# The Right to Information Commission

R.S.Hettiarachchi,
No.405/1,
Temple road,
Waduruppa,
Ambalanthota.

**-Appellant-**

**RTIC App/No :** 1061/2025

Vs.

Sri Lankan Airlines Limited,
Airline Centre,
Bandaranaike International Airport,
Katunayake.

**-Public Authority-**

**Before :**
1. Mr. Dayaratne Lankapura - Chairman
2. Justice D.N. Samarakoon (Rtd.) - Commissioner
3. Ms. Kishali Pinto-Jayawardena (Attorney-at-Law) - Commissioner
4. Mr. A.M. Nahiya - Commissioner

**Appearance :** The Appellant is present via zoom technology.

The Public Authority represented by Information Officer/ Group Legal Affairs Manager Ms.Sakurani Wijerathne via zoom technology.

**Written Submissions:** The Appellant : - 15.10.2025, 21.11.2025

The Public Authority : - 19.11.2025

**Dates of Hearing :** 30.10.2025, 03.12.2025, 21.01.2026

**Decided on :** 05.03.2026

**Decision of the Commission:**

The Appellant Mr. Rahul Samantha Hettiarachichi has requested the following information from the Public Authority on 06th June 2025.

(1) What is the full value [purchase price] of Airbus A 330-200 (4R-ALT) (wide body) airplane recently purchased for the Sri Lankan Airlines?

(2) What is the country and the institution from which the said airplane was purchased?

(3) What is the Year of Make and the Production Company of that airplane?

(4) If that airplane was purchased on a leasing facility, how much is the first installment? What is the payment schedule of paying balance installments?

(5) What is the amount of the annual installment [rent] and the total payment period? The Appellant requests a detailed explanation on this.

(6) What is the income and expenditure of Sri Lankan Airlines from 2023 up to 06th June 2025?

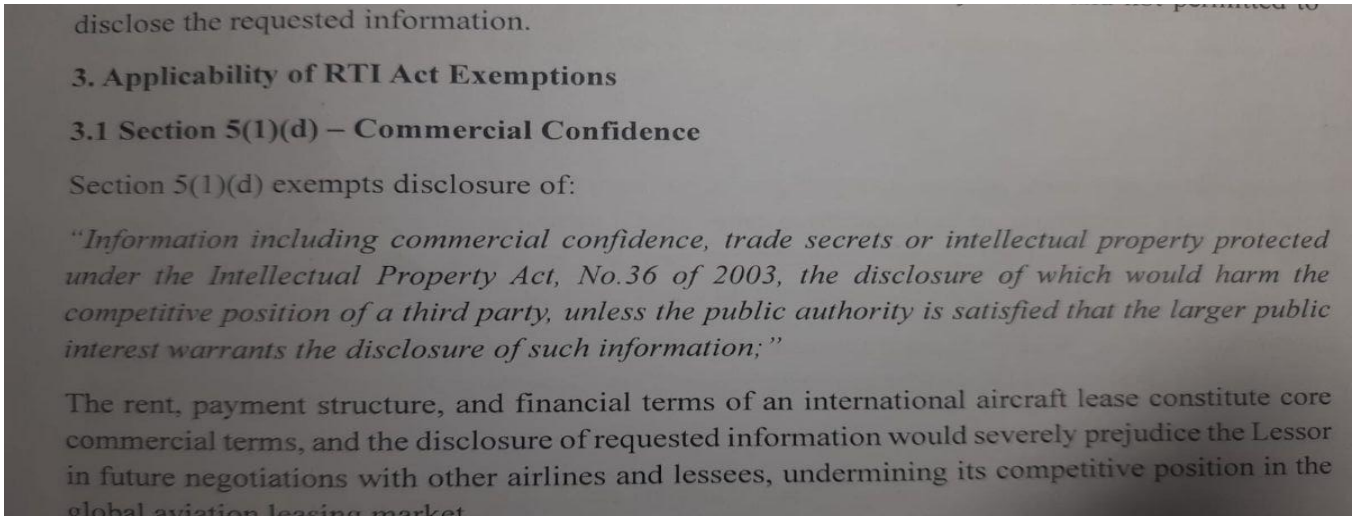
The public authority Sri Lankan Airlines Limited has provided information requested under items (1) (2) (3) and (6) above. The Appellant had admitted this on 30th October 2025.

The question to be decided is in respect of the release of information under items (4) and (5) above.

The public authority has tendered a written submission dated 19th November 2025 on these requests of information.

Firstly under paragraphs 21(i) and 21(b) of the Lease Agreement [which shows that there is a lease and the Sri Lankan Airlines has yet to complete instalment payments under it] which will be reproduced here, the public authority claims that requested information come under the provisions of section 5(1)(d) of the Right to Information Act.

As stated in the above written submissions of the public authority, that section is as follows.


disclose the requested information.

**3. Applicability of RTI Act Exemptions**

**3.1 Section 5(1)(d) – Commercial Confidence**

Section 5(1)(d) exempts disclosure of:

*"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 the larger public interest warrants the disclosure of such information;"*

The rent, payment structure, and financial terms of an international aircraft lease constitute core commercial terms, and the disclosure of requested information would severely prejudice the Lessor in future negotiations with other airlines and lessees, undermining its competitive position in the

As shown in the above photographic image from the written submission, it reads

> Section 5(1)(d) exempts disclosure of:
>
> "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 the larger public interest warrants the disclosure of such information;

The above is different to section 5(1)(d) of the Act in one aspect. The section as it appears in the Act is as follows.

> "(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;.."

If one reads the section as per its reproduction by the public authority it means

> ""Information including commercial confidence, trade secrets or intellectual property protected under the Intellectual Property Act, No.36 of 2003.."

As the word "or" separates "commercial confidence, trade secrets" if the section is read this way the scope of the section will be

(i) All information that would come under commercial confidence

(ii) All information that would come under trade secrets and

(iii) All information that would come under intellectual property protected under the Intellectual Property Act No. 36 of 2003

But it is not the way the section is stated in the Act. It says

> "(d) information, including commercial confidence, trade secrets or intellectual property, protected under the Intellectual Property Act, No. 36 of 2003…"

which means

(i) All information that would come under commercial confidence protected under the Intellectual Property Act, No. 36 of 2003

(ii) All information that would come under trade secrets protected under the Intellectual Property Act, No. 36 of 2003 and

(iii) All information that would come under intellectual property protected under the Intellectual Property Act, No. 36 of 2003

The "comma" [ , ] between the words "intellectual property" and "protected under the Intellectual Property Act, No. 36 of 2003…" makes Intellectual Property Act applicable to "commercial confidence" and "trade secrets" too.

This way limits the scope of the section.

The judgment of the Court of Appeal in Sri Lanka Telecom vs. I. P. Ediribandu CA/RTI/05/2022 dated 31.01.2024 stated

Professor Nathenson[1] says,

> "Pay close attention to punctuation. For example, a comma's presence or absence may completely change the meaning of a statute or rule."

The Interpretation of Statutes of N. S. Bindra Thirteenth Edition 2023 at page 295 states that

> "In Gale v Gale, [*47 PR 1911; Leadon v Leadon, AIR 1926 Oudh 319: the general rule is that a qualifying word shall be deemed to qualify the word nearest to it*] the decision turned on the interpretation of the last para of section 3(1), Indian Divorce act, 1869, '… within the local limits of whose ordinary appellate jurisdiction or of whose jurisdiction under this act, the husband and wife reside or last resided together.' Sir Arthur Reid CJ., with whom Kensington J., concurred, put the matter thus:
>
> > The punctuation of the words above cited 'the husband and wife reside or last resided together' indicates clearly that 'together' must be read with 'last resided' only. had the intention of the legislature been to make together apply to 'reside' we should have expected a comma after 'reside' and after 'resided'.
>
> Rattigan J., who agreed hesitatingly with the majority opined:

[1] How to read a Rule or Statute – Professor Nathenson

> Legal documents in strictness should not be punctuated, and I take it that the rule applies equally to acts of legislatures, and it may have been for this reason that the comma was omitted after 'reside'.
>
> In Re: Krishnaji Gopal, [*AIR 1940 Bom 360*] the court made use of the comma after the word 'conditions' and of the omission thereof after the word 'circumstances' in the expression 'shall in such circumstances and under such conditions, if any, as may be specified in the order...' enacted in section 21 of the Bombay public Security Measures act, 1947. In Colour-Chem Ltd v AL Alaspurkar,219 the court relied on a comma to interpret Maharashtra recognition of trade Unions and prevention of Unfair Labor practices act, 1971. It was held that there was a comma in clause (g) of Item 1, Schedule IV to the act after the words 'for misconduct of a minor or technical character'. hence, if clause (g) were construed to cover even major misconduct the comma would have to be replaced by 'or'. The Court held that such a substitution could not be done in the context and settings of the said clause..."

