

Airline Pilots Guild of Sri Lanka 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 (CCO) 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. He 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 Information Officer of the PA (IO) said that the last page of her letter dated 19.07.2017 had 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). Accordingly she provided the above information on 02.08.2017.

The IO 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 IO further 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 Designated Officer (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 considerable 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 08.01.2018*

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 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 lodged its objections on record, the Appellant was asking for further time to reframe the information requests. 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 (CCO) 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 RTI 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 officials 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.

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 06.02.2018*

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, 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

Update as of 23/03/2018: The arguments regarding the preliminary objection raised by Sri Lankan Airlines was heard on February 23rd 2018 and Order was delivered separately on the said matter on March 23rd 2018 (Vide <http://www.rticommission.lk/web/images/pdf/23032018/ul-rticappea-jurisdiction-point-22032018.pdf>).

It was held that Sri Lankan Airlines comes within the ambit of Section 43 of the Right to Information Act, which defines a Public Authority as 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.

The matter was adjourned for April 24th, 2018 for consideration on the merits subject to the Public Authority availing itself of the right to appeal against the decision under Section 34 (1) of the RTI Act.

By email dated April 20th 2018, the Public Authority (Sri Lankan Airlines) informed the Commission that it would not be appealing the order delivered by the Commission on the Preliminary Objection regarding Jurisdiction.

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 24.04.2018*



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 Malik Latiff, Airline Pilots Guild of Sri Lanka (ALPGSL)
Nalin Ladduwahetty P.C., Attorney at Law (Counsel for the Appellant)
Tarindi Wijayapura, Attorney at Law, ALPGSL
Hafeel Farisz, Attorney at Law, ALPGSL
Suchithe M. Kankanamge, Committee Member, ALPGSL
Dr. Shivaji Felix, Counsel for Sri Lankan Airlines
Shiara Sellamuttu, Group Legal Affairs Manager (Information Officer), Sri Lankan Airlines

Matters Arising During the Hearing

The PA submitted through Counsel that it wished to rely on comprehensive Written Submissions filed in relation to the information request of the Appellant and reiterated its concerns with regard to information submitted confidentially by third parties to the PA.

Where salaries of executive officers were concerned, the PA submitted that the privacy of the said individuals would be violated by the provision of such information, stating that the personal security of the said individuals would be jeopardised if their earnings were made public and contended that it had already attached the salary scales/Grades and the corresponding payments to its Written Submissions. It was conceded however that this document did not indicate what exactly each individual was paid together with all benefits, remunerations, etc but was limited to the basic salary amount for the said level of employment.

Counsel for the Appellant submitted that there were concerns on the part of the staff of the Appellant body that tax payments of the said individuals were being offset by the PA, which itself was functioning on public money. He further submitted that once a person enters public life, his / her right to privacy is severely limited, that this was in order to prevent corruption and that the PA itself was being maintained with considerable public funds.

The PA submitted that it had complied with the orders of the Commission in good faith and that it had already disclosed the salary scales of payments made with the total per month of salaries paid in respect of each grade in its written submissions. It noted that the Head of Human Resources was classified as belonging to Grade 12, and that the Chief Officers (CEO & CCO) belonged to Grade 13.

Counsel for Appellant submitted that since there was already a public indication of the salary scale, any person who would engage in threatening the personal security of the said officers would still be able to if he/she had basic knowledge regarding this information and that this would be the case unless there is a huge discrepancy between the amount given in the salary scales and the actual amount being paid to the said officers.

Counsel for the Appellant handed over to the Commission an agreement between PIA and Hellenic Airways and stated that the said document was publicly available on the internet, and therefore the same should apply to the PA's agreement with PIA. Counsel stated that the Appellant body was a stakeholder since the members of the body fly the said aircrafts. The PA submitted that it was bound by a non – disclosure agreement in relation to the said agreement with PIA and that the agreement was covered by British law. The PA submitted that it could make the agreement available to the Commission. It was further submitted that the Principal Agreement was dated 04. 08.2016 and that it expired in April 2017. The wet lease had run for 3 months and then a further 3 months.

The PA further submitted that in its last written submissions it had mentioned that the agreement with PIA had been profitable. It submitted that even though the agreement had expired, the confidentiality clause survives the contract (in relation to item 5).

In relation to item 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)*') the PA submitted that there had been a refusal by the 3rd Party to disclose the said information in terms of Section 5 (1) (i) which states that access to the information shall be refused when, *'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'*

The Appellant body submitted that with regard to the said item, it would abide by the order of the Commission. It further submitted that its main concern was that the said cancellation had been done arbitrarily and had incurred serious loss to the Airlines since damages had to be paid. The Appellant body stated that it had received information about the involvement of a third party in this matter who had been paid a large amount of money. The Appellant body submitted that this issue could have been better managed since the mishandling of the same had put the Airlines into a serious predicament.

