ICO Hearing 45-00000
Decision

The Governor's Office

Jan Liebaers
Acting Information Commissioner for the Cayman Islands

15 February 2016

Summary:

This case under the Freedom of Information Law 2007 ("FOI Law") revolves around the disclosure of two records relating to *Operation Tempura*, consisting of a complaint about certain members of the judiciary and others made to HE Governor Taylor in 2011, and the Governor's response in which all the allegations raised in the Complaint were dismissed.

This case has a long history, including:

- the request for the responsive records made to the Governor's Office in 2012;

- the refusal of the Governor's Office to disclose the records on the basis of section 54 (providing protections relating to defamation);[1]

- the former Information Commissioner's Hearing Decision 24-00613 in which she rejected the Governor's arguments in relation to the exemptions in sections 17(b)(i) (actionable breach of confidence), 23(1) (personal information), 20(1)(d) (effective conduct of public affairs) and section 54, and ordered the disclosure of the records;

- following the Governor's application for a judicial review of the Information Commissioner's Decision, Acting Justice Sir Alan Moses ordered the Reconsideration of the matter on the sole basis of the exemption in section 20(1)(d);

- the Reconsidered Decision 41-0000 in which I rejected the Governor's arguments in relation to section 20(1)(d), and declined to hear the arguments in sections 16(b)(i) (law enforcement – investigation and prosecution), 16(b)(ii) (law enforcement – trial and

[1] In this decision all references to sections are to sections under *the Freedom of Information Law, 2007*, and all references to regulations are to regulations under the *Freedom of Information (General) Regulations, 2008*, unless otherwise specified. At the time the request in this case was made the 2015 revision of the FOI Law had not yet come into effect, and therefore this Decision is made under the 2007 version of the FOI Law.

adjudication) and 17(b)(ii) (contempt of court), and ordered the records to be disclosed, with the exception of a single segment on page 13 of the Complaint; and,

- the second judicial review applied for by the Governor in which, apart from section 20(1)(d) for which the Governor provided no arguments in court, she also asserted that the Information Commissioner had no jurisdiction in the matter, and argued the exemptions in sections 16(b) (law enforcement), 17(a) (legal professional privilege) and 17(b)(ii) (contempt of court), resulting in the Order of Acting Justice Owen for the present Reconsideration of the matter by reason of section 16(b).

In this current Reconsidered Decision ("Reconsideration") the Acting Information Commissioner considered whether the responsive records are subject to the exemption in section 16(b) by reason of being law enforcement records, the disclosure of which "would, or could reasonably be expected to affect (i) the conduct of an investigation or prosecution of a breach or possible breach of the law; or (ii) the trial of any person or the adjudication of a particular case, and, if so, whether in whole or in part.

After careful consideration the Acting Information Commissioner decided that there are no adequate grounds for a blanket application of the exemption to the two responsive records in their entirety, but that the information representing the actions and conduct of Mr. Martin Bridger in both records, in so far as it is not innocuous or already in the public domain, is exempted by reason of sections 16(b)(i) and (ii) because its disclosure could reasonably be expected to affect the current police investigation and possible prosecution and trial of Mr. Bridger

The Acting Information Commissioner did not re-examine the exemption by reason of section 20(1)(d) of the single passage on page 13 of the Complaint, which was decided in the previous Reconsideration. This passage continues to be exempted.

Statutes Considered:

Freedom of Information Law, 2007
Freedom of Information (General) Regulations, 2008
Cayman Islands Constitution Order 2009 (SI 2009/1379)

Contents:

A. INTRODUCTION

[1] This case concerns the disclosure of two responsive records, namely a complaint (the

"Complaint") made to Governor Taylor in 2011 and the Governor's response ("Governor's Response") to that Complaint, in which the Governor dismissed all the allegations raised. The present Reconsideration follows from the Order (the "Order") issued by Acting Justice Timothy Owen QC (the "Judge") in Cause G0188/2014 in which my earlier Reconsidered Decision 41-00000 was judicially reviewed. In that earlier Decision I had ordered the full disclosure of the records in question, save for a small passage on page 13 of the Complaint which was to remain withheld by reason of section 20(1)(d).

[2] This case has a long history, which goes back to a request for the responsive records made to the Governor's Office on 8 February 2012, the refusal of the Governor's Office to disclose the records on the basis of section 54, the former Information Commissioner's Hearing Decision 24-00613 in which she ordered the disclosure of the records, the judicial review of that Decision in Cause G0003/2013 in which Acting Justice Sir Alan Moses ordered the reconsideration on the basis of the exemption in section 20(1)(d), my Reconsidered Decision 41-0000 in which I ordered the full disclosure of the responsive records (except for a small passage), and the second challenge by means of a judicial review by the Governor before Acting Justice Owen who ordered the reconsideration on the basis of the exemption in section 16(b).

[3] The question before me in the present Reconsideration is whether the responsive records, or any part thereof, are subject to the exemption in section 16(b) of the FOI Law. That section exempts a record from the general right to access if it is a law enforcement record the disclosure of which "would, or could reasonably be expected to – (b) affect – (i) the conduct of an investigation or prosecution of a breach or possible breach of the law; [or] (ii) the trial of any person or the adjudication of a particular case."

[4] The Governor's claim is essentially that the disclosure of the responsive records would, or could reasonably be expected to affect a criminal investigation which is currently being undertaken against Mr. Bridger, the Senior Investigating Officer in *Operation Tempura*, as well as his possible future prosecution and trial.

