR 225 each bearing 17.61 interest rate and interest paid at maturity.

- *The USD debenture was issued with fixed rate of 5.50% and floating rate of 6 month LIBOR + 3%*

Query 5

No such information in bank possession as at date.

Query 6

BOC has invested GBP 10 MIn as the capital component in BOC(UK) Ltd in 2010.

Query 7

Rejected under Section 5(1)(a) of Right to Information Act No 12 Of 2016.

Query 8

Available information is given below.

(£ '000)

<i>Year</i>	<i>2017</i>	<i>2018</i>	<i>2019</i>	<i>2020</i>	<i>2021</i>
<i>Profit before Tax (PBT)</i>	<i>18</i>	<i>85</i>	<i>108</i>	<i>(26)</i>	<i>114</i>

Query 9

The USD debenture was issued in private placement with fixed rate of 5.50% and floating rate of 6 month LIBOR+3%

Query 10-14, 16-20

Rejected under Section 5(1)(a) of Right to Information Act No 12 Of 2016.

Query 15

The LKR debenture was listed in the main board of the debt trading system of the Colombo Stock Exchange.

Query 21 & 22

No such information in bank possession as at date.

Sub heading; Information regarding the obtaining of foreign syndicated loans in 2011 and 2012

Rejected under Section 5(1)(b) (ii) of Right to Information Act No 12 of 2016.”

The appellant was dissatisfied with the response and submitted an appeal to the Designated Officer (DO) by a letter dated 28.10.2022. However, the DO's response by a letter dated 17.11.2022 was to reiterate the position taken by the IO by the letter dated on 18.10.2022 (as extracted above) and to convey the decision of their *“inability to accede to the request of the Appellant.”*

Therefore, the Appellant preferred this appeal to the Right to Information Commission (RTI Commission) dated 02.01.2023. The Appeal was first heard before the RTI Commission on 27.04.2023.

The Public Authority filed its written submission dated 17.04.2023 and the Appellant filed its written submissions dated 20.04.2023.

In summary, the Public Authority's position was as follows;

- Some of the information requested by the Appellant was denied in terms of Section 5 (1) (a) and Section 5 (1) (b) (ii) of the RTI Act.
- The Public Authority could not provide some of the information (which were of the relevance to the period from 2007-2013) as the said information is not in the possession of the Public Authority.
- The subsequent appeal to the DO was not entertained since the Bank reiterated the position conveyed by letter dated 18.10.2022 under reference no. RTI/REQ/2022/034 sent by the IO.
- The Public Authority responded to the information request of the Appellant adhering to the provisions of the RTI Act.

In summary, the Appellant's position was as follows;

- The IO has provided incomplete, misleading and false information.

- The requested information does not qualify to be rejected within the ambit of Section 5 (1) (a) and Section 5 (1) (b) (ii) of the RTI Act since BOC being a public entity is obliged to disclose information pertaining to how public money has been utilized.
- The Appellant believes there are grounds for the matter to fall within Section 31 (1) (g) of the RTI Act.
- The Chairman of BOC awarding contracts at the expense of the Public Authority, investing in debenture stocks issued by the bank and obtaining loans/overdrafts from BOC, during his tenure, are not a part of the remuneration entitlements or perks of the position.
- The information request cannot be rejected under Section 5 (1) (a) of the RTI Act information that has been requested is of public interest and not a violation of privacy, as the information requested has a direct correlation with a Public Authority's use of public funds.
- The information request cannot be rejected under Section 5 (1) (b) (ii) of the RTI Act as it does not violate any diplomatic treaties, nor does it compromise Sri Lanka's relation with any State.
- Mashreq Bank is a 'non-state actor' which is a private bank based in UAE and owned by businessman Abdulla Al-Ghurair. Therefore, securing foreign syndicated loan from an overseas private lender by a Public Authority is of public interest, due to the fact that the citizens of the country would have to ultimately pay for the loans and liabilities obtained by state institutions.
- Initially the Public Authority had attempted to delay the request by requesting an extension to provide information and further delay by requesting questions in relation to the 'citizenship' of the Appellant.
- The request by the IO for personal information including NIC details of the members of the movement to which the Appellant belongs is observed as an attempt of intimidation.

