



Information
Commissioner's
Office

ICO Hearing 20 - 00112
Decision
Public Service Pensions Board

Jennifer Dilbert, MBE, JP
Information Commissioner for the Cayman Islands
7 May 2012

Summary:

The Public Service Pensions Board deferred an Applicant access to “...a copy of the 1 January 2008 Actuarial Report completed on the Public Service Pensions funds ...”

The Information Commissioner overturned the decision of the Public Service Pensions Board to defer access to The Actuarial Valuation of the Public Service Pension Plan as of January 1, 2008, and required that the Public Service Pensions Board release the responsive record.

Statutes¹ Considered:

Freedom of Information Law, 2007
Freedom of Information (General) Regulations, 2008
Legislative Assembly Standing Orders (2006 Revision)
Public Service Pensions Law (2004 Revision)

Exclusions and Exemptions Considered:

Section 11 (2)(b) of the *Freedom of Information Law, 2007*

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¹ In this decision all references to sections are to sections under *the Freedom of Information Law, 2007* unless otherwise specified.

A. INTRODUCTION

On 14 October 2011 the Applicant made a Freedom of Information request to the Ministry of Finance, Tourism and Development for the following records:

“...a copy of the 1 January 2008 Actuarial Report completed on the Public Service Pensions funds and a copy of the 1 January 2010 Actuarial Report completed on the same ”.

On 18 October 2011 the Ministry of Finance, Tourism and Development informed the Applicant that it was transferring the request to the Public Service Pension Board (PSPB). On 18 November 2011 the PSPB responded to the Applicant explaining that there was no Actuarial Report conducted for the year 2010 but there was a January 2011 report being prepared. The PSPB deferred access to both of the records under section 11(2)(b) of the FOI Law.

The Applicant requested an Internal Review on 30 November 2011, and on 30 December 2011 the Managing Director of the PSPB responded to the Applicant and upheld the Public Authority’s initial decision to apply section 11(2)(b) of the FOI Law and defer access to the responsive records. The Public Authority also confirmed that the 2011 Report was “currently under development “.

On 3 January 2012 the Applicant appealed to the Information Commissioner’s Office, and an attempt was made to resolve the matter informally. It was determined that the 2011 report was not being requested by the Applicant, but the deferral of the 2008 report remained in dispute and the matter proceeded to a formal Hearing before the Information Commissioner on 29 March 2012.

B. BACKGROUND

The PSPB is responsible for the management and administration of Public Sector pension funds/plans. They ensure delivery of retirement pension benefits to public sector pensioners, in accordance with relevant Cayman Islands legislation and international professional standards.

Under the Public Service Pensions Law, at least every three years, the PSPB must have a review carried out by an actuary to assess and evaluate the assets and liabilities of the Public Service Pensions Fund. A report of the actuarial review is to be sent to the Financial Secretary, who is required to table it in the Legislative Assembly.

C. PROCEDURAL MATTERS

The PSPB responded to the Applicant, both with respect to the initial application, and the Internal Review of the Information Manager's decision, on the 30th day following the request. However, in the case of a decision to defer access, section 11(3) of the FOI Law requires that an applicant be advised of a decision to defer within 14 days. To that extent, the PSPB was in violation of section 11(3). In addition, the public authority is required where possible to indicate a period during which the deferment will operate. The applicant was given no possible time frame in the initial decision letter. However, upon Internal Review the Managing Director of the PSPB did give an expected time frame.

It should be noted that a request for this record had already been made by the same Applicant in January of 2009, which was the first appeal made to the Information Commissioner. At the time, the Commissioner upheld the PSPB's decision to defer access to the record pending tabling in the Legislative Assembly.

D. ISSUES UNDER REVIEW IN THIS HEARING

The issues to be decided in this Hearing are:

Section 11(2)(b): Can the Public Service Pensions Board defer the grant of access to the Actuarial Valuation of the Public Sector Pension Plan as of January 1, 2008 because the record was prepared for presentation to the Legislative Assembly or for the purpose of being made available to a particular person or body?

Has a reasonable period for the record to be presented or made available to that person or body expired?

E. CONSIDERATION OF ISSUES UNDER REVIEW

The PSPB seeks to defer access to the responsive records under section 11(2)(b) which states:

- (2) *A public authority may defer the grant of access to a record-*
 - (b) *if the record was prepared for presentation to the Legislative Assembly or for the purpose of being made available to a particular person or body, until the expiration of a reasonable period after its preparation for it to be so presented or made available to that person or body;*

The position of the Public Service Pensions Board

The PSPB states that "The 2008 Actuarial Report of the Public Service Pensions Fund is not available as it is waiting to be tabled in the Legislative Assembly. We cannot release the

information until after it has been tabled". In their submission, they give a rationale for deferment of records as follows:

It is expected that the 2008 Actuarial Reports for the three Government sponsored Pension Plans will be re-submitted to Cabinet, along with the 2011 Actuarial Valuation Reports. It is understood from the Financial Secretary that the objective is to have these Reports tabled in the Legislative Assembly by late May or early June 2012; therefore the PSPB stands by its decision to continue to defer access to the record until it becomes a public document.