B. BACKGROUND

[5] For detailed background information on the previous stages of this case, I refer to:

- the former Information Commissioner's Decision 24-00612 dated 22 November 2012;[2]
- the Judgment and Order of Acting Justice Sir Alan Moses in the Judicial Review of that Decision, dated 23 December 2013;[3]
- My Reconsidered Decision 41-00000, dated 10 July 2014;[4]
- the Judgment and Order of Acting Justice Timothy Owen in the Judicial Review of that Decision, dated 16 March 2015.[5]

[2] Information Commissioner's Office *Decision Hearing 24-00612 The Governor's Office* 22 November 2012
[3] *The Governor of the Cayman Islands v The Information Commissioner* Cause G 0003 of 2013
[4] Information Commissioner's Office *Decision Hearing 41-00000 The Governor's Office* 10 July 2014
[5] *The Governor of the Cayman Islands v The Information Commissioner* Cause G 188 of 2014 16 March 2015

[6] The Order of Owen Ag J. remitted the matter back to the Information Commissioner for reconsideration of the Governor's Office claim of the exemption in section 16(b).

[7] The Order stated, *inter alia*:

> *2. The Decision is remitted back to the [Information Commissioner] to reconsider whether the requested records are exempt from disclosure by reason of section 16 (b) of the Freedom of Information Law 2007 (the 'FOI Law');*
>
> *3. It is declared that on remission the [Information Commissioner] is to use such investigatory powers pursuant to the FOI Law as he considers necessary and for the purpose of his reconsideration is to receive such written or oral submissions, as the FOI Law permits and, consistent with that Law, he considers necessary;*

[8] Following the Order, which remitted the decision back to me for reconsideration, I invited the Governor's Office to provide me with a new Submission on the basis of the exemption in section 16(b).

[9] On 29 May 2015 Police Commissioner David Baines sent me an invitation to meet with him, offering me access to the investigation files relating to the allegations against Mr. Bridger. However, since I had not yet received the Governor's Submission, I informed the Police Commissioner that I first wished to learn the Governor's arguments, before examining further evidence.

[10] I received the Governor's Submission on 16 June 2015. Although it contained a lengthy chronology and comprehensive background of the case, the Submission provided little in the way of a detailed legal analysis as to why the exemption is engaged. The Submission suggested that I should undertake an investigation of what was said to be evidence in the hands of the Police Commissioner in support of the exemption in section 16(b).

[11] The lack of specific reasoning in the Submission and the Governor's referral to the Police Commissioner for further information and evidence indicated to me that the Governor's Office felt it was my responsibility to locate evidence, and build the case in support of their claim of the exemption in question.

[12] I wish to emphasize that the examination of the police investigation files and provision of evidence in support of the application of the exemption should properly have been undertaken by the Governor's Office, since section 43(2) places the burden of proof squarely on the public authority that is claiming an exemption, providing:

> *In any appeal under section 42, the burden of proof shall be on the public or private body to show that it acted in accordance with its obligations under this Law.*

[13] Nonetheless, I decided to adhere to the Governor's request and commenced an investigation under sections 45 and 46 of the FOI law in an attempt to gain a reasonable understanding as to why the exemption had been applied by the Governor's Office.

[14] After reading the Submission of 16 June 2015 I contacted the Police Commissioner, as well as the Director of Public Prosecutions ("DPP"), requesting access to "any investigation and/or prosecution records in their possession" in regard to Mr. Bridger. I also contacted Mr. Bridger himself to ask: (1) when he learned about the criminal investigation against him, and whether he

had been contacted by anyone in pursuance of the investigation; and, (2) whether there were any other issues related to the FOI question before me that he wished to bring to my attention.[6]

[15] I met with the Police Commissioner on 3 and 5 August 2015, and he kindly offered the Acting Deputy Information Commissioner (ADIC) and myself full access to all the relevant files, and also verbally provided background information about the police investigation that was ongoing. We freely examined a small proportion of the complex set of files, consisting of investigation binders, for about 2 hours on each of those two days.

[16] After review of the RCIPS investigation binders I was able to gain a general understanding of the police investigation, including the reasoning behind some of the allegations. The ADIC and I were able to scrutinize the investigation binders compiled by Mr. Schofield, but, in the relatively brief period allotted, we were not able to confirm any specific connection between the RCIPS investigation and the information contained the responsive records. I will further expand on this point in my discussion of the exemption, below.

[17] In the course of our conversations, the Police Commissioner (having previously stated that he had read the responsive records) verbally indicated that he was uncertain which parts, if any, of the responsive records were relevant to the investigation of Mr. Bridger. He said this would depend on where the evidence might lead the investigation and he was not sure what direction that might be. The non-committal nature of his answer was somewhat concerning, considering the investigation had apparently been going on for some time, and exemptions under the FOI Law must be supported by clear and cogent evidence.

[18] I explained to the Police Commissioner that the ADIC and I would need to continue with our examination of the investigation binders for several more days, spread over multiple weeks, at mutually convenient times. The Police Commissioner explicitly consented to this action plan, and agreed that our examination of the files could also continue during his leave in the ensuing weeks, since his own presence was not required. He indicated that his secretary knew where the binders were located and that she would be able to assist us when we needed access to them.