By way of submissions dated 13.06.2023, the Appellant submitted as follows (in summary);

The Appellant's primary contention is that the Public Authority has only provided incidental information which does not satisfactorily establish his statutory obligation to provide precise information to the specific questions.

- The Public Authority has failed to discharge the legal burden of proof to establish Section 5 (1) of the Right to Information Act No. 12 of 2016.
- The Public Authority has not clearly defined about the manner in which the information requested by the Appellant is encompassed within the ambit of Section 5 (1) (a) and Section 5 (1) (b) (ii) of the Right to Information Act No. 12 of 2016 with reasonable grounds of Public Authority's decision to reject the Appellant's request for information.
- The Appellant reiterates his position from the submissions dated 20.04.2023. "The Chairman of BOC awarding contracts at the expense of the Public Authority, investing in debenture stocks issued by the bank and obtaining loans/overdrafts from BOC, during his tenure, are not a part of the remuneration entitlements or perks of the position."
- The Appellant reiterates his position from the submissions dated 20.04.2023. The information request cannot be rejected under Section 5 (1) (b) (ii) of the Right to

Information Act No. 12 of 2016 as it does not violate any diplomatic treaties, nor does it compromise Sri Lanka's relation with any State. Further, Mashreq Bank is a 'foreign non-state actor' - a private bank based in UAE and the foreign syndicated loan obtained by the Public Authority is of public interest, since the citizens of Sri Lanka would have to ultimately pay for the loans and liabilities obtained by the Public Authority.

- The Public Authority has contradicted their earlier position of refusal to disclose information under Section 5 (1) (a) and 5 (1) (b) (ii) of the Right to Information Act No. 12 of 2016 by citing Section 3 (1) of the Act that the information requested is not in their possession in their submissions.
- The unavailability of records is serious breach of public trust, a public concern and a national concern as the Public Authority is subjected to an Annual audit by the Auditor-General, governed by the directives of the Financial Regulations which places a strong emphasis on maintain records.
- Section 16 (1) of the National Audit Act No. 19 of 2018 is directly violated by the unsubstantiated claim of the Public Authority that the requested information is not in possession.
- Sections 7 (1), 7 (2), 7 (3) (a), 7 (3) (b), 7 (4) and 7 (5) of the Right to Information Act No. 12 of 2016 have been violated by purportedly failing to preserve records.
- Any destruction or withholding of information is an offence committed under Section 39 of the Right to Information Act No. 12 of 2016 and officers of such Public Authority is acting male fide towards the greater public interest.
- The Annual Reports of 2010, 2011, 2012 of the Public Authority clearly mentions about LKR 140 million, LKR 285.5 million, LKR 369.5 million invested to upgrade its existing IT infrastructure, core banking system and the disaster recovery infrastructure which provides the Public Authority with the required technological platform to expand its operations.
- The 2012 Annual Report of the Public Authority categorically states data and information pertaining to Board minutes and decisions of the Public Authority are maintained and circulated to Board members through a special IT system (via iPads provided to Board members) and all current and previous minutes are archived in the system for the Board members to access them at their convenience.
- The Public Authority being the largest State-owned bank is compelled to maintain records of all its transactions, own expenses, customer data, loans, assets and liabilities.
- Some of the requested information is indicated on the Public Authority's Annual Reports and the IO and DO claiming that they do not possess the requested information is a violation of the Right to Information Act No. 12 of 2016.
- There are clear contradictions of the IO's and DO's response of "no such information in possession" in the letter dated 18.10.2022 and the Public Authority's Annual Reports of year 2008, 2009, 2010, 2011 and 2012 which has published information in relation to the requested information.

Consideration:

The right of the citizen to ask for information from a Public Authority (PA) arises when the PA is in the possession, custody or control of the information requested under and in terms of Section 3 (1) of the Right to Information Act, No.12 of 2016 (hereafter RTI Act).

