

Airline Pilots Guild v. Sri Lankan Airlines

RTICAppeal(In-Person)/99/2017 - 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) – *Heard as part of a formal meeting of the Commission on 13. 11.2017*

Chairperson: Mr. Mahinda Gammampila

Commission Members: Ms. Kishali Pinto-Jayawardena

Mr. S.G. Punchihewa

Dr. Selvy Thiruchandran

Present: Director-General Mr. Piyathissa Ranasinghe

Appellant: Airline Pilots Guild of Sri Lanka

Notice issued to: Mr. Lalith Withana, Alternate Designated Appeals Officer, Sri Lankan Airlines

Appearance/ Represented by: Captain Ruwan Vithanage, President, Airline Pilots Guild of Sri Lanka
Mr. Shamir Zavahir, Attorney at Law (Counsel for the Appellant)
Ms. Shiara Sellamuttu, Group Legal Affairs Manager (Information Officer), Sri Lankan Airlines

RTI Request filed on	: 29.06.2017
IO responded on	: 19.07.2017
First Appeal to DO filed on	: 02.08.2017
DO responded on	: 23.08.2017
Appeal to RTIC filed on	: 15.09.2017

Brief Background Facts

The Commission was informed by Captain Ruwan Vithanage, the Current President of the Pilots Guild that notice had been sent to Captain Venura Perera, former President of the Appellant body as he had been named in the information request and requested substitution of his name as the current President of the Appellant body. The Commission allowed this request.

The Information Officer (IO) representing the Public Authority informed the Commission that the Designated Officer (DO) could not attend the instant hearing and requested that the substantive matter be heard on another date. She also filed a letter addressed to the Commission by the DO requesting the same.

The Appellant had requested the following information from the Public Authority:

1. Salaries and other allowances and/or benefits of:
 - a. The CEO of Sri Lankan Airlines Limited
 - b. Head of Human Resources (HHR) of Sri Lankan Airlines Limited
 - c. Chief Commercial Officer of Sri Lankan Airlines Limited
2. All information related and/or connected to Pakistan International Airlines' (PIA) correspondence with Sri Lankan Airlines Limited
3. All information related and/or connected to PIA initial entry into an agreement with Sri Lankan Airlines Limited and all information relating to the Agreement with Sri Lankan Airlines Limited including the said agreement
4. All financial information (including but not limited to profits and/or losses and damages) connected to the Agreement and/or arrangement between PIA and Sri Lankan Airlines Limited
5. All information related to and/or connected to the termination of the Agreement and/or arrangement between PIA and Sri Lankan Airlines Limited
6. All information related to and/or connected to the cancellation of the order of Airbus A350 Aircraft (including but not limited to all Agreements and/or correspondence related to ordering of Airbus A350 Aircraft and the cancellation thereof)
7. All information related to and/or connected to the cost of personal flying training for the A320 jet conversion borne by Sri Lankan Airlines Limited and/or any party for the CEO Mr. Suren Ratwatte.

The initial information request was made to the IO on 29.06.2017. The IO had responded on 30.06.2017 with an acknowledgement, and on 19.07.2017 responded to the request refusing the information citing exemptions under Section 5 (1) of the RTI Act. The exemptions cited for item 1 of the information request were Sections 5(1) (a) and 5(1)(g), the exemptions cited for items 2- 5 of the information request were Sections 5(1)(b) (ii) and 5 (1) (d), the exemptions cited for item 6 of the information request were Sections 5(1)(i) 5(1)(d) and 5(1)(m) and the exemptions cited for item 7 were Sections 5(1) (a) and 5(1)(g).

These Sections state as follows:

Section 5 (1) (a)

“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)

“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 (1) (d)

“information, including commercial confidence, trade secrets or intellectual property, protected under the Intellectual Property Act, No. 36 of 2003, the disclosure of which would

harm the competitive position of a third party, unless the public authority is satisfied that larger public interest warrants the disclosure of such information;”

Section 5 (1) (g)

“the information is required to be kept confidential by reason of the existence of a fiduciary relationship;”

Section 5 (1) (i)

“subject to the provisions of section 29(2)(c), the information has been supplied in confidence to the public authority concerned by a third party and the third party does not consent to its disclosure;”

Section 5 (1) (m)

“the information is of a cabinet memorandum in relation to which a decision has not been taken;”

Believing that the IO had granted incomplete, misleading and false information and also relying on the Public Interest importance of the information request, the Appellant appealed to the DO on 02.08.2017. The DO responded on 23.08.2017 refusing to provide the information in items 1 and 6. Re items 2-5, the DO had stated that the requests were extremely vague and widely phrased and they would be considered if the Appellant is more specific, as the repercussion of releasing such voluminous correspondence would affect relations between the stated two countries, namely Sri Lanka and Pakistan. Following this response the Appellant had appealed to the Commission on 15.09.2017.