[19] Since the police investigation involved seven different criminal allegations, and the two responsive records are quite lengthy and complex (the Governor's Response alone amounting to some 185 pages), I considered a detailed investigation of the documentary evidence would be necessary in order to find out how the police investigation exactly, if at all, related to the responsive records, and, if so, whether the evidence engaged the exemption in respect of the two responsive records in full or in part. On the basis of a detailed analysis of both the investigation binders and the responsive records I hoped to be able to understand better how the disclosure of the responsive records "would, or could reasonably be expected" to affect the investigation, prosecution, trial and/or adjudication of Mr. Bridger, as was being claimed. I specifically explained that intent twice in detail to the Police Commissioner who clearly understood what I meant to accomplish, and expressly consented to my intended course of action.

[20] However, a few days later when the ADIC tried to make arrangements for the continuation of our examination of the RCIPS investigation binders, he was told that the Police Commissioner had just appointed an investigation team which would need the files, and that we would consequently not be able to examine the files for an unspecified period of time. I was surprised

[6] As the complainant, Mr. Bridger is in possession of a copy of the Governor's Response which he received directly from Governor Taylor under a confidentiality agreement with the Governor.

by this change of course in light of the assurances given by the Police Commissioner, only a few days prior, that we could view the records.

[21] I wrote to the Police Commissioner's office proposing that the files be shared between me and the investigation team at mutually agreeable times. In response I received a flat refusal from the investigating officer.

[22] This about-face of the RCIPS was inconsistent with the course of action explicitly agreed with the Police Commissioner, and it posed a significant and insufficiently explained impediment for my own investigation and the resolution of the case. Therefore, I issued a formal Order, requiring that I be provided with access to the records under section 45 which provides (emphasis added):

> *45. (1) In coming to a decision pursuant to section 43 or 44,* ***the Commissioner shall have the power to conduct a full investigation, including by issuing orders requiring the production of evidence and compelling witnesses to testify; in the exercise of this power he may call for and inspect an exempt record,*** *so however, that, where he does so, he shall take such steps as are necessary or expedient to ensure that the record is inspected only by members of staff of the Commissioner acting in relation to that matter.*
>
> *(2)* ***The Commissioner may, during an investigation pursuant to subsection (1), examine any record to which this Law applies, and no such record may be withheld from the Commissioner on any grounds*** *unless the Governor, under his hand, certifies that the examination of such record would not be in the public interest*.

[23] I issued my Order to the Police Commissioner on 17 August 2015. In it, after repeating the context of my investigation, I stated (my emphasis),

> *…considering:*
>
> - *My letter of 24 July 2015 requesting access to records "containing evidence and documentation held by the RCIPS in relation to any criminal investigation and/or prosecution of Mr. Bridger currently in progress, as well as to any records of communications between the RCIPS and the Office of the Director of Public Prosecutions relating to the same";*
>
> - *My visit to your office on 3 and 5 August 2015, during which [the ADIC] and I were provided with access to a number of the above records for a total of approximately 4 hours, in order to start examining the Governor's claim made under the Freedom of Information Law, further to the Court Order indicated above;*
>
> - *The verbal agreement you gave me on 5 August 2015 in which you assured me that I would continue to have access to the same during your absence from the Islands in order to continue the investigation;*
>
> - *The communication by [your PA], dated 11 August 2015, to [the ADIC] which contradicted our verbal agreement and informed him that an investigative team has been appointed, and that consequently I could no longer have access to the records for an unspecified period of time, as long as the records were required by the RCIPS investigators;*

- *My letter of 14 August 2015 to [your PA], requesting that the above position be reconsidered and access be arranged on the basis of an agreed schedule; and,*

- *The response from [the investigating RICPS officer], received on the same day, confirming that no access would be provided until his review of the available documentation by the investigators is completed,*

under my authority as the Acting Information Commissioner of the Cayman Islands, pursuant to section 45 of the Freedom of Information Law, 2007 ("FOI Law"), ***I order that you provide access by means of inspection to the records mentioned in my letter of 24 July 2015 at such dates and times as mutually agreed, in order to allow me to continue and complete my investigation of the Governor's claims.***

In the alternative, you may provide me with copies of all the records by the end of business on Friday, 21 August 2015.

[24] I received a response from the Police Commissioner that same afternoon, in which he expressed his great concern at having learned (apparently from Mr. Bridger) that I had asked Mr. Bridger for "a statement/affidavit concerning his complaint to the RCIPS", saying that this had the potential of interfering with a police investigation, and asking on what basis I had done so. He opined that it was "beyond what the Judge [i.e. Owen Ag J.] had envisaged and beyond [my] remit". The Police Commissioner advised me to get legal advice on my "actions and potential consequences". Most importantly, he said he had "instructed that no further access to the records [was] to be provided until [he had] formal response as to the accuracy of [the fact that I had contacted Mr. Bridger]". The Police Commissioner also said it was necessary for me to provide him with my "correspondence [with Mr. Bridger] and any associated documents".

[25] In response, I made it clear that the premise of his statement was incorrect, since I had not asked Mr. Bridger for "a statement/affidavit concerning his complaint to the RCIPS". Rather, I had asked two specific questions relevant to my own investigation (as related above). I had explicitly pointed out to Mr. Bridger that "I am only empowered to reach a decision on matters within the confines of the FOI Law… [and that] it is not within my powers to address other issues, such as the potential correctness or legality of any actions that may be the subject of the responsive records or a criminal investigation, prosecution, trial and/or adjudication".