Section 3(1) of the Act reads as follows:

3. (1) *Subject to the provisions of section 5 of this Act, every citizen shall have a right of access to information which is in the possession, custody or control of a public authority*

Upon the requirements of this Section being satisfied, the function of this RTI 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 falls within the purview of the several exceptions detailed in Section 5 (1) of the RTI Act. In the event that the information does fall within the purview of an exception in Section 5 (1), it is the duty of this Commission to ascertain as to whether Public Authority has addressed its mind to the question as to whether the ‘public interest in disclosing the information outweighs the harm that would result in such disclosure’ (public interest override, vide Section 5 (4)).

Accordingly, the citizen's right to obtain information from the PA arises when the requested information is in the ‘possession, custody or control’ of the PA in terms of Section 3(1) as aforesaid. The operational terms here are, ‘possession’, ‘custody’ or ‘control.’ All three (alternative) limbs in Section 3 (1) of the RTI Act, i.e., “possession, custody or control” have to be tested to ascertain if the requested information can be released in the context of a particular factual circumstance.

We note that the legislative intent of Parliament in bringing in the three limbs of Section 3 (1) using the disjunctive term (‘or’) emphasizes an expansive reading of Section 3(1). This underscores the fact that the retention of information is to be tested at an institutional level, and not merely at an individual level (viz., whether a particular officer or division in that PA is in ‘possession, custody or control’).

To suggest otherwise would mean that Public Authorities can deny information by claiming that it is under the custodianship of a different branch, division, agency or individual under its own agencies. As emphasized repeatedly by this Commission, that approach is not permitted under the RTI Act, (vide *Chamara Sampath v Parliament of Sri Lanka*, RTIC Appeal 719/2018, decision of 02.02.2021 directing the release of information concerning the list of members of parliament who have submitted their declarations of assets and liabilities to the Speaker in 2018/2010-2018, as affirmed by the Court of Appeal in CA/ RTI/004/2021, judgment dated 28.02.2023).

Further, frivolous or blanket denials of information are also not permitted. As emphasized by this Commission in previous appeals (vide; *Nirosh Kumar v Sri Lanka Army*, RTIC Appeal 111/2022, decision of 08.11.2023), Section 3 (1) of the Act arises in multiple ways. Public Authorities are legally and institutionally obliged to collect/retain information in several contexts and the fundamental question as to whether an institutional, legal or constitutional duty arises or evidence is

placed before the Commission to establish the existence of such information is carefully scrutinized by us.

Neither does it suffice to say that the information in issue has been destroyed, in which case, Public Authorities have been directed to strictly prove if the same has been done according to law. Conversely however, if a Public Authority is not under a legal duty to collect that information or factually does not, indeed, collect that information, this Commission has taken the view that Section 3(1) does not come into operation (Vide *Rubatheesan v Parliament of Sri Lanka*, RTIC Appeal 369/2021, decision of 20.07.2021, concerning an information request *inter alia*, to disclose the members of parliament who have criminal charges against them).

In that context, the primary question in this appeal is whether the Public Authority (PA) is in “possession, custody or control” of the information requested under items Nos 07,09-19, 25-32, 39-48, 53-61,67-75, 80-90 as envisaged in Section 3 (1) of the Act? The PA has taken a position that the information requested under the aforementioned items is not in its possession, without providing any explanation. The said information relates to details that are linked to transactions of the PA which transactions the PA has not denied.

Further, we note that though the PA has readily provided as to how many ATM machines were installed at the PA in the respective years asked for, the PA has declined to answer the connected question as to how many of these machines were purchased from the company in question, Informatics in that regard. We are in agreement with the submission of the Appellant that the fact of the said purchase of these machines from the company in question is borne out by the Annual Reports of the PA in the years 2009, 2010, 2011 and 2012.

We find that the said information cannot be barely denied by a dismissal on the basis of ‘no such information in bank possession as at date’ (vide response of the IO dated 18.10.2022). We emphasize that the PA has the statutory responsibility of satisfactorily discharging the burden of proof regarding a denial to provide information [Section 32 (4)]. The IO and the DO have failed to indicate clearly as to whether they are not in custody or control of the said information rather than claiming that they are not in ‘possession’ of the same. In other words, the rejection of information by the PA must encompass all three limbs of Section 3(1). This is not evidenced on the responses on record.