Matters Arising During the Hearing

Counsel for the Appellant submitted that the appeal on the said information request had been filed due to the lack of transparency of the PA. The PA had been suffering substantial losses which had been reflected in every annual report of the PA. The Appellant had an interest in this matter qua the Pilots Guild as their salaries are paid by the PA, but the pilots were also concerned as citizens since Sri Lankan Airlines was being bailed out by public funds. In recent years, the losses faced by the PA had been getting worse amidst allegations of mismanagement, cronyism, and nepotism which had worsened during the past 10 – 15 years including allegations of contracts being given with vested agendas to other parties at substantial rates.

The alleged mismanagement and corruption had sullied the name of Sri Lankan Airlines which had once maintained a good reputation and had been named in the list of top 10 global airlines. Counsel further submitted that a reduction in the number of passengers flying via Sri Lankan Airlines had not been evidenced as a matter of record. Consequently, he questioned as to how the PA claimed that it was suffering losses?

Moreover the PA had been entering into loss- making contracts, for example the contract with Pakistan International Airlines (PIA) which was the subject of one of the information requests and in a context where the counterpart signatory in that country was now undergoing criminal investigations. Despite this, he pointed out that the contract was being hailed as a

success in Sri Lanka. As a result of the controversy, the contract has been cancelled, Counsel for the Appellant claimed.

Counsel for the Appellant submitted that even though Section 5 of the RTI Act, No.12 of 2016 lists exemptions as a basis on which information may be refused, there is a public interest override in Section 5(4) and that the Appellant were specifically relying on the same in the appeal.

Section 5 (4) of the RTI Act states,

“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.”

The PA then informed the Commission that on 02.08.2017, it had provided the details of the revenue collected through the contract with PIA. The IO said that she had sent her letter of decision to provide information on 19.07.2017 and subsequently provided the above information on 02.08.2017.

The Information Officer of the PA informed the Commission that she had provided the information under Section 25 (2), 14 days after the notice of the decision. She was apprised of the fact that in all cases, the information should be provided as ‘expeditiously as possible’ in terms of Section 25 (1) and that the PA was not required to wait 14 days to provide the information as Section 25 (2) this sets out the maximum time period within which the information should be provided.

The Commission also informed the IO that the letter dated 19.07.2017 letter amounted to a refusal of the information request citing exemptions under Section 5 (1) of the Act and therefore her 02.08.2017 letter providing information in part thereafter amounted to an amendment of the above refusal. In response, the IO wished it to be put on record her submission that the letter dated 02.08.2017 was not an amendment to her letter dated 19.07.2017 as the last page of her letter dated 19.07.2017 had specifically made a reservation that she was providing part of the information under request no (4) and part of the information under request no (6) and that she would be doing so within the timelines under Section 25(2).

The IO stated that she had written to the 3rd parties (Airbus and AerCap) mentioned in item 6 of the Appellant’s information request by letter dated 19.07.2017 in line with the mandatory requirements laid down in Section 29 of the Act that a Public Authority must take into account the representations made by a third party if information that related to confidential information supplied to the Public Authority by a 3rd party, is requested under the RTI Act. By the same letter dated 19.07.2017, she had apprised the Appellants that the 3rd parties had responded requesting that the information be not disclosed in consequence of which the Public Authority took a decision under and in terms of Section 29(2)(c) to deny that portion of the information. The letters from Airbus and AerCap had been included in the response from the DO dated 23.08.2017.

The Commission also noted that there was a typo in the response by the DO; the date had been referred to as 23.07.2017 when the actual date of response was 23.08.2017.