If there is any doubt [*it appears that there is no doubt whatsoever that the correct reading of the section is to include the part "protected under the Intellectual Property Act, No. 36 of 2003" for the words "commercial confidence" and "trade secrets" too*] one has only to refer to the Sinhala version of the Act which says

> "(ඈ) එම තොරතුරු හෙළිදරව් කිරීම විශාල වශයෙන් මහජන සුභසිද්ධිය සඳහා හේතුවන බවට පොදු අධිකාරිය විසින් සෑහීමට පත්වේ නම් මිස, 2003 අංක 36 දරන බුද්ධිමය දේපළ පනත යටතේ ආරක්ෂා කර ඇති වාණිජ රහස්, වෙළඳ රහස් හෝ බුද්ධිමය දේපළ ඇතුළු තොරතුරු හෙළිදරව් කිරීම යම් තුන්වන පාර්ශවයක තරඟකාරී තත්ත්වයට අහිතකර ලෙස බලපානු ලබන්නේ නම්;.."

It reads

> "..බුද්ධිමය දේපළ පනත යටතේ ආරක්ෂා කර ඇති වාණිජ රහස්, වෙළඳ රහස් හෝ බුද්ධිමය දේපළ ඇතුළු තොරතුරු..."

which shows without any doubt that all three categories

(i) Commercial confidence
(ii) Trade secrets and

(iii) Intellectual property

are covered by the phrase "protected under the Intellectual Property Act, No. 36 of 2003".

The rules applicable in releasing information that come under the above is having a similarity, especially in view of Article 14A of the Constitution of the Republic of Sri Lanka which confers on its citizens, the public a "Right to Know" in following English cases decided in recent times.

**(A) English Open Justice cases and their limitations in Issuing Documents Marked in Evidence in Full to the Press:**

In *Regina (Guardian News and Media Ltd) v City of Westminster Magistrates Court and another* (Article 19 intervening) *and Guardian News and Media Ltd v Government of the United States of America and another [2012] EWCA Civ 420* decided by the Civil Division of the Court of Appeal of England although the matter involved is not directly that of a commercial confidence or trade secret, a principle laid down in such a commercial confidence case, *Smith Kline Beecham Biologicals SA v Connaught Laboratories Inc [1999] 4 All ER498*, CA was applied.

In the *Guardian News and Media Ltd case* the question was whether in a public sitting of a Court of Law, which the Court of Appeal said based on "the common law constitutional principle of open justice" the press is allowed to witness the proceedings and report them in media for the consumption of the general public, whether the press has a right to receive in full, copies of documents marked in evidence, but not fully read in open court to economise time, about which the press cannot obtain a comprehensive knowledge.

It was said in the summary of the judgment in *Guardian News and Media Ltd* that

> "…under the open justice principle; that the power to allow access to documents therefore derived from the common law rather than the Criminal Procedure Rules, the function of the Rules being merely to set out a process for the exercise of that common law power; *that the practice of receiving evidence without it being read in open court potentially had the consequence of making the proceedings less intelligible to the press and public and* ***accordingly it was necessary in some cases*** *for public access to be granted to documents referred to in open court*; that in a case where documents had been placed before a judge and referred to in the course of proceedings.."

The phrase in "bold" print in the italicised part shows that just because the sittings are based on the common law principle of "open justice" even the press was not entitled to receive copies of all the documents in every case.

The above passage continued immediately thereafter saying that

> "the default position on an application for inspection should be that access ought to be permitted on the open justice principle, *and where access was sought for a proper journalistic purpose the case for allowing it would be particularly strong; and that on an application for access to documents the court was to carry out* ***a fact-specific proportionality exercise, evaluating the potential value of the material in advancing the purpose of the open justice principle against any risk of harm which access might cause to the legitimate interests of others*** (post, paras 69—75, 83, 85, 92, 109).
>
> *SmithKline Beecham Biologicals SA v Connaught Laboratories Inc [1999] 4 All ER498, CA* applied".

The part in "bold" print in the italicised part shows that even under the "open justice" principle and when there was a "proper journalistic purpose" the Court must evaluate the potential value of each material in a "a fact-specific proportionality exercise" weighing the interest of the public to know against the legitimate interests of others.

The purpose of citing the above case was to stress that even in a common law setting, where the public is kept in the most important place; and where the sitting was public; and the press already knew about the document which was not however read in the open court, the court must be selective in releasing the documents marked in evidence.

In the present appeal the matter as to the documents in question is not governed by common law. It is a contract between the public authority and a foreign company. It is governed by the law of contract of which the basic principle is the privity of contract. Hence even if Article 14A confers a "Right to Know" on the public, as the above sections in the Right to Information Act limits the scope of the release, the Commission has to approach cautiously in a setting even courts adopted "a fact-specific proportionality exercise" under the common law.

However in *Guardian News and Media* the appeal of the claimant who represented the press was allowed. The summary of the judgment says

> "Allowing the appeal, that the claimant had a serious journalistic purpose in seeking access to the documents, the way in which the justice system addressed international corruption and the operation of the Extradition Act 2003 being matters of public interest about which it was right that the public should be informed; that the courts ought to assist the exercise of informing the public on matters of public interest unless there were strong countervailing arguments; that the principle of open justice was not necessarily satisfied if the proceedings were held in public and reporting of the proceedings was permitted since the purpose of the principle was not merely to allow the judges conduct of the case to be monitored, but to enable the public to understand and scrutinise the justice system of which the courts were the administrators.."

In the case of *SMITHKLINE BEECHAM BIOLOGICALS SA Petitioner/Appellant and CONNAUGHT LABORATORIES INC Respondent* the Civil Division of the English Court of Appeal's judgment started saying

> "THE LORD CHIEF JUSTICE: This appeal concerns a number of documents supplied or disclosed by Connaught Laboratories Inc to SmithKline Beecham Biologicals S.A. pursuant to court order in the course of litigation between them. The question is whether, on the facts, each of these documents 'has been read to or by the Court, or referred to, in open Court'. That is the language of Order 24 rule 14A of the Rules of the Supreme Court. If the question is answered affirmatively, then (subject to any contrary order the court may make) the party to whom disclosure had been made is released from the ordinary duty binding upon it to use such

documents for no purpose other than the proceedings in which they have been disclosed. If a negative answer is given, the party to whom disclosure had been made remains bound notwithstanding the conclusion of the proceedings. In this case SmithKline invited Laddie J to rule that they were released from their obligation to treat as confidential documents received from Connaught. He refused to do so. SmithKline appeal against the judge's decision, the correctness of which is the major issue in this appeal. This is the judgment of the court".

Hence the section in question was Order 24 Rule 13 of the Rules of the Supreme Court.

If the document "has been read to or by the Court or referred to in open Court" then the Court had the discretion [after the proceedings] to release the party on whose application the document was produced from the "ordinary duty binding upon it to use such document for no purpose other than the proceedings in which they have been disclosed". If the question is decided in the negative "the party to whom disclosure had been made remains bound notwithstanding the conclusion of the proceedings" not to use the document for a purpose other than the above proceedings.

The above question is having a similarity in logic to the question the Commission must decide in this appeal for following reasons.

The parties have referred to a previous decision by this Commission which is *Airline Pilots Guild of Sri Lanka vs. Sri Lankan Airlines Ltd RTIC (in person) 99/2017*. In respect of a question of releasing information related to Pakistan International Airlines correspondence with Sri Lankan Airlines Limited this Commission as constituted then had considered whether the stage of negotiations have been concluded. It had considered several judgments including *Public and Private Development Centre vs. Holding Company of Nigeria & the Honorable Attorney General* of the Federation decided by the Federal High Court of Nigeria.

The Public Authority in the present appeal argues that the decision of this Commission in Air Line Pilots Guild would not apply to this appeal, whereas the Appellant argues the contrary. While it would be decided later it is pertinent to examine the logic that was applied to the question, hence of certain similarity to the question in Air Line Pilots Guild appeal by the Civil Division of the English Court of Appeal.

In January 1997 Connaught was granted a European patent for biologically pure and stable protein known as pertactin. In July 1997 SmithKline lodged a petition to revoke that patent.

On 30 April 1998 the parties lodged with the court a reading guide signed by leading counsel for both parties and trial bundles, together with skeleton arguments on both sides. The reading guide for SmithKline included a report of their expert Professor Findlay. "Friday 1 May and Tuesday 5 May 1998 had been set aside as pre-reading days for the judge (the intervening Monday being a bank holiday). On the afternoon of 5 May 1998 Connaught's then solicitors wrote to

SmithKline's solicitors indicating their intention to give notice to the Comptroller of Patents of Connaught's intention to surrender the patent. They gave as their reasons a shortage of time properly to prepare their case (a ground not pursued when counsel was later taxed on the subject by the judge), and also the relative commercial unimportance to them of patent protection in the United Kingdom".

However the Counsel for SmithKline did not accept the surrender. He moved the Court to make an order revoking the patent. When that Counsel apologised to Court for the Judge having to read reading guides, prior to knowing the sudden change of the position of Connaught, his response was that "I have read it all". As per the application of SmithKline the Judge made a decision at the end by which he found the patent invalid. In July 1998 Chiron Corporation writing to solicitors of both the SmithKline and Connaught referring to the decision in *Derby vs. Weldon (No.2)* requested the copies of parties' skeleton arguments, witness statements and experts' reports before the above Judge. Chiron was involved in proceedings in the European Patent Office opposing Connaught's patent. Earlier in May 1998 solicitors of Connaught had requested those of SmithKline pursuant to the confidentiality agreement between the parties saves for retention of one archive copy be destroyed.