[26] In my response to the Police Commissioner I again explained the investigatory powers of the Information Commissioner under section 45, and asked for a copy of the communication in which Mr. Bridger had apparently told the Police Commissioner about my contact with him. I attached a copy of my letter to Mr. Bridger, and explained that my contact with Mr. Bridger was strictly related to my duties under the FOI Law and pursuant to the Order of Owen Ag J., and that as of yet I had not received a response from Mr. Bridger. I concluded my response to the Police Commissioner by saying that, now that I had clarified my contact with Mr. Bridger as he had requested, I expected him to provide me with renewed access to his investigation binders so that I could conclude my own investigation.

[27] In his response on 19 August 2015 the Police Commissioner stated that my approach had been "inappropriate and [had] the potential to interfere with the investigation." He forwarded me the email of Mr. Bridger I had asked for. Regarding my request for access to the records, the Police Commissioner stated:

> *In light of you seeking to compel my provision of documents from a legal position which I consider flawed, I have referenced all documentation to the Attorney General for legal*

consideration and in order to prepare for a return to the High Court [sic] to address what I consider to be an overstretch of his [sic] powers and actions.

Finally, until that matter is finalized, I will not be presenting or permitting further access to the documents

[28] In summary, notwithstanding that:

(1) the Governor's Office had not adequately presented me with reasons as to why it contended the exemption in section 16(b) applied and was instead insisting that I meet with the Police Commissioner in order to obtain evidence from him;

(2) the Judge had confirmed my powers to examine what evidence might exist for the exemption claimed by the Governor's Office;

(3) sections 45 and 46 in any event gave me broad powers to investigate such matters and examine any records that are relevant; and,

(4) the Police Commissioner had himself invited me to consult his investigation files, and had agreed to provide unrestricted access, also in his absence;

the Police Commissioner continued to refuse access to the documentary evidence I needed to complete my investigation under the FOI Law because he considered my legal position "flawed", and was willing to go to court to prevent me, essentially, from fulfilling the Judge's Order and my mandate under the FOI Law.

[29] There is no doubt in my mind that I acted properly at all times in pursuit of evidence relevant to the question before me, and that my access to the police files was reasonable and well within my powers under sections 45 and 46, as was my communication to Mr. Bridger.

[30] Under these circumstances I considered it reasonable to withdraw my Order of 17 August 2015 requiring access to the police records. I took this decision particularly in the light of the fact that it is the Governor's Office which has the burden of proof and whose duty it therefore is to examine all evidence for or against their claim of an exemption and present their case, as required under sections 43(2) and 47(2). Given that this matter has already gone to court twice before, I was also conscious of the cost to the public purse and the likely criticism that would ensue if this case between two public entities once again returned to the courts, not to mention the extra delay an additional court appearance would create.

[31] As I could not continue without access to the police files, I concluded my investigation of RCIPS evidence and withdrew the formal Order to the Police Commissioner. I wrote to HE the Governor explaining that:

- in my view the Submission of 16 June 2015 contained insufficient evidence to conclude that the exemption in section 16(b) applies to the responsive records;
- my own investigation in this matter was drawing to an unexpected close as I was being impeded from examining the police investigation binders by the Police Commissioner; and,
- I was offering the Governor's Office another chance to make its case in a new Submission.

My letter of 26 August 2015 to the Governor is further discussed below.

[32] In the meantime, I had also received a response from the DPP which confirmed the existence of their communication with the Police Commissioner on the subject of the criminal investigation of Mr. Bridger, as indicated by Mr. Schofield and further explained below, which I had in any event already read in the investigation binders held by the Police Commissioner.

[33] Shortly afterwards, I also received a response from Mr. Bridger, which confirmed that an RCIPS investigation of certain criminal allegations against him, which were apparently first mentioned to him in July 2013, was indeed ongoing. The response from Mr. Bridger is also further discussed below.

[34] On 26 October 2015 the Governor's Office provided me with a new Submission, entitled "Supplemental Submissions of Governor of the Cayman Islands – Section 16(b) Exemption" (the "Supplemental Submission").

[35] The Governor's Office states that the Supplemental Submission is intended to supplement its Submission dated 16 June 2015. That earlier submission consisted of background information and a chronology of the case to date, and was supported by three affidavits, namely:

- the First Affidavit of Police Commissioner David Baines, dated 8 June 2015;
- the First Affidavit of Douglas Schofield, dated 19 December 2014; and,
- the Second Affidavit of Douglas Schofield, dated 8 June 2015.

[36] For the avoidance of doubt, I confirm that in the present Reconsideration, I have taken into account the Submission of 16 June 2015, the Supplemental Submission of 26 October 2015, and all affidavits provided to me, as well as any information gained in the course of my own investigation.

C. PRELIMINARY ISSUE – THE MEANING OF THE ORDER OF 16 MARCH 2015

[37] The Governor's Office argues that the Judge has, in fact, already ruled on the application of the exemption in section 16(b), and has found that the Governor's case in respect of that exemption has therefore already been proven. It supports this contention by selectively quoting passages from Acting Justice Owen's Judgement dated 16 March 2015 (the "Judgment"). Essentially, the Governor's Office counsels me to step aside and accept that there is nothing more for me to add until the police investigation, prosecution and trial of Mr. Bridger are over.