The President of the Appellant body submitted that there is a public interest in this matter and that the letters denying the information did not do justice to the Appellants' request. He claimed that consequent to the information request against the Public Authority being filed, a campaign directed against the persons instrumental in initiating RTI proceedings had been evidenced within the institution. He also alleged that generally and due to the loss of confidence in the national carrier, close to 80 pilots have left the national carrier.

Order

It is rarely that initial hearings are determined to be necessary by us prior to written submissions being filed by both parties and a full in-person hearing is held in terms of Rule 20 of Rules of the Commission on Fees and Appeals (Gazette no 2004/66, 03.02.2017).

However in this instance, certain issues have been raised by the Appellants which necessitate the holding of an initial hearing to narrow down the exact matters in issue. The Appellant is directed to ascertain which information requested by the Appellant is already in the public domain and identify the crux of the actual information needed. The Appellant is to file the streamlined request together with their written submissions with copy to the PA by December 4th, 2017.

As the PA has pleaded many exemptions, including Section 5 (1) (m) of the RTI Act which relates to the requested information being connected to a pending cabinet memorandum, the DO is directed to clarify how this exemption is applicable in the written submissions since no documentation has been provided to support this particular claim of exemption.

Written submissions by the PA with copy to the Appellant are to be filed by December 18th, 2017. Both written submissions will be considered at the next date of hearing.

Next date of hearing: 02/01/2018

The Appeal is adjourned.

The Appeal date was further adjourned to 08/01/2018 as there was a delay in providing the written submissions.

RTICAppeal(In-Person)/99/2017 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) – *Heard as part of the meeting of the Commission on 08.01.2017*

Chairperson: Mr. Mahinda Gammampila

Commission Members: Ms. Kishali Pinto-Jayawardena

Mr. S.G. Punchihewa

Dr. Selvy Thiruchandran

Justice Rohini Walgama

Present: Director-General Mr. Piyathissa Ranasinghe

Appellant: Airline Pilots Guild of Sri Lanka

Notice issued to: Mr. Lalith Withana, Alternate Designated Appeals Officer, Sri Lankan Airlines

Appearance/ Represented by: Captain Ruwan Vithanage, President, Airline Pilots Guild of Sri Lanka
Nalin Ladduwahetty P.C., Attorney at Law (Counsel for the Appellant)
Shamir Zavahir, Attorney- at -Law (Counsel for the Appellant)
Buddhika Chandrasekara, Apprentice Counsel, Pilots Guild
Tarindi Wijayapura, Apprentice Counsel, Pilots Guild
Lalith Witana, Group Chief, Finance & Administration Officer, Sri Lankan Airlines
M.A. Ranasinghe, Head of Group – Legal, Sri Lankan Airlines
Shiara Sellamuttu, Group Legal Affairs Manager (Information Officer), Sri Lankan Airlines
Thushitha Ranasinghe, Attorney –at- Law

Matters Arising During the Hearing

It was minuted before the Commission that the written submissions made by both parties to the Appeal had been received by the Commission. The Commission called upon the Appellant to clarify on the submission by Sri Lankan Airlines in its written submission that the initial information request had been added to in the streamlined request submitted by the Appellant.

Sri Lankan Airlines had in its written submission averred that the initial information request Item 6 has been added upon in the streamlined request in the following manner:

Request No .5

All agreements relating to the purchase and cancellation of Airbus A350 Aircraft.

Request No. 6

All financial information of the profit and/or loss and/or damages relating to and/or connected to the purchase and cancellation of the order of Airbus A350 Aircraft.

Request No. 7

All financial analysis/reports on the purchase agreements (relating to the order of Airbus A350 Aircraft) on which the Board decisions were made to terminate the purchase agreements, including all data on hidden costs and accumulated costs.

Request No 8

All correspondence related to the purchase and cancellation of the ordering of Airbus A350 Aircraft.

Counsel for the Appellant stated that he had been retained upon short notice and admitted that the contents of the revised information requests submitted in appeal may need to be reframed. The Commission stated that the matter will be decided on the original information request..

Counsel for the Appellant submitted that in order to better articulate their position, the Appellant would need more time as there should be a proper hearing of the matter. He further submitted that the situation within Sri Lankan Airlines had also changed and that the significance of receiving the information at this stage was much higher than when the request for information was submitted. He noted that the Appellant wished to record all their concerns as Sri Lankan Airlines was the national carrier and the country's brand to the outside world.