In September 1998 SmithKline gave Connaught's solicitors a copy of the notice of a motion seeking a declaration from the above judge that it was free to use documents falling into four categories [*mentioned in the judgment*] and alternatively sought the leave of the court to use those documents for the purpose of opposition proceedings in the European Patent Office and Japanese Patent Office.

Among other things saying that there was no question of a full trial on 7 May and in *Derby vs. Weldon (No. 2)* there had been and that it was apparent by the late afternoon of 5 May that there was going to be no discission of the skeletons, the expert reports, the witness statements or any of the documents except the patent itself, the above judge ruled that

> "In substance I held that, as a result of what I had read in private in my room and in the light of the decision of Connaught not to contest the issues, I was going to revoke the patent. It was no different to a notification in open court of an intention to revoke the patent after a hearing in camera. **In the circumstances SmithKline has failed to show that the documents they want to disclose fall within rule 14A**. **Unless leave is given to use discovery for purposes other than the Petition, the implied obligation of confidentiality continues to apply**. Breach of that obligation is a contempt of court".

However the judge did not accept an argument advanced by Connaught based on the confidentiality agreement but did not grant SmithKline leave to use the documents for which they requested permission to use in European or Japanese opposition proceedings.

It was, as said at the beginning of consideration of this case in this order, the appeal of SmithKline which was considered by the Court of Appeal, which Court

stating that the legal background had been very clearly summarised by Sir Nicolas Browne-Wilkinson V. C. in *Derby vs. Weldon (No. 2)* stated that

> ""It will be helpful to state in outline the English law applicable to documents obtained on discovery in an action. The approach of English law is that discovery in the course of an action is an interference with the right of privacy which an individual would otherwise enjoy in relation to his own documents. As a result of the public interest in ensuring that all relevant information is before the Court in adjudicating on the claim in the action, that right of privacy is invaded and the litigant is forced, under compulsion by the process of discovery, to disclose his private documents. But, such invasion of privacy being only for the purpose of enabling a proper trial of the action in which the discovery is given, the Court is astute to prevent documents so obtained from being used for any other purpose. As a result the law is well established that the recipient of documents disclosed under compulsion of Court proceedings holds those documents subject to an implied undertaking not, without the consent of the Court, to disclose such documents to any third party or use the documents for any purpose other than the action in which they were disclosed. I will refer to that undertaking as 'the implied undertaking'. A breach of the implied undertaking is a contempt of Court."

The Court of Appeal also considered the majority decision in *Harman vs. Home Office [1983] 1 A. C. 280* in which both the Court of Appeal and the majority of the House of Lords held that the implied obligation continued to bind a party to whom compulsory disclosure had been made notwithstanding that the documents disclosed or material parts of them had been read aloud in open court and the disclosure would amount to a contempt of court.

But the Court of Appeal also noted, that the law as established in *Harman vs. Home Office* was challenged before European Commission of Human Rights and the challenge was amicably settled on an undertaking by Her Majesty's Government to seek to change the law so that it would no longer be a contempt of court to make public, material contained in documents compulsorily disclosed in civil proceedings once those documents had been read out in open court (see Bibby Bulk Carriers Ltd v Cansulex Ltd [1989] QB 155 at 159 per Hirst J) and that undertaking was honoured by the introduction of what is now Order 24, rule 14A.

Towards the latter part of the judgment the Court of Appeal also noted that "Although both parties marked most of the documents which they disclosed as confidential, it is not suggested that the documents disclosed by Connaught in fact contained any trade secrets or information of a truly secret nature".

However that observation would not apply in the present appeal because as it was seen in discussing the legal effect of section 5(1)(d) it was made out that everything that comes under "commercial confidence" or "trade secrets" do not come under that section but they are included only if they come under the umbrella position of "protected under Intellectual Property Act No. 36 of 2003" which position taken in this appeal is clearly evident if one examines the Sinhala version of the section.

In the same passage from which the last quoted part of the judgment of the Court of Appeal was taken itself, that court stated that

> "We can of course understand why Connaught would wish to maintain the confidentiality of their documents and control the use which is made of them in proceedings around the world. But there is, as it seems to us, a significant public dimension to this issue. Patent protection is internationally recognised as an appropriate reward for those who have made genuinely inventive contributions to science and technology. But it inevitably involves a restriction of competition, and if patent protection is extended to inventions which are not properly entitled to such protection, then there is an unwarrantable restriction of competition, here relating to a whooping cough vaccine, in a manner potentially damaging to the interests of the public. It is in our view unsatisfactory if in the proceedings elsewhere decisions are made in ignorance of the grounds which led the patent court in this country to hold the patent invalid on grounds of anticipation, obviousness and insufficiency. Connaught should not be in a worse position than if the materials on which Laddie J relied in making his decision had been read aloud in open court, but nor in our opinion should they be in a better position".

The public interest referred to in the above passage is the same right [*of the public*] referred to in section 5(1)(d) itself as "*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*" and in public interest override provision in section 5(4) which says "*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*".

As it would be of a matter of interest for the reader to know, the English Court of Appeal said "*Our ruling in this case permits SmithKline to use documents otherwise than in the revocation petition which gave rise to disclosure, but does not in any way oblige SmithKline to make such documents available to the public if they do not wish to do so*".

What the English Court of Appeal said in the passage quoted before the last, that "*But it inevitably involves a restriction of competition, and* ***if patent protection is extended to inventions which are not properly entitled to such protection****, then there is an unwarrantable restriction of competition… in a manner potentially damaging to the interests of the public*" makes the decision [*of the English Court of Appeal*] applicable to the facts of the present appeal because the information the Appellant seeks in items 04 and 05 cannot be those protected by patent. It is mainly the amount of one instalment of the lease, the method of payment and the period in which all instalments must be paid which are requested. Actually even without reference to any other principle it could be ruled that such information is not covered by section 5(1)(d). But the above principle laid down especially in a case of patent by the English Court of Appeal was discussed to show, that even if it

is assumed or argued that the requested information is covered by that section, still they must be released.

It is pertinent to note that this Commission in *Air Line Pilots Guild case* referred to above, in relation to section 5(1)(d) as well as section 5(1)(b)(ii) which addresses the question of prejudice to Sri Lanka's relations with any State or in relation to international agreements [*which provision is not cited for the public authority in the present appeal*] noted that

> "*Transnet Ltd. and Another v. SA Metal Machinery Co (PTY) Ltd (supra)* established the principle that Public Authorities relying on harm to third party interests to justify refusals must show that these harms are "not simply possible, but probable". Where the Sri Lankan law is concerned, a Public Authority is, in fact, put under a greater burden as it has to demonstrate that the larger public interest does not warrant the disclosure of the information, as stipulated in Section 5(1)(d) itself as well as in Section 5 (4)".

In considering the same two sections, the Commission in that case also noted in respect of Transnet Ltd. judgment of the Supreme Court of Appeal of South Africa which is the final court of review except in constitutional matter that

> "The Court held that a confidentiality clause cannot shield a contract of a state company with a third party from disclosure. It was held that the Public Authority (*Transnet Limited, which was a state-owned company acting through the National Ports Authority of South Africa*) was obligated to conduct its operations in a transparent and accountable manner. The Court further held that the confidentiality clause could not protect disclosure of bidder's information after the contract had been awarded and emphasized that parties cannot circumvent the terms of South Africa's information law by resorting to a confidentiality clause".

**(B) The case of Matky vs. Czech Republic Application No. 19101/03 dated 10th July 2006:**

The case of *Regina (Guardian News and Media Ltd.) vs. City of Westminster Magistrate's Court and another etc 2012* considered above among other cases referred to *Matky vs. Czech Republic* above. But in that brief reference, the English Court of Appeal has not provided sufficient material to comprehend the questions involved in that case reasonably.

As the discussion of several litigations in that matter, prior to the case came up to the European Court of Human Rights, offers several valuable insights into the right to know and the right to express, it will be discussed here.

The following is what *Regina (Guardian News and Media Ltd.) case* said about *Matky vs. Czech Republic* of 2006.

"*Matky v Czech Republic (Application No 19101/03) (unreported) 10 July 2006*, concerned attempts by members of an environmental group to obtain original project documents lodged with a government department. They wanted to compare

the plans with revised plans which were currently the subject of an environmental assessment. The ministry refused access to the documents. The group applied to the court, relying on article 10, but the court declared its application inadmissible. In its reasons the court stated:

> It notes that the circumstances in the present case are to be clearly distinguished from those in cases relating to restrictions upon the freedom of the press, in which it has on many occasions recognised the existence of a right for the public to receive information . . . The court considers that article 10 of the Convention should not be interpreted as guaranteeing the absolute right to have access to all the technical details relating to the construction of a power station as, unlike information concerning its environmental impact, such data should not be of general public interest".