[38] The Governor's Office states:

> *Unlike the case where Sir Alan Moses rejected the suggestion that he, as opposed to the Information Commissioner, should rule on the application of the exemption, in his Judgment, Mr. Justice Owen QC, ruled on the application of the exemption and held that the Section 16(b) Exemption was engaged*

[39] In support of this assertion, the Governor's Office quotes, in particular, paragraph 56 of the Judgment no less than four times throughout the Supplemental Submission. In that paragraph the Judge stated *inter alia* (emphasis added by the Governor's Office):

> *In these circumstances, I have concluded that the Governor's argument on the single* ***s.16(b) exemption is made out*** *with the consequence that the Information Commissioner's decision of 10th July must be quashed…*

[40] On this basis the Governor's Office draws the following conclusion:

> *Mr. Justice Owen ruled that both parts of the Section 16(b) Exemption applied with respect to the Requested Records, i.e. that the Requested Records are at the present time are [sic] exempt from disclosure pursuant to the Section 16(b) Exemption on the basis that the Report addressing the Complaint is a "record relating to law enforcement" whose disclosure "…could reasonably be expected to affect the conduct of an investigation or prosecution of a breach or possible breach of the law or the trial of any person or the adjudication of a particular case."*

[41] The Governor's Office explains that, in reaching the above-quoted conclusion in paragraph 56 of the Judgment, the Judge relied on the First Affidavit of Douglas Schofield, which is discussed in paragraph 53 of the Judgment. In the relevant passage of that Affidavit Mr. Schofield lists the criminal offences for which Mr. Bridger is being investigated, and explains his own role in assisting the Police Commissioner in preparing the file which was presented to the DPP on 28 November 2014, and in response to which the DPP replied in April 2015.

[42] In this regard, the Governor's Office also quotes the following passage from paragraph 54 of the Judgement, in which the Judge stated:

> *In my view, it is quite impossible for me to dismiss as baseless the concern that publication of the Governor's report, identical in content to the Aina report as it is, has the potential to interfere with what is plainly an active criminal investigation into Mr Bridger's alleged commission of a wide range of criminal offences. It is equally impossible to dismiss the possibility that, were Mr Bridger to be charged, the wide publicity that would inevitably be given to the Governor's response to the complaints pursued by him and Mr Polaine has the potential to prejudice a fair trial. Having read the records myself, it is clear that insofar as the Governor's response summarily dismisses the allegations pursued by Messr. Polaine [and] Bridger against identified members of the judiciary, the former [sic] Attorney General and Mr. Covington – and does so in great detail by reference to a complex series of events that can fairly be assumed to overlap with at least some of the issues that will be addressed in the current criminal investigation into Mr Bridger's conduct – a credible basis for the engagement of s.16(b) of the Law is made out on the evidence. …*

[43] The Governor's Office says it is important to note that I did not challenge what it calls "this clear and convincing evidence in support of the Section 16(b) Exemption". Towards the end of the Supplemental Submission, it is stated that (emphasis added by the Governor's Office),

> *The Grand Court 2015 Order cannot be construed without reference to Mr Justice Owen's Judgment, pursuant to which the Grand Court Order was made. The Judgment was not appealed by the Acting Information Commissioner and as the Judgment holding that "**the 16(b) Exemption is made out**" is binding on the Acting Information Commission [sic].*

[44] The Governor's Office claims that, in regard to the present Reconsideration in pursuance of the Order:

> *The issue to be determined at this stage is not whether at present the Requested Records are exempt from disclosure under the Section 16(b) Exemption. That issue was*

determined when Mr. Justice Owen ruled in the Judgment: [followed by the passage from paragraph 56 of the Judgment, already quoted above]

The issue to be determined will be the "ultimate" application of the Section 16(b) Exemption after the trial. Mr. Justice Owen concluded his judgment with the following:

> *The only tenable basis for exempting the requested records from disclosure under the 2007 Law is that the current active investigation into Mr Bridger's conduct prima facie engages the s.16(b) exemption. Whether ultimately it prevents publication of the whole of the Governor's report (or merely identified parts of it) or whether future events wholly undermine the basis for the s.16(b) exemption are all matters for the Information Commissioner to reconsider in light of all relevant considerations and in light of the full exercise of his investigatory powers. The appeal is allowed to this extent.*

[45] The Governor's Office also counsels me as follows:

> *The continuing application of the Section 16(b) Exemption is not ripe for review at present because there are no new facts or new evidence beyond that which Mr Justice Owen relied upon in the Judgment other than those that the Governor has submitted with the June 16, 2015 [sic] and the evidence shown in paragraph 33 above.*[7]
> *...*
>
> *The Acting Information Commissioner is urged to be patient and to let the Commissioner of Police and the Director of Public Prosecutions to [sic] discharge their duties without interference until either, (a) the Investigation and trial of Mr Bridger is completed or (b) the Investigation is completed and the DPP has decided not to charge Mr Bridger.*

[46] The Order which accompanied the Judgment is dated 16 March 2015, and was filed on 24 April 2015. Its language is clear, and was mutually agreed upon by both parties, being the Governor and the Information Commissioner.