In fact, this bare denial that information is not in its possession even applies to tender procedures in relation to the transactions in issue as evidenced in the response of the PA to item No 58 of the information request; viz, ‘What was the tender procedure followed by BOC in obtaining the services of Visual Computing Systems (Pvt) LTD, a subsidiary company of Informatics, to provide maintenance support on Tandem Server in 2010? Disclosure of details related to the tender bids and bids made by competing vendors.’

A similar response is evidenced to connected questions taken as examples, nos;17, 18, 26, 27, 41, 42, 44, 46, 47, 55, 56, 59, 69, 70, 72, 73, 82, 83, 85, 86 and 88. It is not acceptable for the PA to offer a blanket denial in response to these questions which involve public funds. If no tenders had been called for in these impugned transactions, then the PA must state that fact, rather than blandly say, ‘no information.’

Moreover, the PA has relied on Section 5(1)(a) and 5 (1) (b) (ii) to deny other items of the information asked for.

Section 5 (1) (a) states as follows;

the information relates to personal information the disclosure of which has no relationship to any public activity or interest, or which would cause unwarranted invasion of the privacy of the individual unless the larger public interest justifies the disclosure of such information or the person concerned has consented in writing to such disclosure.

Section 5 (1) (b) (ii) states as follows;

(b) disclosure of such information—

(ii) would be or is likely to be seriously prejudicial to Sri Lanka's relations with any State, or in relation to international agreements or obligations under international law, where such information was given by or obtained in confidence;

Section 5 (4) states that;

Notwithstanding the provisions of subsection (1), a request for information shall not be refused where the public interest in disclosing the information outweighs the harm that would result from its disclosure.

Examining the application of the cited exceptions in detail, the PA has referred to Section 5(1)(a) to refuse to release the information asked for in items No. 01-06, 20-23,33-37,49-51,62-65,76-78 of the information request. However, it is not sufficient to merely cite a sub-section of Section 5 (1) of the RTI Act; rather the PA has to justify that citation by setting out the basis as to how that ground operates to deny the information asked for.

Examination of the several sets of information asked for and denied under Section 5(1)(a) reveal that these relate to details, *inter alia*, of loans, overdrafts and the like given to named companies in 2007, 2008, 2009, 2010, , 2011, 2012.

However, this Commission has clearly articulated the fact that Section 5(1)(a) of the RTI Act may be pleaded as a ground to refuse information only in instances where this concerns the ‘privacy of the individual’ (emphasis ours, as per the wording contained in the relevant Section) where the disclosure of which has no relationship to any public activity or interest or where this would cause ‘unwarranted invasion’ of such an individual privacy interest. The threshold ground in Section 5(1)(a) relates to the question as to whether the privacy of the individual is in issue first and foremost. However, as stated previously, several items of information asked for have been refused under Section 5(1)(a) despite the fact that the said information references a company and/or companies, thereby not attracting the ‘individual privacy interest’ in terms of Section 5(1)(a).

In response to items of information regarding the involvement of particular individuals in these impugned transactions, ie; *inter alia*, items no 4-6, 23, 36-37, 51, 64-65,78 and several unnumbered items under the heading ‘Regarding conflict of interest arising from the issuing of debentures by BOC and the possible misuse of state property,’ regarding which Section 5(1)(a) has been pleaded to deny release, we note that this *per se* attracts the privacy interest in that Section.

However, given that these transactions concern public funds and the possible misuse of state resources, we hold that there is no ‘unwarranted invasion of the privacy of the individual’ which is greater than the larger public interest in issue. In any event, we hold that Section 5 (1)(a) is overridden by Section 5 (4) of the RTI Act in that the public interest in releasing the same demonstrably outweighs any likelihood of ‘harm’ resulting from that disclosure. We are at a loss to identify the ‘harm’ that would be so caused in the event of the release of the said information.