The judgment of *Matky vs Czech Republic* of Strasbourg Court is in French language. The above judgment of the English Court of Appeal does not say which English translation of the judgment of Strasbourg Court it followed.

One of the basic tenets of the Right to Information Regime in Sri Lanka is that a person who seeks information is not under a duty to justify his or her claim or the motive to obtain information. The reason for this became evident in the argument of the Applicant in *Matky vs. Czech Republic* before the ECHR. It was said

> "Insofar as it is not necessary in a democratic society to make access to information conditional upon demonstrating the legitimacy of the request, Article 133 of the Building Act is, according to the applicant, contrary to Article 10 of the Convention. While acknowledging that it may be justified to restrict access to information in order to protect the rights of others and confidential information, the applicant maintains that this objective cannot be achieved by requiring the person concerned to demonstrate the legitimacy of their request, as such a criterion relates to the applicant's subjective motives and not to the objective nature of the information requested. In this regard, the applicant emphasizes that she unsuccessfully argued before the national authorities **that the information she sought was the basis for the proceedings in which she was participating** and that her role was to publicly criticize the nuclear power plant; therefore, the requested information was directly related to her activity and she needed it to achieve her legitimate aims. **According to the applicant, an absolute limitation of her right of access to information, through the requirement of justification of the request, which she could not satisfy, appears disproportionate to the goals pursued in this case by the authorities**. The applicant argues that if she had been able to participate in the aforementioned administrative procedures, she would have had the opportunity to denounce the safety deficiencies of the proposed changes, submit evidence to support her concerns, and propose the elimination of said changes".

Hence the absence of a requirement to satisfy subjective motives stands on the premise, that "**information...sought was the basis of proceedings**". Therefore

restricting access to information, as the above argument of the Applicant before ECHR said, "in order to protect the rights of others" gives the holder of information to indirectly impose upon the requester to legitimize his or her request, which is contrary to the tenet of "information…sought [being] the basis of proceedings".

What was said in the above passage, offers an insight to a further matter relevant to requests of information vis-à-vis a large majority of cases on commercial confidence and trade secrets, which had arisen between employers and ex-employees who attempt to divulge or to use information that could be classified as such for there own benefit or the benefit of a third party which may include a new employer. But in the present appeal, the alleged confidential information is between a company making Airplanes and a public authority that comes within the purview of the Right to Information Act No. 12 of 2016. Whereas the rights pertaining to commercial confidence or trade secrets that are the subject matter of section 5(1)(d) coming under the Intellectual Property Act No. 36 of 2003 will be distinguished from a usual employer and ex-employee and other such fiduciary relationships, it is pertinent to further consider the facts of *Matky vs. Czech Republic*.

The following is what the ECHR judgment said about its basic facts.

> "In 1986, the construction of the Temelín nuclear power plant, based on Soviet engineering, was authorized by the Czechoslovak authorities of the former communist regime, following a procedure in which the State was the sole participant.
>
> After the fall of the communist regime in 1989, it was decided to complete the construction of the power plant using American technology. This change in technology led to modifications in many parts of the plant; To this end, a number of administrative procedures aimed at obtaining the necessary permits were initiated in the 1990s by the plant operator, a limited company majority-owned by the Czech State.
>
> The applicant association was founded in 1991 by people living near the Temelín nuclear power plant. According to its statutes, the association's main missions are the protection of nature and the landscape, environmental improvement, and support for sustainable development; it works, among other things, to obtain the cessation of risky, non-ecological technologies, particularly nuclear power".

However an article by **Tianyi Chen** [*for which he has accepted responsibility*] published in the website of the Department of Physics in the Stanford University says

> "The Temelín Nuclear Power Station is located in the Czech Republic, near the village of Temelín in the South Bohemian Region. It is one of the two nuclear power plants in the Czech Republic. Commissioned in the late 1990s, Temeln represents a significant investment in nuclear technology, boasting advanced pressurized water reactor (PWR) units.. The Temelín nuclear facility was given the green light in 1978, with Czechoslovakia acquiring the blueprints from the USSR in 1981. Construction kicked off in

1986 as part of a grand scheme to establish four 1000 MW reactors modeled on Soviet designs at Temelín, with additional sites planned across Czechoslovakia. **However, work came to a halt in 1989 following the Chernobyl disaster, prompting a reassessment of the reactor's safety**. Faced with mounting concerns over the reliability of Russian-designed reactors, the government felt compelled to act. By 1990, the original plan was significantly downsized. Prime Minister Petr Pithart voiced frustration over the lack of crucial information needed to decide the plant's fate… Since 1990, Temelín Nuclear Power Station has transitioned from a project delayed by political upheaval to a fully operational facility. Despite facing protests and international controversies over safety, it was completed in the early 2000s and has since played a crucial role in the Czech Republic's energy supply.. A lot of people are concerned with how Temelín influenced, or might influence, the nearby environment. Studies of the elemental concentrations in the moss samples around the Temelín nuclear station, however, did not find dangerous signals. A comprehensive analysis identified a total of 42 pollutant elements, with a focus on assessing atmospheric contamination through potentially harmful industrial emissions including As, Al, Cd, Fe, Mn, Sb, Se, Si, Sr, V, and Zn. Examination of atmospheric deposition in places around Temelín indicated no significant deviations from typical European contamination levels[2]…"

**Chernobyl disaster** took place on 26th April 1986 when "reactor no.4 of the Chernobyl Nuclear Power Plant, located near Pripyat, Ukrainian SSR, Soviet Union (later Ukraine), exploded [w]ith dozens of direct casualties and thousands of health complications stemming from the disaster".

The ECHR judgment does not mention anything about the Chernobyl disaster of 1986. It says that, the construction of the Temelin nuclear power plant was authorised in 1986. But it appears from Chen's article, that the Temelín nuclear facility was given the green light in 1978, with Czechoslovakia acquiring the blueprints from the USSR in 1981.

Therefore when the applicant Sdružení Jihočeské Matky, an association incorporated under Czech law and headquartered in České Budějovice based its initial claim under Article 70 of Law No. 114/1992 dated 01st June 1992 under which citizens' associations campaigning for the protection of the nature and landscapes have the right to be informed by the authorities of the initiation of all administrative procedures likely to affect the interests of nature and landscape protection [*Page 01 and 02 of the judgment*] and to participate in such procedures, it was a little more than six years after the Chernobyl disaster. The initial Russian Blueprint was in 1981. The applicant association was founded in 1991. It was in 1986 [*as per the judgment as well as Chen*] the construction work had started. The judgment says that the transfer to American technology was after the fall of the communist regime in 1989. But as per Chen work came to a halt in 1989 following the Chernobyl disaster, prompting a reassessment of the reactor's safety and by

[2] Temelin Nuclear Power Plant dated 23rd March 2024 Submitted as coursework for PH241, Stanford University, Winter 2024.

1990 the original plan was significantly downsized. All this happened before the formation of the Matky association in 1991 and as Temelín Nuclear Power Station has transitioned from a project delayed by political upheaval to a fully operational facility [*as per Chen*] in 1990, the plant having come into existence even prior to the applicant association came into being in 1991 and the initial application for information under the aforesaid law in 1992 being on 17th January 1995 has played a role in the final non admissibility of the application by ECHR.

However certain requests of information have been granted prior to the matter coming to ECHR and they become relevant.

Although the Applicant requested on 17th January 1995 all administrative procedures relating to the Temelín Nuclear Power Plant that might affect the interests of nature and landscape protection, the only procedure in which she was permitted to participate concerned the authorization of technological changes in the construction of the auxiliary services building.

That was the decision of the České Budějovice Building Authority (stavební úřad) on 09th May 1997 which was upheld by the Ministry of Local Development on 12th September 1997. The applicant challenged that decision in administrative action, alleging the absence of an Environmental Impact Assessment and by its judgment of 22nd February 1999 the High Court of Prague overturned the challenged decision. As a result, the plant operator submitted his positive opinion on the environmental impact of the proposed change issued by the Ministry of Environment on 26th March 2001. However the Applicant's objections regarding the insufficiency and incompleteness of the documents submitted during the proceedings were rejected.

As it is said in *Regina (Guardian News & Media Ltd) judgment* the Applicant wanted to compare the plans with revised plans which were the subject of environmental assessment.

The ECHR judgment says

> "Meanwhile, on April 4, 2000, the applicant—as a party to the proceedings (pursuant to Law No. 114/1992)—requested permission from the District Office to consult the original documentation (the initial project) in order to compare the changes made, the environmental impact assessment (EIA) of which was being examined, with the fire safety report that was said to have prompted these changes. She also invoked Law No. 106/1999 on free access to information".

Hence the above was the 2nd application of the Applicant. She [*the judgment of the ECHR refers to the Applicant as "She"]* has been able to obtain an environmental assessment due to the decision aforesaid of High Court of Prague.

Although the Applicant made her second application also under Law No. 106/1099 on free access to information, the District Office informed her on 17th April 2000 that her request fell under Article 133 of Law No. 50/1976 on construction and not under Law No. 106/1999 on free access to information.