[47] Contrary to the assertions of the Governor's Office, the Order plainly states that the reconsideration whether the exemption in section 16(b) applies, is remitted back to the Information Commissioner for a new decision, as follows (emphasis added):

> 1. *The order of certiorari to quash the Decision is granted;*
>
> 2. ***The Decision is remitted back to the [Information Commissioner] to reconsider whether the requested records are exempt from disclosure by reason of section 16 (b) of the Freedom of Information Law 2007 (the 'FOI Law');***
>
> 3. *It is declared that on remission the [Information Commissioner] is to use such investigatory powers pursuant to the FOI Law as he considers necessary and for the purpose of his reconsideration is to receive such written or oral submissions, as the FOI Law permits and, consistent with that Law, he considers necessary;*

[7] This reference to paragraph 33 appears to be an error, since that paragraph of the Supplemental Submission consists of a quote from Police Commissioner Baines's statement which formed part of the Governor's Submission of 4 April 2014, and which was quoted at length by Acting Justice Owen in paragraph 11 of the Judgment.

4. There shall be no order as to costs.

[48] I note that the Order is worded in language that is the same as the earlier Order by Acting Justice Moses in a previous stage of this case[8], which also remitted the matter back to the Information Commissioner for reconsideration, albeit on the basis of another exemption.

[49] Acting Justice Owen defined the issues before him in the Judicial Review of my Hearing Decision 41-00000. These included:

> *d. Is there any merit in the "fresh" grounds for not disclosing the records, namely the issues of contempt, legal professional privilege and potential prejudice to a live criminal investigation and, if so, what consequences flow from this?*[9]

[50] In regard to this last point, the Judge questioned whether the rejection of new exemptions in my earlier Decision of July 2014 (Hearing 41-0000) had been lawful. Those new exemptions had been freshly introduced by the Governor in that Hearing. Specifically, the Judge asked:

> *Did the Commissioner act lawfully in limiting his consideration of the disclosure request to the s.20(1)(d) dispute, thereby refusing to consider any matters that arose after the date of the original request?*[10]

[51] In considering this question, the Judge rephrased the question as follows:

> *In my view the real question is whether, in quashing the Commissioner's original decision… and ordering remittal to reconsider whether the requested records are exempt from disclosure by reason of section 20(1)(d) of the FOI Law, Moses Ag. J. was to be taken to excluding in all circumstances the possibility of the Governor relying on any new basis for exemption that had arisen since the original decision in February 2013, including one which had arisen after his Judgment has handed down in December 2013.*[11]

[52] After careful consideration, the Judge reached the conclusion that this could not have been the intention of Moses Ag J., and rejected my refusal in 2014 not to hear the new exemptions proposed by the Governor, stating that,

> *To read the Order [by Moses Ag J.] as imposing a straightjacket on both the Governor and the Commissioner would be contrary to good public administration and common sense.*[12]

[53] The Judge then proceeded to consider whether, in the course of my earlier reconsideration (Decision 41-00000 dated 10 July 2014), it would have been appropriate for me to hear the three exemptions freshly raised by the Governor in her April 2014 Submission. The Judge rejected that I should have heard the first two new exemptions (contempt of court and legal professional privilege) on points of law, but accepted that there were sufficient *prima facie* reasons for me to have heard the third new exemption raised by the Governor relating to law enforcement, stating:

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[8] *Governor v Information Commissioner* Cause G 0003 of 2013 Order 23 December 2013
[9] *Judgment* para 20
[10] *Judgment* para 35
[11] *Judgment* para 38
[12] *Judgment* ibid

> *Whatever criticism may be laid against the Governor's office for the way in which her case has been advanced both before Moses Ag J. and before me in terms of the constantly shifting positions adopted in relation to potential exemption from disclosure, no blame attached in relation to the contention that the records are at the moment exempt from disclosure pursuant to s.16(b) on the basis that the Governor's 7th March 2011 response is a "record relating to law enforcement" whose disclosure "could reasonably be expected to affect the conduct of an investigation or prosecution of a breach or possible breach of the law or the trial of any person or the adjudication of a particular case".*[13]

[54] The Judge concluded that I had been wrong to refuse the Police Commissioner's invitation for a private briefing in April 2014, and stated that such a meeting would have offered me a chance to learn, "further and better particulars about the criminal inquiry into the allegations and counter allegations flowing between Mr. Bridger and those against whom he had complained".[14] This was particularly the case in light of the preceding Order of Moses Ag J., which had referred to the use of my investigative powers and the possibility of receiving both written and oral submissions, as follows:

> *4. It is declared that on remission the [Information Commissioner] is to use such investigative powers pursuant to the FOI Law as she considers necessary and for the purpose of her reconsideration is to receive such written or oral submissions, as the FOI Law permits and, consistent with that Law, she considers necessary.*[15]

[55] In discussing these arguments in the Supplemental Submission, the Governor's Office does not clarify whether the exemption is intended to apply to both responsive records equally, or to the Governor's Response only, since only the latter appears to be mentioned as "a record relating to law enforcement".

[56] I note that the excerpt of paragraph 54 of the Judgment quoted by the Governor's Office[16], neglects to provide the full text of that passage, thereby creating the impression that the Judge had reached his final conclusion as to the application of the exemption in section 16(b). In fact, the Judge continued as follows (my emphasis):

> *… In my judgment,* ***one of the issues that might usefully have been considered by the Information Commissioner in light of the concerns expressed by Commissioner Baines was whether a redacted version of the Governor's 7th March 2011 report might be capable of being published*** *with a view to avoiding prejudice to the current criminal investigation while upholding the basic principles of FOI law. However the Information Commissioner's blanket refusal to contemplate a meeting with Commissioner Baines, combined with his view that he could not lawfully consider the claim to a s.16(b) exemption, prevented any such consideration and in my view that is a further reason why I consider the 10th July 2014 decision was unlawful and falls to be quashed.*

[13] *Judgment* para 48
[14] *Judgment* para 52
[15] Order 23 December 2013 op cit
[16] See paragraph 44 above

[57] This full passage makes it clear that the Judge was considering the actions leading up to my Decision of July 2014, and was not reaching final conclusions on the application of the exemption in section 16(b).