The PSPB contends that the record requested was prepared for presentation to the Financial Secretary and Cabinet for subsequent tabling in the Legislative Assembly. In addition, as the 2008 Report will be incorporated into the 2011 Report, and tabled by the second quarter of 2012, this constitutes a reasonable timeline.

The position of the Applicant

The Applicant points out that the 2008 Report was first requested in 2009, and its release was at that time also deferred pending tabling in the Legislative Assembly. They assert that any "reasonable period" as referred to in the FOI Law has "long since expired with regard to the release of this document".

They further refer to section 26 of the Framework for Fiscal Responsibility (FFR) signed in November 2011 by both the United Kingdom and the Cayman Islands Government, which states the following:

The Cayman Islands Government will make contingent and actual liabilities, including (but not limited to) pensions and health care schemes, subject to actuarial assessments at least every three years. Actuarial assessments will be published within three months of receipt. The Government will publish its proposals to address the results of the assessments no later than the budget following the receipt of the actuarial assessment.

According to the Applicant, the delay incurred in the tabling of the 2008 report is not reasonable, and Government could also potentially be in contravention of the FFR agreement in this respect.

Discussion

Section 3(7) of the FOI Law states that "Nothing in this Law shall be read as abrogating the provisions of any other Law that restricts access to records". I can see nothing in either the Public Service Pensions Law or the Standing Orders which restricts access to the responsive record. If there is any other legislation, policy or procedure which might restrict access to the 2008 actuarial report this has not been argued by the PSPB.

In their short submission, the PSPB simply states that they cannot release the responsive record until after it has been tabled. They do not refer to any provisions of the Public Service Pensions Law or the Legislative Assembly Standing Orders to support their position. They have therefore not demonstrated, as required under section 43(2), that they acted in accordance with their obligations under the Law.

However, for the avoidance of doubt, I refer to the provisions of sections 12(3) and 12(4) of the Public Service Pensions Law:

(3) A report of the actuarial review carried out under subsection (1) shall be made to the Board, which shall send a copy to the Financial Secretary, ...

(4) The Financial Secretary shall, immediately after he receives it, lay the actuarial report on the table of the Legislative Assembly for twenty-one days, and such report shall be gazetted.

I also consulted section 18 of the Legislative Assembly Standing Orders, which deals with the Presentation of Papers, but I can find no provision that restricts access to a record such as the one under review in this instance, prior to tabling in the Honourable House.

The PSPB states that the responsive record was prepared for presentation to the Financial Secretary and Cabinet for subsequent tabling in the Legislative Assembly. I do not agree with this statement. Section 12(1) of the Public Service Pensions Law sets out that the actuarial review is to be carried out in order to assess and evaluate the assets and liabilities of the Fund. The primary purpose of the review is not to present a report on it to the Financial Secretary and Cabinet, but to assess and evaluate the viability of the Fund.

With respect to whether a reasonable period after its preparation for the record to be presented or made available to that person or body has expired, the responsive record is a 2008 Report which was completed on 17 March 2009. Thus more than three years has passed, the requirement of the Public Service Pensions Law for the Financial Secretary to immediately table the report has not been met, and the Report has not yet been tabled in the Legislative Assembly and gazetted as required. The fact that it is planned for the 2008 Report to be incorporated into the 2011 Report with the objective of having these Reports jointly tabled in the Legislative Assembly by late May or early June 2012 is irrelevant to the release of the 2008 Report, and cannot be used to justify a further deferral.

Therefore, I find that the deferral in section 11(2)(b) does not apply to the responsive record as it was not prepared for presentation to the Legislative Assembly or for the purpose of being made available to a particular person or body. Even if it was prepared for presentation to a person or body, a reasonable period after its preparation for it to be so presented or made available to that person or body has expired.

F. FINDINGS AND DECISION

Under section 43(1) of the *Freedom of Information Law, 2007*, I make the following findings and decision:

Findings:

It is not reasonable to defer the grant of access to the Actuarial Valuation of the Public Service Pension Plan as of January 1, 2008 under Section 11(2)(b) .

Decision:

I overturn the decision of the Public Service Pensions Board to defer the grant of access to the Actuarial Valuation of the Public Service Pension Plan as of January 1, 2008 under section 11(2)(b) of the *Freedom of Information Law, 2007*, and require the Public Service Pensions Board to disclose the responsive record.

Concurrently, the PSPB is required to forward me a copy of the cover letter together with a copy of the record it supplies to the Applicant.

As per section 47 of the *Freedom of Information Law, 2007*, the complainant, or the relevant public or private body may, within 45 days of the date of this Decision, appeal to the Grand Court by way of judicial review of this Decision.

If judicial review is sought, I ask that a copy of the application be sent to my Office immediately upon submission to the Court.

If judicial review has not been sought on or before 21 June 2012, and should the PSPB fail to provide the Applicant with, and publish the responsive record in this matter, I may certify in writing to the Grand Court the failure to comply with this Decision and the Court may consider such failure under the rules relating to contempt of court.



Jennifer P Dilbert
Information Commissioner
7 May 2012