This 2nd request of the Applicant was dated 04th April 2000 and the District Office rejected it on 20th March 2001 under Article 133 of the Building Law and the judgment of ECHR says that the District Office noted that

> "the documents in question had served as the basis for the conclusion of the contract between the project's author (Soviet) and the power plant's builder. In response to the applicant's request, the latter invoked the protection of information subject to trade secrets and contractual obligations, as well as its responsibility for the operational safety and protection of the plant against terrorist attacks. The district office considered the grounds stated in the applicant's request of April 4, 2000, to be irrelevant, since the results of the EIA procedure had already been published; furthermore, since the procedure for authorizing the disputed changes had not yet concluded, it was not possible to predict what documents would still be submitted by the manufacturer. It did, however, consider the reasons put forward by the manufacturer—namely, its duty to prevent a breach of trade secrets and contractual obligations and to ensure the protection of the plant—to be essential and consistent with the interests expressed in the Atomic Energy Act". [*Page 3 of the judgment*]

Whereas the claim of the right to participate of the Applicant was under Article 6 of the European Convention on Human Rights the request for information was on its Article 10 which says

> "ARTICLE 10
>
> Freedom of expression
>
> 1. **Everyone has the right to freedom of expression. This right shall include freedom to hold opinions and to receive and impart information and ideas without interference by public authority and regardless of frontiers**. This Article shall not prevent States from requiring the licensing of broadcasting, television or cinema enterprises.
>
> 2. The exercise of these freedoms, since it carries with it duties and responsibilities, may be subject to such formalities, conditions, restrictions or penalties as are prescribed by law and are necessary in a democratic society, in the interests of national security, territorial integrity or public safety, for the prevention of disorder or crime, for the protection of health or morals, for the protection of the reputation or rights of others, for preventing the disclosure of information received in confidence, or for maintaining the authority and impartiality of the judiciary".

Most of the above restrictions in Article 10(2) of the European Convention on Human Rights have come into Article 14A(2) of the 1978 Constitution of Sri Lanka as

> "(2) No restrictions shall be placed on the right declared and recognized by this Article, other than such restrictions prescribed by law as are necessary in a democratic society, in the interests of national security, territorial

integrity or public safety, for the prevention of disorder or crime, for the protection of health or morals and of the reputation or the rights of others, privacy, prevention of contempt of court, protection of parliamentary privilege, for preventing the disclosure of information communicated in confidence, or for maintaining the authority and impartiality of the judiciary".

It was on the basis of Article 14A(2) that exceptions mainly contained in sub sections of section 5(1) and certain other sections of the Right to Information Act No. 12 of 2016 have been enacted.

The relationship between the freedom of expression and the right to know and that the former will be of no use without the latter was discussed in *Litro Gas Lanka Limited and another vs. W.K.S. Karunarathne and another CA/RTI/REV/08/2022 RTIC Appeal No: 704/2021 dated 12.02.2024* in the Court of Appeal.

Although Article 14A of the 1978 Constitution is similar [mostly] to Article 10 of the European Convention on Human Rights, in its sub article (2) the initial part of Article 14A is somewhat different.

Whereas Article 10(2) of the European Convention of Human Rights says "*The exercise of these freedoms, since it carries with it duties and responsibilities, may be subject to such formalities, conditions, restrictions or penalties as are prescribed by law..*" thus giving scope for a wider interpretation of restriction, the Sri Lankan Article 14A(2) has adopted the other way of limiting the scope of restrictions by saying "*No restrictions shall be placed on the right declared and recognized by this Article, other than such restrictions prescribed by law as are necessary in a democratic society*".

Furthermore the relevant parts of Article 14A(1) are as follows.

> "14A. (1) Every citizen shall have the right of access to any information as provided for by law, being information that is required for the exercise or protection of a citizen's right held by:-
>
> (a) the State, a Ministry or any Government Department or any statutory body established or created by or under any law;.."

A citizen having a right to access information that is required for the exercise of a right or its protection is a positive right than freedom of expression under Article 10(1) of the ECHR which includes the right to receive and to impart information and ideas without interference by the public authority, as a corollary of that freedom of expression. On the other hand, as already said, the restrictions are described in Sri Lankan Article 14A(2) limiting their scope by starting that sub article as "*No restrictions shall be placed…other than".*

In order to summarise, the European Convention on Human Rights (i) describes the "*freedom*" to receive information as a corollary of "*the right to freedom of expression*" whereas Sri Lankan Article by stating (ii) "*Every citizen shall have the right of access to any information as provided for by law*" confers a constitutional right on a citizen and the European Convention (iii) describes restrictions as "*The*

*exercise of these freedoms, …, may be subject to such formalities, conditions, restrictions*" allowing an inclusive interpretation of restrictions whereas the Sri Lankan Article (iv) limits the scope of restrictions by stating "*No restrictions shall be placed on the right declared and recognized by this Article, other than such restrictions prescribed by law*". This is a significant distinction that courts of law and tribunals must take into account.

As a result of the above situation, a citizen in Sri Lanka starts with an established right to access information.

It is due to that, section 32 (4) of the Act provides, that

> "(4) On appeal, the burden of proof shall be on the public authority to show that it acted in compliance with this Act in processing a request".

This becomes clear further by the Preamble to the Right to Information Act which says

> ""AN ACT TO PROVIDE FOR THE RIGHT OF ACCESS TO INFORMATION; TO SPECIFY GROUNDS ON WHICH ACCESS MAY BE DENIED; TO ESTABLISH THE RIGHT TO INFORMATION COMMISSION; TO APPOINT INFORMATION OFFICERS; TO SET OUT THE PROCEDURE AND FOR MATTERS CONNECTED THEREWITH OR INCIDENTAL THERETO. WHEREAS the Constitution guarantees the right of access to information in Article 14A thereof and there exists a need to foster a culture of transparency and accountability in public authorities by giving effect to the right of access to information and thereby promote a society in which the people of Sri Lanka would be able to more fully participate in public life through combating corruption and promoting accountability and good governance".

As the Preamble is a part of an Act the provisions of the Right to Information Act read with Article 14A of the Constitution assumes a wider scope than Article 10 of the ECHR.

His Lordship Kanagasabapathy J. Sripavan, Chief Justice in the course of His Lordship's determination on the 19th Amendment to the Constitution said that the Preamble is a part of the Constitution. It is a long-standing principle too. In *The London County Council vs. The Bermondsey Bioscope Company Limited, 08th and 09th December 1910, [1911] 1 K. B. 445,* C. A. Russell K. C. for the cinema argued, that, "**The title of the Act is part of the Act: Fielding vs. Morley Corporation [1899] 1 Ch. 1".**

Thus, the Sri Lankan Article 14A is wider in the right conferred and narrower in restrictions, than Article 10 of the European Convention of Human Rights.

It was said that a basic tenet of the Right to Information Regime is that the requester of the information need not justify his or her request. However in various exceptions under section 05 of the Act etc. there arises a requirement of legitimising the request vis-à-vis the exception. What is stressed as drawn from the insights provided by *Matky vs. Czech Republic* is that there is a distinction of

character as well as degree in that process of legitimising in a right to access to information when it assumes the character of "an actio popularis[3]" instead of being an action of another kind. In *Matky vs. Czech Republic* the ECHR towards the end of its judgment said

> "In the Court's view, the applicant thus appears to be complaining more about the general danger … thereby presenting arguments of an actio popularis. Then, by demanding that all concerned parties participate in the adoption of decisions concerning the fundamental conditions for the operation of a nuclear power plant.." [*Page 12 of the judgment*]

The above passage came, as it was said, towards the end of ECHR judgment, having earlier [*at Page 10 of the judgment*] said that the applicant association being a legal entity it cannot claim to be the victim of a violation of personal rights, the holders of which can only be natural persons, such as the rights to life and health, nor can it invoke the right to respect for its "home" within the meaning of Article 8 of the Convention, solely because its registered office is located near the power plant it criticizes, when the infringement of this right results from nuisance or disturbances that can only be experienced by natural persons.

It was on that backdrop the ECHR said at the conclusion [*at page 13 of the Judgment*] that

> "In these circumstances, the Court considers that the outcome of the administrative proceedings before the building authority, in which the applicant association was unable to participate, was not directly decisive with regard to the "civil rights"—such as the rights to life, health, a healthy environment, and the respect for property—that the Czech legal system conferred upon it or its members"

which shows that the ECHR did not consider the action as an actio popularis.

Had it considered the action of Applicant association as one, the decision could have been otherwise, for the part of its judgment quoted in *Regina (Guardian News & Media Ltd.)* said

> "It notes that the circumstances in the present case are to be clearly distinguished from those in cases relating to restrictions upon the freedom of the press, in which it has on many occasions recognised the existence of a right for the public to receive information . . . The court considers that article 10 of the Convention should not be interpreted as guaranteeing the absolute right to have access to all the technical details relating to the construction of a power station as, unlike information concerning its environmental impact, such data should not be of general public interest".