[58] The final passage of paragraph 56 of the Judgment provides a clear indication of the Judge's intention and the meaning of the Judgment and Order. Although this passage has been quoted by the Governor's Office,[17] I want to repeat it here with added emphasis, since its true meaning was not considered in the Governor's Supplemental Submission:

> *… Subject to any genuinely new exemption arising for consideration (by which I mean an exemption that is based on new factual developments rather than a revised view of what legal submission might be advanced on "old" facts),* ***the only tenable basis for exempting the requested record from disclosure under the 2007 law is that the current active criminal investigation into Mr. Bridger's conduct prima facie engages the s.16(b) exemption. Whether ultimately it prevents publication of the whole of the Governor's report (or merely identified parts of it) or whether future events wholly undermine the basis for the s.16(b) exemption are all matters for the Information Commissioner to reconsider in light of all relevant considerations and in light of the full exercise of his investigatory powers.*** *The appeal is allowed to this extent.*

[59] Plainly, the Judge considered it "tenable" that the exemption in section 16(b) may apply to the responsive records, and ruled that that exemption was the only tenable argument remaining for the Governor's Office, barring new factual developments. Clearly, he did not reach a final conclusion as to the application of section 16(b), but noted that the criminal investigation into Mr Bridger's conduct "*prima facie engages the s.16(b) exemption*" (emphasis added). As is clear beyond any doubt from paragraph 2 of the Order, he remitted the matter back to me for investigation and a new decision, the outcome of which is left for me to decide.

[60] For these reasons, I find that the Governor's Office is wrong in stating that the matter has already been decided by the Judge, and that I should therefore step aside until the police investigation, prosecution and/or trial are over. That point of view misreads the purpose of the present Reconsideration, and is nonsensical.

[61] Consequently, contrary to the Governor's reasoning, for the purposes of this Reconsideration the meaning of the Order is: (1) the exemption in section 16(b) is the only exemption the Governor can argue under the FOI Law, barring new factual developments; and (2) the decision whether that exemption applies to the responsive records is to be reconsidered by the Information Commissioner following new submissions and an investigation.

D. ISSUES UNDER REVIEW IN THIS HEARING

[62] As quoted above, the Order of the Court remitted the matter back to me for reconsideration "whether the requested records are exempt from disclosure by reason of section 16 (b) of the Freedom of Information Law 2007 (the 'FOI Law')."

[63] Section 6(1) provides:

[17] See paragraph 43 above

6. (1) Subject to the provisions of this Law, every person shall have a right to obtain access to a record other than an exempt record.

[64] Section 16(b) provides:

> *16. Records relating to law enforcement are exempt from disclosure if their disclosure would, or could reasonably be expected to-*
>
> *…*
>
> *(b) affect-*
>
> *(i) the conduct of an investigation or prosecution of a breach or possible breach of the law; or*
>
> *(ii) the trial of any person or the adjudication of a particular case;*

[65] In regard to the term "would", I have already observed elsewhere that the UK Information Tribunal has clarified that

> *The words "would prejudice" have been interpreted by the Tribunal to mean that it is "more probable than not" that there will be prejudice to the specific interest set out in the exemption…*[18]

[66] Therefore, the phrase "would affect" means that it is more probable than not that the disclosure will affect the investigation, prosecution, trial and/or adjudication.

[67] The meaning of the phrase "could reasonably be expected to" has not been fully explored, but it was previously considered by the former Information Commissioner, who observed that,

> *It is worth noting that the harms test for some other exemptions in the Law is whether disclosure "could reasonably be expected to" which appears to be a lower standard than "would". In this context, the term "would" implies something that is likely, whereas the term "could" expresses possibilities.*[19]

The phrase "could reasonably be expected" therefore has a lower threshold than "would", and means that it is reasonable to expect in all the circumstances that the disclosure will affect the investigation, prosecution, trial and/or adjudication.

[68] Section 16(b) sets a low threshold for the exemption, which applies if the disclosure of the records "would, or could reasonably be expected to … affect" an investigation, prosecution, trial or adjudication. I note that this exemption does not require prejudice to the investigation, prosecution, etc. as a result of the disclosure, but only that the disclosure has to affect the investigation, prosecution, etc.

[69] The exemption in section 16(b) is not subject to a public interest test pursuant to section 26(1).

[70] However, every exemption is subject to the provisions of section 12(1), which provides:

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[18] *Ian Edward McIntyre v Information Commissioner and Ministry of Defence* 4 February 2008 EA/2007/0061 para 40

[19] Information Commissioner's Office *Hearing Decision 4-02109 Cabinet Office* 20 May 2010 para 17

12. (1) Where an application is made to a public authority for access to a record which contains exempt matter, the authority shall grant access to a copy of the record with the exempt matter deleted therefrom.

[71] Therefore, the question before me is whether the exemption in section 16(b) applies to the responsive records, and, if so, whether it applies in whole or in part.