The Public Authority submitted that the information seeking process had already started but that after the Public Authority had made its objections, the Appellant was asking for further time to reframe the questions. She stated that the Respondent was not appreciative of the request to grant further time and requested the Commission to make its decision based on the process already underway. She further submitted that the PA was engaged in doing business with international parties and that it could not jeopardise those transactions.

The Information Officer of Sri Lankan Airlines submitted that information on the total salary of the Senior Management consisting of 13 Officers was given in the PA's Annual Report with regard to their Grade. It is used as an attempt to clarify the grade structure.

The Commission noted that what was requested was more than information on the Grade Structure and that in India details of such salaries are required to be provided through Section 4 (1) (b) of the RTI Act itself as a proactive disclosure requirement. In Sri Lanka, it had been provided for through Regulation 20 of the Regulations Gazette No. 2004/66 gazetted on 03.02.2017.

The Commission also brought to the attention of the PA that it had selectively quoted from the decision of the Central Information Commission of India in *Mrdr Dheeraj Kapoor Vs Directorate of Health and Family and Others* in its Written Submissions even though the ratio in that case supported the provision of the requested information with regard to salaries.

Order

For the purposes of this appeal, the original information request by the Appellant will be taken as the relevant document. .

Item 1 of the initial information request is as follows:

Salaries and other allowances and/or benefits of:

- a. The CEO of Sri Lankan Airlines Limited
- b. Head of Human Resources (HHR) of Sri Lankan Airlines Limited
- c. Chief Commercial Officer of Sri Lankan Airlines Limited

Item 7 of the initial information request is as follows:

All information related to and/or connected to the cost of personal flying training for the A320 jet conversion borne by Sri Lankan Airlines Limited and/or any party for the CEO Mr. Suren Ratwatte.

In terms of the Commission's Regulations gazetted in Regulation 20 (1) (ii) on proactive disclosure there is a duty on the PA to disclose such information proactively to the Public.

Regulation 20 (1) (ii) states as follows:

01. In accordance with the power to direct a Public Authority to provide information in a particular form under Section 15(d) of the Act and in keeping with the overriding principle of Proactive Disclosure, all Public Authorities shall routinely disseminate, at a minimum, the following key Information including through a digital or electronic format;

- (ii) “Organizational information: Organizational structure including information on personnel, and the names and contact information of executive grade public official their remunerations, emoluments and allowances.”

The PA is directed to file submissions in regard to the manner in which the instant Regulation on proactive disclosure relates to the said information requests. The said Regulation which is a voluntary duty on Public Authorities relates to the lowest standard possible in respect of information disclosure. The process of reactive disclosure detailed in Sections 24 to 25 of the Act signifies a much higher level of information disclosure in consonance with the principle of maximum disclosure subject to narrowly defined exceptions set out in Section 5 (1) and its various sub-sections. Similarly the PA’s attention is directed to Regulation 20 (1) sub-sections (ii), (iii), (iv), (v), and (vi) of the said Regulations in that regard.

Further time will be granted for written submissions. Appellant is directed to send its written submissions to the Commission with copy to the PA by 18th January 2018. PA is directed to send its written submission to the Commission with copy to the Appellant by 25th January 2018.

Next date of hearing – 06/02/2018.

RTIC Appeal(In-Person)/99/2017- 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) – *Heard as part of the meeting of the Commission on 06.02.2017*

Chairperson: Mr. Mahinda Gammampila

Commission Members: Ms. Kishali Pinto-Jayawardena

Mr. S.G. Punchihewa

Justice Rohini Walgama

Present: Director-General Mr. Piyathissa Ranasinghe

Appellant: Airline Pilots Guild of Sri Lanka

Notice issued to: Mr. Lalith Withana, Alternate Designated Appeals Officer, Sri Lankan Airlines

Appearance/ Represented by:

Captain Ruwan Vithanage, President, Airline Pilots Guild of Sri Lanka

Nalin Ladduwahetty, PC (Counsel for the Appellant)

Shamir Zavahir, Attorney –at- Law (Counsel for the Appellant)