[3] Actio popularis is a legal action allowing any member of the public to bring a case in defense of public interest, even if they are not personally affected. Actio popularis originated in Roman penal law as a mechanism for citizens to initiate legal proceedings in the interest of public order, without being direct victims of the offense. It represents a form of public interest litigation, empowering individuals to protect collective rights and societal norms. Wikipedia

Therefore the application of the Applicant association was not considered to be one in the interest of the public as well as her request to access "*all the technical details relating to the construction of a power station*" was turned down. But the information request of the present appellant is in the public interest, which will be further discussed later in this order; and his requests not granted up to now are confined to know "*under item No. 4…disclosure of the first lease instalment and the payment schedule of the remaining instalments; and under item No. 5 disclosure of the annual rent and the total payment period*" [Page 01 of the written submissions of the public authority dated 19th November 2025]

It is in this backdrop the law relating to "commercial confidence" and "trade secrets" covered by intellectual property regime must be considered.

**(C) The exception under section 5(1)(d) of the Right to Information Act and the applicable legal principles:**

The article "*The Surprising Virtues of Treating Trade Secrets as IP Rights*[4]" by Mark A. Lemley[5] says [*from the 5th sentence of his article*] that

> "While scholars periodically disagree over the purposes of the law, and have for almost a century, they seem to agree that misappropriation of trade secrets is a bad thing that the law should punish. Rather, the puzzle is a theoretical one: no one can seem to agree where trade secret law comes from or how to fit it into the broader framework of legal doctrine. Courts, lawyers, scholars, and treatise writers argue over whether trade secrets are a creature of contract, of tort, of property, or even of criminal law.4[6] None of these different justifications have proven entirely persuasive. Worse, they have contributed to inconsistent treatment of the basic elements of a trade secret cause of action, and uncertainty as to the relationship between trade secret laws and other causes of action.5[7] Robert Bone has gone so far as to suggest that this theoretical incoherence suggests that there is no need for trade secret law as a separate doctrine at all. He reasons that whatever purposes are served by trade secret law can be served just as well by the common law doctrines that underlie it, whichever those turn out to be".6[8]

Then Professor Lemley says

> "In this article, I suggest that trade secrets can be justified as a form, not of traditional property, but of intellectual property (IP)". [*Page 2 of the article*]

[4] © 2008 Mark A. Lemley.
[5] William H. Neukom Professor, Stanford Law School; of counsel, Keker & Van Nest LLP.
[6] [4.See infra notes __-__ and accompanying text.]
[7] [5 Miles J. Feldman, Toward a Clearer Standard of Protectable Information: Trade Secrets and the Employment Relationship, 9 High Tech. L.J. 151, 161-63 (1994) (arguing that much of the uncertainty in trade secret law can be traced to the disagreement over justifications for trade secret law).]
[8] [6 Robert G. Bone, A New Look at Trade Secret Law: Doctrine in Search of Justification, 86 Cal. L. Rev. 241 (1998).]

As it was stated in the initial part of this order, this is the approach in section 5(1)(d) too. Something that could be termed under "commercial confidence" or "trade secret" must come under the meaning of an intellectual property, to be protected by that section.

At the outset it must be said that the amount of the first installment, the payment schedule for the remaining installments, the annual rent and the total payment period are things both parties into the contract agree, hence it is not the knowledge of one party, such as in a trade secret. They are results of the consensus of two minds or *consensus ud idem*[9] [*Meeting of the Minds*] The public authority accepts that the requested information is something agreed in the contract. That is why they say, that the contract requires confidentiality and secrecy. They cite section 21(i) and section 21(b) in their above written submission too. The aforesaid shows that *consensus ad idem* is a fundamental principle of law of contract. A contract cannot come into being without *consensus ad idem*. Hence the information in items 4 and 5 referred to above cannot be intellectual property coming under section 5(1)(d).

Furthermore, although the contract could be still "on going" as the public authority says, for all installments have not been paid, since the amounts and periods of time involved in item 4 and item 5 of the request have been agreed, they represent a concluded matter and not something that is still being negotiated.

The Annual Report of the company Sri Lankan Airlines for 2024-2025 [*the latest its website has*] says

> "This is the Annual Report of Sri Lankan Airlines which covers the financial year from 1st April 2024 to 31st March 2025. As Sri Lanka's national carrier since its inception in 1979,.."

It is also said in the above report that

> "The financial statements included herein have been prepared in compliance with Sri Lanka Financial Reporting Standards and the Companies Act No. 7 of 2007. The governance disclosures adhere to the Guidelines on Corporate Governance and the Operational Manual for State-Owned Enterprises, as set forth in Public Enterprises Circular No. 01/2021".

One of the senior members of its Board of Directors is also a senior officer of the Ministry of Finance. The page 64 et seq. of the Annual Report contains the "*Report of the Auditor General on the Financial Statements and Other Legal and Regulatory Requirements of the Sri Lankan Airlines Limited and its subsidiary for the year ended 31 March 2025 in terms of Section 12 of the National Audit Act, No. 19 of 2018*".

[9] Consensus ad idem is a Latin term meaning "meeting of the minds" and is a fundamental principle in contract law. It refers to the requirement that for a contract to be legally binding, all parties must have a clear and mutual understanding of the essential terms and subject matter of the agreement. Without this mutual agreement, a contract may not be enforceable. The principle emphasizes that both parties must intend for their agreement to be legally binding, ensuring that there is no ambiguity or misunderstanding regarding the terms of the contract. https://www.upcounsel.com/consensus-ad-idem-in-contract-law.

Such a function by the Auditor General was considered to be evidence of the State **or** a Public Corporation and State **and** a Public Corporation having a "controlled interest" in terms of section 43(e) of the Right to Information Act in *CA/RTI/REV/08/2022, RTIC Appeal No: 704/2021* [*also referred to above*] in a case where an institution contested the question whether it is a public authority under the Act. Despite there being no such contest here, the above shows that public funds are involved.

Hence, as already said, when item 4 of the request, the disclosure of the first instalment and the payment schedule for the remaining instalments; and item 5 of the request, disclosure of the annual rent and the total payment period, are matters of *consensus ad idem* of SASOF IV (A1) Aviation Ireland DAC and the public authority, they cannot be, the intellectual property of that Irish company coming under "commercial confidence" or "trade secrets" [*under section 5(1)(d)]* or even "commercial confidence" or "trade secrets" independent of being intellectual property [*but that is not what the above sections includes*] for in utilising public funds in the determination of the requested information, the general public of Sri Lanka has a hand.

The quotations from texts on "commercial confidence" or "trade secrets", cited in this order, show that most of the cases in which a "commercial confidence" or a "trade secret" [*whether also being an intellectual property or not*] being solely on a product and the property of one party, section 5(1)(d) will not directly apply in this appeal.

But subject to the above the following cases and principles are examined.

Professor Lemley referred to above also said

> "It seems odd, though, for the law to encourage secrets, or to encourage only those inventions that are kept secret. I argue that, paradoxically, trade secret law actually encourages disclosure, not secrecy" [*Page 03 of the article*]

and

> "Thus, an IP theory of trade secrets is in part a "negative" one: the value of trade secret law lies in part in defining the boundaries of the cause of action and pre-empting others that might reach too far". [*Page 04 of the article*]

The article "*Working Knowledge: Trade Secrets, Restrictive Covenants in Working Knowledge: Trade Secrets, Restrictive Covenants in Employment, and the Rise of Corporate Intellectual Property, Employment, and the Rise of Corporate Intellectual Property, 1800-1920*" by Catherine L. Fisk[10] [2001] examines some early cases on this subject. It is said that

> "One of the earliest published American cases involving a restrictive covenant ancillary to an employment contract was *Keeler v. Taylor, [53 Pa. 467 (1866).]* an 1866 Pennsylvania Supreme Court decision. Keeler involved

[10] Professor of Law and William Rains Fellow, Loyola Law School.

> a "mechanic," who had agreed, in consideration for training in the manufacture of platform scales plus $1, never to make platform scales for anyone else or to convey the information he learned to anyone else. The mechanic agreed that he would pay his former employer $50 for any scales made in violation of the agreement. He worked for the plaintiff for seven years and then set up for himself in the manufacture of scales. Under the norms of the artisanal relationship, the mechanic would have been free to leave at the end of the customary seven-year apprenticeship, taking his knowledge and skill with him. The employer, however, chose to litigate to repudiate the old way of doing things.
>
> Although later cases confronted with these facts would likely have enforced the contract on the ground that the plaintiff's manufacturing techniques were trade secrets, the Pennsylvania court did not. The court held the agreement unenforceable because it "restrained the industry of the defendant, not in a particular locality, but everywhere, not for a specified period, but for a lifetime ... ."[ *Id. at 470.*] [*Page 486 487 of the article*]

Referring to a later case, that article says

> "In 1894, the Pennsylvania Supreme Court made it obvious that the courts should protect a wider range of confidential information than had hitherto been considered as legitimate basis for a restrictive covenant. [*Fralich v. Despar, 30 A. 521 (Pa. 1894).*] In Fralich v. Despar, an assistant in the manufacture of lubricating grease and oil had contracted that he would never use or divulge the knowledge he acquired about the manufacture of grease and oil. After several years, Despar began making grease for another firm. In enjoining him, the court all but overruled an earlier case, *Keeler v. Taylor, [53 Pa. 467, 470 (1866).*] which had held unenforceable a contract by which an employee promised not to reveal knowledge he had acquired about the manufacture of scales. [*Fralich, 30 A. at 521.] [Page 511 512 of the article*]

But the trend shown by later authorities, based on promotion of competition as well as democratic values of transparency and accountability have affected this area of law also.