Order

Even where a third party has refused disclosure of confidential information supplied to a Public Authority under Section 591(i) read with Section 29 of the Act, this Commission is mandated in terms of the proviso to Section 29(2) (c) of the Act, to direct the release of the said information if the public interest demonstrably outweighs the private interest in non-disclosure. This is buttressed also by the general public interest override contained in Section 5(4) of the Act.

It is further noted that Section 6 of the RTI Act, No. 12 of 2016 states as follows,

"6. Where a request for information is refused on any of the grounds referred to in section 5, access shall nevertheless be given to that part of any record or document which contains any

information that is not exempted from being disclosed under that section, and which can reasonably be severed from any part that contains information exempted from being disclosed.”

In previous such instances, this Commission has ordered information to be provided by severing any information which relates to the third party where disclosure of the information is objected to by the said Third Party.

In order to assess its responsibilities under Sections 5(4) and the proviso to Section 29 (2) (c), the PA is directed to provide the Commission with the documentation on the process followed in relation to item 6 in order to determine how much of it relates to the exemptions cited by the PA, i.e. Section 5 (1) (d), Section 5 (1) (i) and Section 5 (1) (m).

Further, the PA is also directed to submit a copy of its agreement with PIA (including the non-disclosure clause) for the perusal of the Commission in order to decide whether such information should be in the public domain. The PA is directed to handover all the above mentioned documentation on or before May 3rd, 2018.

Next date of hearing: 09/05/2018

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 09.05.2018*

Chairperson: Mr. Mahinda Gammampila

Commission Members: Ms. Kishali Pinto-Jayawardena

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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 (ALPGSL)
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Hafeel Farisz, Attorney at Law, ALPGSL
Suchithe M. Kankanamge, Committee Member, ALPGSL
Dr. Shivaji Felix, Counsel for Sri Lankan Airlines

Shiara Sellamuttu, Group Legal Affairs Manager
(Information Officer), Sri Lankan Airlines

Matters Arising During the Hearing

Following the direction by the Commission at the last hearing the PA had submitted on 01.05.2018 board meeting minutes in respect of contractual commitments with regard to ordering of A350 aircraft and board meeting minutes in relation to termination of the A350 aircraft and a copy of the wet lease agreement with PIA and the extension agreement with PIA for the Commission’s perusal.

Counsel for the PA submitted that Board Meeting Minutes related to sensitive matters and were confidential in nature but if the Commission considered that it was not so, then it would take its direction into consideration. However, it was submitted that if that were to be the case and if confidentiality did not attach to board of director meetings, then the minutes could may as well as published and posted online and that board meeting minutes may need to be made available to each and every person who asks for it.

Counsel for Appellant contended in response that this was public money which was being used by the Public Authority without signs of recovery or profit. He further stressed that information regarding the said expenditure could not be refused on the basis of assurances by the Public Authority that the Board of Directors’ decision had been taken *bona fide* and there was no reason to worry. He submitted that the purpose of the RTI Act was to ascertain if there had been transparency and accountability in the decision making process. He further submitted that even though this was a commercial decision being taken by using public funds, the information requested did not relate to any commercially confident information.

.....
Order

The contention made by Counsel for the PA that if the minutes of meetings of directors would be made available under the RTI Act, then there is no reason for such meetings to be held privately but the same could be held in the open, is not a tenable argument in respect of assessing the disclosure or the non-disclosure of the information requested since that argument applies equally to many aspects of what is defined as information in Section 43 of the Act.

For example, that same argument could be made in respect of emails or opinions that are included within the definition of ‘information.’ If that argument were to be accepted, then the notion of the right to know would lose its essential meaning within the four corners of the Act. In the instant case, what needs to be assessed is if the public interest in disclosing the information requires the disclosure as weighed against the exceptions pleaded by the Public Authority and if that be the case, then if the relevant information could be severed from the said minutes of meetings.

The PA is directed to provide the Commission with the information listed in item 6 of the information request in order to assess the public interest in disclosing the same.

It is also evinced from the documentation provided to us that the decision of the Board of Directors in 2016 to purchase the Aircraft was consequent to a Board Paper submitted by the

then CEO Mr. Suren Ratwatte on 09.03.2016. The PA is directed to make that board paper available to the Commission on or before May 22nd 2018.

Final Order is reserved for delivery on 12.06.2018