Hafeel Farisz, Attorney-at-Law

S. M. Kanamge, First Officer – Pilots Guild
Dr. Shivaji Felix, Attorney-at- Law, Counsel for Sri Lankan Airlines
Lalith Withana, Group Chief, Finance & Administration Officer, Sri Lankan Airlines
M.A. Ranasinghe, Head of Group – Legal, Sri Lankan Airlines
Shiara Sellamuttu, Group Legal Affairs Manager (Information Officer), Sri Lankan Airlines

Matters Arising During the Hearing

It is recorded that the Written Submissions of the Appellant and the Public Authority were received by the Commission respectively on 18th January 2018 and 5th February 2018.

The PA had taken up the preliminary objection in the said Written Submissions that it was not a Company incorporated under the Companies Act No. 7 of 2007 and therefore was not a PA as defined in Section 43 of the RTI Act No. 12 of 2016.

The written submission of Sri Lankan Airlines stated in paragraph 12 that the definition of a ‘Public Authority’ as provided in Section 43 (e) of the RTI Act referred to a company incorporated under the Companies Act No. 7 of 2007 in which the State, or a public corporation or the State and a public corporation together hold twenty five per centum or more of the shares or otherwise has a controlling interest. Sri Lankan Airlines submitted that it was incorporated as a company named Air Lanka in 1979 under the Companies Ordinance. The Company then changed its name to Sri Lankan Airlines in 1999 under the Companies Act No. 17 of 1982. The Company then re-registered as a Company under the Companies Act No. 7 of 2007 as is required in the provisions of the Act.

Sri Lankan Airlines submitted that the Companies Act No. 7 of 2007 in Section 529 defines a Company as one incorporated under the Act or an existing company. Therefore, it maintained that since it was not ‘incorporated’ under the said Act but only merely re-registered as an existing Company, the definition in Section 43 (e) of the RTI Act does not apply to it. It was also submitted that this amounted to a patent lack of jurisdiction in the Commission to hear the matter on appeal despite acquiescence, waiver or omission by the Public Authority.

Counsel for the Appellant submitted that the issues in Appeal had already been crystallised in the two sets of written submissions provided to the Commission. He stated that the written submissions of the Appellant party deals with all arguments set forth by the PA except the jurisdictional issue as it was newly taken up and in regard to which, the Appellant had received the Submission of the Public Authority the day before the hearing.

It was submitted that the position of the Appellant was that even though there had been a change to the Companies Act there was also a continuation provision and that if the Companies Act applied to all companies irrespective of whether it was incorporated under the Act or an existing one it should be the same with regard to the RTI Act. He further submitted that Sri Lankan Airlines had till now, seemed to have acted under the impression that the Act

applies to it since it had acquiesced to the information requesting process and the Appeal hearing before the Commission. He further requested time to provide written submissions addressing the preliminary objection raised by Sri Lankan Airlines.

Counsel for Sri Lankan Airlines reiterated that it could not be deemed to be a 'public authority' within the meaning and scope of the RTI Act unless the law provided for it. He stated that the Public Authority was merely an existing company which had re-registered under the Companies Act.

Order

As a body established under the RTI Act, No 12 of 2016 to promote transparency and accountability in public authorities (viz; the preamble to the Act) and irrespective of the legality of the jurisdictional objection raised by the Public Authority as being patent in nature which remains to be decided, this Commission notes with concern the fact that, that after a full one year of acting in compliance with the RTI Act, including the appointment of an Information Officer and a Designated Officer, the Public Authority is now taking up the position that the Act does not apply to it.

The next hearing will be in relation to determining the jurisdictional issue raised as aforesaid in the Written Submissions of the Public Authority. The Appellant is directed to send written submissions to the Commission (with copy to the Public Authority) by 14th February, 2018 on the Appellant's response to the same. The Public Authority is directed to send its Written Submissions thereto to the Commission (with copy to the Appellant) by 20th February, 2018.

In order to obviate confusion in regard to the handing over/acceptance of the Written Submissions by the parties as evidenced previously and resulting in the Written Submissions, including the raising of the jurisdictional objection, being belatedly filed by the Public Authority the day before this hearing, the parties are directed to file the same through electronic mail on the aforesaid dates.

Next date of hearing - 23/02/2018