The article "*SECRECY AND UNACCOUNTABILITY: TRADE SECRETS IN OUR PUBLIC INFRASTRUCTURE*" by David S. Levine[11] January 2007 says

> "Trade secrecy-the intellectual property doctrine that allows businesses to keep commercially valuable information secret for a potentially unlimited amount of time-is increasingly intruding in the operation of our public infrastructure, including voting machines, the Internet, and telecommunications…
>
> This Article argues that trade secrecy must give way to traditional notions of transparency and accountability when it comes to the provision of public

[11] Resident Fellow at Stanford Law School's Center for Internet and Society (CIS) and also Professor, Elon University School of Law; Affiliate Scholar, Center for Internet and Society, Stanford Law School.

> infrastructure. Although there are good reasons for trade secrecy in private commerce, when applied to public infrastructure, the basic democratic values of transparency and accountability should prevail. The application of trade secrecy doctrine to public infrastructure projects causes some unanticipated outcomes, like hiding information that could be useful for both the public at large and for the improvement of the specific infrastructure project at issue. This Article examines the background and history of trade secrecy and contrasts its values with those of democratic government. It then shows the increasing impact of trade secrecy on public infrastructure through three examples. Finally, the Article suggests some potential remedies to this sphere of increasingly conflicting values". [*from the Abstract*]

The article refers to the *Restatement (First) of Torts* published by the American Law Institute in 1939 as the most often cited definition of trade secrets, which is

> "'A trade secret may consist of any formula, pattern, device or compilation of information which is used in one's business, and which gives him an opportunity to obtain an advantage over competitors who do not know or use it[12]".

The requested items in 4 and 5 could only come under "compilation of information". But that does not change it not being solely the property of the Irish company due to what was stated above.

Furthermore what Levine says in his abstract is more in keeping with the public finances involved, as the Air Bus in question belongs to public infrastructure and "the basic democratic values of transparency and accountability should prevail".

Due to that public character of the infrastructure, the six bases for determining whether a trade secret in the *Restatement (First) of Torts* which identify the extent to which the owner of the secret protects his interest from disclosure to others, the value of the information to [*the business*] and [*its*] competitors [*the 4th base*] would not apply with the same rigour.

In the article "*Emerging and Enduring Issues of Trade Secrecy – A Sri Lankan Perspective*" Darshana Sumanadasa[13] says

> "The TRIPS Agreement that establishes the modern global standards of intellectual property (IP) protection does not provide for a globally unified protection of trade secrets".

He also says

> "According to Article 39.2 of the TRIPS Agreement, 'protection must apply to information that is secret, which has commercial value because it is secret and that has been subjected to reasonable steps which were taken to keep it a secret.' It provides natural and legal persons 'the possibility of

[12] See RESTATEMENT (FIRST) OF TORTS § 757 cmt. b (1939).
[13] Lecturer, Department of Private and Comparative Law, Faculty of Law, University of Colombo, Sri Lanka

preventing information lawfully within their control from being disclosed to, acquired by, or used by others without their consent in a manner contrary to honest commercial practices. These dishonest commercial practices include breach of contract; breach of confidence; inducement of breach; as well as the acquisition of such information by third parties who knew, or were grossly negligent in failing to know, that such practices were involved in the acquisition"

and

"Sri Lanka has enacted a TRIPS-compliant IP regime in the Intellectual Property Act, No. 36 of 2003 (*'IP Act'*) trade secrets are also protected under that regime. Trade secrets are protected as a subset of unfair competition law. As stated in section 160(6) of the IP Act, 'any act or practice, in the course of industrial or commercial activities, the results in the disclosure, acquisition or use by others, of undisclosed information without the consent of the person lawfully in control of that information (*or rightful holder*) and in a manner contrary to honest commercial practices shall constitute an act of unfair competition. This is a clear reiteration of the language in the TRIPS Agreement and the Article 10 bis of the Paris Convention".

Referring to section 160(6)(c) of the Intellectual Property Act Sumanadasa says

"Further, the IP Act provides a clear and precise definition as follows:

'For the purpose of this Act, information shall be considered 'undisclosed information' if,

i. it is not, as a body or in the precise configuration and assembly of its components, generally known among, or readily accessible to, persons within the circles that normally deal with the kind of information in question;

ii. it has actual or potential commercial value because it is secret; and

iii.it has been subject to reasonable steps under the circumstances by the rightful holder to keep it secret.

Although this is, in general, an adoption of the TRIPS definition, the IP Act goes beyond the definition by stating more details and examples. For instance, further stating the scope of the information that is covered by this provision, the IP Act provides that 'undisclosed information shall include technical information relating to the manufacture of goods or the provision of services; and business information which includes the internal information which an enterprise has developed so as to be used within the enterprise. Since this is an inclusive provision, any other information which satisfies the requirements of the definition and which is technical or commercial in nature may qualify for protection".

But the article "*Compelling Trade Secret Sharing*" by David S. Levine[14] and Joshua D. Sarnoff[15] 2023 says

> "Given the need for compelled trade secret sharing, this Article surveys the relevant international intellectual property law treaties addressing trade secrets. It demonstrates that, consistent with international law obligations, governments are free to compel trade secret sharing…
>
> Given this national freedom to act, this Article then provides numerous examples of existing United States, European, and other authorities that have been or could be used to compel the sharing or licensing of trade secrets. It also notes the potential to adopt more explicit legislation authorizing compelled or induced behaviors. This survey of authorities illustrates that compelling trade secret sharing or licensing should be unobjectionable whenever there is a need to protect lives, health, or the economy. Accordingly, this Article provides a first critical step toward rethinking the nature of international trade secret protections and seeks to develop the political will for governments to protect the global public from the harms that trade secret rights can generate". [*from the Abstract*]

The article further says

> "Textual Interpretation of TRIPS Supports the View That It Does Not Prohibit Governments from Compelling Trade Secret Sharing". [*a heading at page 1019*]

Finally the article "*THE CONFIDENCE GAME: AN APPROACH TO THE LAW ABOUT TRADE SECRETS" by Thornton Robison*[16] under the part *"THE ACCOMMODATION OF INTERESTS IN RESTRICTIVE COVENANTS AND THE TORT OF MISAPPROPRIATION*" says

> "There are two legal devices now available to firms which have unpatented information to protect their interest in exclusivity. The first device to be discussed, a restrictive covenant, is overbroad[17] for several reasons. First, it tends to hinder the spread of information that is not a trade secret, and thus unduly limits the efficient dispersal of skill. Second, restrictive covenants impinge too broadly on the interest of employees in advancing their own welfare by obtaining the most rewarding jobs their individual talents can command". [*Page 364*]

As stated initially in this part, there is a difficulty of direct application of principles to the matter at hand because there is no strict employer-employee relationship.

[14] Professor, Elon University School of Law; Affiliate Scholar, Center for Internet and Society, Stanford Law School.
[15] Professor, DePaul University College of Law.
[16] A.B., 1964, Stanford University, J.D., 1970, University of California, Berkeley. Associate Professor of Law, University of Arizona.
[17] to extremes of enthusiasm

But as the public authority's purchase on lease involves public funds, the principle embodied in the above passage applies in a slightly different manner. The

proposition "*First, it tends to hinder the spread of information that is not a trade secret, and thus unduly limits the efficient dispersal of skill*" applies here too, for several reasons stated above the information pertaining to item 4 and item 5 are not "trade secrets" but purportedly protected by a restrictive covenant. The second part of the proposition "*unduly limits the efficient dispersal of skill"* is akin to the loss to public of information, what is exactly expected from public audit of expenses [*including income too*] by the Auditor General, who according to her website is

> "…the flag bearer of the public sector towards public accountability and good governance[18]"

Following a prolonged vacancy since April 2025 on February 3, 2026, the Constitutional Council of Sri Lanka unanimously approved the appointment of [*a*] new Auditor General. This decision came after a lengthy period of institutional deadlock, during which four other nominees proposed by the President were rejected.