Further considering the information asked for under the sub-heading ‘Regarding conflict of interest arising from the issuing of debentures by BOC and the possible misuse of state property,’ we note that the PA has released information in respect of certain items, (un-numbered in the information request). However in respect of the following question as to whether ‘*the funds allocated from the 2008 debenture issue used to convert and capitalize the BOC branch in London, UK as a subsidiary operating under the direct supervision of the Financial Services Authority in the UK?*’, the PA has responded by stating, ‘no such information in bank possession as at date’ (vide response of the IO dated 18.10.2022).

A similar response has been given to the request to ‘*provide details related to the dates when the main auditorium/ conference halls/ conference rooms or the BOC premises was used to carry out marketing and promotions for Informatics Institute of Technology?*’

We do not find this response to be in consonance with the requirements of the RTI Act. As stated previously, the PA has the responsibility of satisfactorily discharging the burden of proof regarding the said rejection, [Section 32 (4)]. The IO and the DO have failed to indicate clearly as to whether they are not in custody or control of the said information as well, apart from claiming that they are not in ‘possession’ of the same.

Further, regarding the query as to the number of account holders exist in the branch of the PA in London and in relation to queries independently numbered as No;s 16-20 under this sub-heading, that information has been rejected on the basis of Section 5(1)(a). We fail to comprehend as to how Section 5(1)(a) is infringed by revealing the number of said account holders and consequently dismiss that rejection.

In relation to the information asked for in queries numbered as 16-20, we hold that there is no ‘unwarranted invasion of the privacy of the individual’ which is greater than the larger public interest in issue. In any event, we hold that Section 5 (1)(a) is overridden by Section 5 (4) of the RTI Act in that the public interest in releasing the same demonstrably outweighs any likelihood of ‘harm’ resulting from that disclosure.

The PA has cited Section 5 (1) (b) (ii) to refuse to release information regarding the obtaining of foreign syndicated loans in 2011 and 2012 from the Mashreq Bank of Dubai, (viz; the items of information asked for are un-numbered in the information request). However in this respect as well, the rationale in citing this Section is not clearly set out. The PA has not rebutted the position of the Appellant that the said bank is a private bank based in Dubai and as such, cannot attract the application of Section 5 (1) (b) (ii).

The details asked for pertain to, *inter alia*, the question as to whether the Central Bank of Sri Lanka or the Ministry of Finance provided written consent and/or review of the said syndicated loan which clearly relate to financial accountability in that regard of the PA. Further, details have been asked for regarding the foreign loans obtained by the PA during 2007-2013. These details have cumulatively been refused to be released by the PA under a general citation of Section 5(1)(b) (ii) lacking a bare description of what these loans are and the basis on which they may attract Section 5(1) (b)(ii).

In whole, it is our considered view that the PA has failed to discharge the burden of proof under Section 32 (4) of the RTI Act to establish that it processed the information request in a manner that adheres to the Act. Indeed, as our examination of the impugned responses disclose, the said responses have been issued by the Information Officer (I) in a careless or perfunctory manner which has been affirmed by the Designated Officer (DO) without due regard to the statutory duty of care imposed under Section 31 of the Act.

The PA is apprised that the said information pertains to transparency of procedures adopted by Public Authorities in pursuance of its public function for which purpose, public funds are utilized. Accordingly, a greater standard of care must be followed in responding to information requests of this nature.

The Commission directs the release of the information requested by the Appellant in his information request dated 30.08.2022 in respect of items No. 07,09-19, 25-32, 39-48, 53-61,67-75, 80-90, 01-06, 20-23,33-37,49-51,62-65,76-78 as well as the remaining items of information that remain to be released, (un-numbered in the information request), under the respective sub-headings, 'Regarding conflict of interest arising from the issuing of debentures by BOC and the possible misuse of state property' and 'information regarding the obtaining of foreign syndicated loans' on or before 31.12.2024, with copies to the Commission.

The Commission further decides that, if the Public Authority fails to comply with the said decision of the Commission before the said date, the Information Officer and the Public Authority shall be prosecuted before the relevant Magistrate's Court under Section 39 of the Right to Information Act No.12 of 2016.

For the completeness of this decision, we place on record that, in terms of rule no. 11 of Right to Information Commission Rules of 2017, the Public Authority is not entitled to charge any fee from a citizen for the release of the information upon a decision made by this Commission.

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

Appeal concluded.