The latest Annual Report of the public authority, referred to above, covers the period from 01st April 2024 to 31st March 2025. The Report of the Auditor General at page 62 of the Annual Report is dated 12th August 2025 and signed by an acting Auditor General. Although the audit report does not have a specific reference to the lease of Air bus A330-200, which the written submissions of the public authority says governed by ongoing Lease Agreement dated 18th December 2024, the report addressed to the Chairman of the public authority says, among other things, that

> "In my opinion, the accompanying financial statements of the Company and the Group give a true and fair view of the financial position of the Company and the Group as at 31 March 2025, and of their financial performance and cash flows for the year then ended in accordance with Sri Lanka Accounting Standards".
>
> …..
>
> 1.3 Emphasis of Matter
>
> (a) Materiality Uncertainty Related to Going Concern
>
> I draw attention to Note 2.1.1 to the financial statements, that discloses the Group recorded a net loss of Rs.2,735.28 million during the year ended 31 March 2025 (*2024 - profit of Rs.7,925.01 million*) with an accumulated loss of Rs.596,461.28 million (*2024 - Rs. 592,626.52 million*) and, as of that date, the Group's current liabilities exceeded its current assets by Rs.346,479.55 million (*2024 - Rs.327,144.66 million*) and total equity of the Group as of the reporting date is a negative Rs.379,519.61 million (*2024 - negative Rs.381,723.67 million*)…

[18] https://auditorgeneral.gov.lk/web/index.php/en/about-us/main-our-vision-mission-and-values

(b) Aircraft Predelivery Payments

I draw attention to Note 5 to the financial statements, relating to the aircraft predelivery payments as at 31 March 2025 amounting to Rs.5,692 million

(USD 19.21 million), as the Company has made a claim for the recovery of the said amount together with damages through the dispute resolution mechanism set out in the agreement with the supplier….

2. Report on Other Legal and Regulatory Requirements …

2.2 Based on the procedures performed and evidence obtained were limited to matters that are material, nothing has come to my attention;..

2.2.1 to state that any member of the governing body of the Company has any direct or indirect interest in any contract entered into by the Company which are out of the normal cause of business as per the requirement of section 12 (d) of the National Audit Act, No. 19 of 2018…

[*Paragraphs 2.2.2 and 2.2.3 are omitted in this order*]

2.2.4 to state that the resources of the Company had not been procured and utilised economically, efficiently and effectively within the time frames and in compliance with the applicable laws as per the requirement of section 12 (h) of the National Audit Act, No. 19 of 2018".

[*The above excerpts are from the Auditor General's Report attached to the last Annual Report of the public authority*]

According to the Appellant the Air bus was acquired in May 2025 [*according to the public authority the Lease Agreement is dated 18th December 2024*] and there is no Annual Report or Auditor General's Report pertaining to the period after 31st March 2025.

The Request for Information was on 06th June 2025.

The Citizen does not have to wait until the Annual Report or the Auditor General's Report pertaining to the year ended on 31st March 2026 is out, which financial year still has some days to go and this also shows the applicability to the present appeal of the last quoted proposition ""*First, it tends to hinder the spread of information that is not a trade secret, and thus unduly limits the efficient dispersal of skill*" on principle.

In the last quoted article "*THE CONFIDENCE GAME: AN APPROACH TO THE LAW ABOUT TRADE SECRETS*" by Thornton Robison[19] it is said under the heading "*2. The Impact of Restrictive Covenants on Employees, Competitors and Competition*" that

[19] A.B., 1964, Stanford University, J.D., 1970, University of California, Berkeley. Associate Professor of Law, University of Arizona.

"One approach to deciding whether social intervention is appropriate is to consider the impact of enforcing restrictive covenants on the efficient allocation of society's resources. One of the reasons for enforcing promises at all is to increase efficient resource allocation". 103 [*Footnote 103 in the main text is reproduced as follows*]

> "103. See R. POSNR, ECONOMIC ANALYSIS OF LAW - (2d ed. 1977). We suppose persons who make voluntary promises to be rational, and therefore, acting in their own best interests. When promises of performances are exchanged, we presume the exchange is beneficial to each promisor. The result of the individual mutual enhancements is an increase in society's welfare. The process and theoretical results summarized are the basis of the current view that law not only does but should reflect the theories of microeconomic analysis. There has been extensive recent writing on this general subject, critical as well as expository. The most significant expositor has been Richard Posner, if for no other reason than the accessibility of his voluminous work to non-economists. He also founded the Journal of Legal Studies in 1972; its pages have since been filled with analysis and comment on the subject. Criticism has principally been based on the assumption that microeconomic analysis does not exhaust the normative positions and arguments which ought to be considered by the legal system. See, eg., Leff, Law And, 87 YALE L.J. 989 (1978); Leff, Eco nomic Analysis of Law: Some Realism About Nominalism, 60 VA. L. Rav. 451 (1974); Michelman, Norms and Normativify in the Economic Theory of Law, 62 MiNN. L. REv. 1015 (1978); Polinsky, Economic analysis as a Potentially Defective Product: A Buyer's Guide to Posner's Economic Analysis of Law, 87 HARv. L. REv. 1655 (1974)". [*Page 366 367 of the article*]

The same article also says that

> "Another aspect of the overbreadth is that restrictive covenants tend to retard the dissemination and use of valuable information which is not trade secret information. As noted above, the patent system seeks to narrow the number of inventions which receive that state sanctioned monopoly." We are similarly concerned about the boundaries of information claimed to be trade secrets. In both cases, the concern is to distinguish information that "deserves" to be protected from free sharing from that which should be freely available. Restrictive covenants make no attempt to delineate protected from unprotected information. Given these concerns, it seems inefficient to enforce restrictive covenants to protect trade secrets-at least if there are other ways in which to protect the legitimate interest in such information". [*Page 369 370 of the article*]

**(D) The objection of the public authority under section 5(1)(i) and provisions of section 29(2)(c) of the Act:**

The public authority also takes up the objection under section 5(1)(i) which says

"(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;.."

Here too, like under section 5(1)(d) discussed earlier in this order, the requested information in item 4 and item 5 do not directly come under "*the information has been supplied in confidence to the public authority concerned by a third party*" for the information in question is a result of *consensus ad idem* of the public authority and the Irish company, but not "supplied by" the latter.

But even assuming but not conceding that it is information under section 5(1)(i) it is subject to section 29(2)(c) which reads with its proviso as follows

"29 (2) An information officer shall be required in making his decision on any request made for the disclosure of information which relates to or has been supplied by a third party, to take into consideration the representations made by such third party under subsection (1), and shall, where the third party

.....

(c) responds to the notice and refuses to the disclosure of the information requested for, deny access to the information requested for:

Provided however, the Commission may on the application made in that behalf by the citizen making the request, direct the disclosure of the information in question notwithstanding any objections raised by such third party against its disclosure, where the release of the information concerned demonstrably outweighs the private interest in non disclosure.

As per what was discussed above, especially in regard to the last Annual Report of the public authority and its components, it is evident that the proviso applies, that, "*the release of the information concerned demonstrably outweighs the private interest in non disclosure*".

**(E) Section 5(4) and "freedom of expression" of citizens:**

The First Amendment to the Constitution of the United States and Article 14(1)(a) of the 1978 Constitution of the Democratic Socialist Republic of Sri Lanka refer to the freedom of expression and publication.

Article 14(1)(a) says

"14. (1) Every citizen is entitled to –

(a) the freedom of speech and expression including publication;.."

The Court of Appeal in **CA/RTI/REV/08/2022, RTIC Appeal No: 704/2021** said on 12th February 2024 that

"Sovereignty is the ultimate power that runs the nation state which comprises of what belongs to the public and what is in respect of the public and to which the public is having a controlling interest. Under article 03 sovereignty is in the People and inalienable. This ultimate sovereign power therefore affects rights and interests. Hence it is "judicial" and must be

exercised judiciously. It was seen in the paragraph quoted before the last, that, the judicious exercise of power needs, as one ingredient, the free flow of information. The right to information is based on this. Therefore, the right to information or freedom of information, whatever may be the manner in which it is described, is not only necessary to effectively exercise the right to freedom of speech and expression recognized by article 14(1)(a) of the Constitution, as Sarath N. Silva Chief Justice., said in Environmental Foundation Limited vs. Urban Development Authority of Sri Lanka and others (*Gall Face Green Case*) S. C. F. R. 47/2004 (*which the writer Kodikara as well as Chief Justice Kanagasabapathy Sripavan in the Special Determination in 2016 pertaining to the Right to Information Bill quotes*) but, with respect, has a deeper base and a firmer foundation on the right to exercise the power of sovereignty…" [*Page 39 and 40 of the judgment*]

And again

"The Special Determination (*Judicial Preview*) of the Right to Information Bill was conducted before the Supreme Court on 05.04.2016 and 06.04.2016. Writing the opinion of the Court Chief Justice Sripavan said, among other things, that,

> "Thus, the "freedom of speech and expression including publication" which includes an implicit right to secure relevant information should be broadly interpreted in the light of fundamental principles of democracy and the Rule of Law which form the foundation of the Constitution, subject however to such restrictions and to the extent provided in the Constitution." [*Page 41 of the judgment*]

Therefore this Commission decides that information in item 4 and item 5 must be released.

In addition to and independent of several reasons given in this order for the release of that information, the Commission is of the view that the following section, the overriding public interest, too applies.

Section 5(4) of the Right to Information Act says

"(4) 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".

Hence the appeal is allowed.

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.