E. CONSIDERATION OF ISSUES UNDER REVIEW

[72] In order to consider all evidence and arguments presented by the Governor's Office and discovered in the course of my own investigation in a logical manner, I have broken down my consideration of the issues under review as follows:

1. Are the responsive records "records relating to law enforcement"?
2. Is an investigation, prosecution, trial and/or adjudication being conducted against Mr. Bridger?
3. Do the Governor's fair trial arguments provide evidence for the exemption?
4. Do the allegations against Mr. Bridger provide evidence for the exemption?
    a. Is the exemption engaged in relation to "everything that transpired [after the initial allegations of corruption against the Deputy Police Commissioner were dismissed", as recorded in the responsive records?
    b. Is the exemption engaged in relation to "the conduct of Mr. Bridger" as recorded in the responsive records?
5. Do the affidavits of Messrs. Schofield and Baines provide further evidence for the exemption?
6. Does the general chronology of *Operation Tempura* presented by the Governor's Office provide evidence for the exemption?
7. Does section 24 of the Bill of Rights provide evidence for the exemption?
8. Additional observations

1. Are the responsive records, "records relating to law enforcement"?

[73] Apart from quoting the Judgement in which Owen Ag J. found that no fault lay against the Governor for arguing the section 16(b) exemption in her 2014 submissions,[20] as clarified above, the Governor's Office has not explained why the records are to be considered "records relating to law enforcement".

[74] Despite no argument being put forward in this respect by the Governor, and the fact that the responsive records are not records that were created in the course of a law enforcement activity, I accept that, in so far as, and to the extent that they bear upon an ongoing police investigation and potential prosecution and trial of Mr. Bridger, the responsive records should, indeed, be considered "records relating to law enforcement".

2. Is an investigation, prosecution, trial and/or adjudication being conducted against Mr. Bridger?

[75] Let me state clearly that I accept that a police investigation of criminal allegations against Mr. Bridger is underway, and that Mr. Bridger may eventually be charged and prosecuted. All the

[20] *Judgment* para 48

evidence which has been presented to me, and all the evidence which I have personally reviewed in the RCIPS investigation binders, including the communication between the RCIPS and the DPP as well as the information provided by Mr. Bridger, confirms this.

[76] While I do not contest that an investigation is indeed ongoing, and that a prosecution/trial is possible, this in itself does not prove the exemption since the responsive records, while in part about events that may overlap with the allegations against Mr. Bridger, do not in their entirety consist of information concerning Mr. Bridger or the allegations against him.

[77] Whether and, if so, how and to what extent the two responsive records relate to the police investigation and/or possible prosecution and trial if charges are laid, and how this proves that the exemption is engaged, is what the Governor's Office needed to demonstrate, and what I must decide.

3. Do the Governor's fair trial arguments provide evidence for the exemption?

[78] The Governor's Office raises section 7 of the Bill of Rights, as follows (emphasis added by the Governor's Office):

> *Under Article 7 of the Bill of Rights of the Constitution of the Cayman Islands, everyone has **the right to a fair and public hearing** in the determination of his or her legal rights and obligations **by an independent and impartial court** within a reasonable time and everyone charged with a criminal offence as the minimum rights set in 7(2) including: "**to be presumed innocent until proven guilty according to the law**."*

[79] The Governor's Office states that,

> *With respect to his holding that the publication of the Requested Records "has the potential to prejudice a fair trial," Mr Justice Owen would have had in mind the harmful pretrial publicity that would be caused by the Requested Records being published prior to trial.*

[80] The Governor's Office adds,

> *… given the abilities and frailties of human decision making, notwithstanding any admonition by the trial judge to put such information out of their minds, a juror's information about a case prior to trial is difficult if not impossible to exclude.*

[81] The Governor's Office also indicates that the "members [of the jury would] have to carry out an objective assessment of, inter alia, the likely harm which will be brought about to the public interests by the failure to perform the duty."[21]

[82] However, the relevance of that last sentence is not clarified, in particular what "failure to perform the duty" that is alleged against Mr. Bridger is relevant in this respect, nor whether or how the responsive records are relevant to such "failure". My own investigation did not clarify how the responsive records relate to a specific alleged "failure to perform the duty" on the part of Mr. Bridger.

[83] The Governor's Office points out that the right to trial by jury requires that "the person accused has his case presented to the jury with their minds open, unprejudiced and untrammeled by

[21] Colin Nicholls QC, et al *Corruption and Misuse of Public Office* Second Edition 2011

anything the juror has heard, seen on television, or read." It suggests this is particularly important in relation to the common law offence of misconduct in public office, which Mr. Bridger is alleged to have committed, because in the *Dytham* case Lord Widgery CJ found that,

> *… misconduct in public office involves an element of culpability which is not restricted to corruption or dishonesty but which must be of such a degree that the misconduct impugned is calculated to injure the public interest so as to call for condemnation and punishment. Whether such a situation is revealed by the evidence is a matter that a jury has to decide.* [22]

[84] While I recognize the importance of the principles underlying the right to a fair trial, I disagree that the right to an open-minded, unprejudiced and untrammeled jury is of exceptional importance in cases involving misconduct in public office, as seems to be suggested, since the quote from Lord Widgery CJ continues as follows:

> *It puts no heavier burden upon [the members of the jury] than when in more familiar contexts they are called upon to consider whether driving is dangerous or a publication is obscene or a place of public resort or a disorderly house...* [23]

[85] The Governor's Office appears to consider any pre-trial coverage of the subject matter of the responsive records by the media inappropriate. It states:

> *Pre-trial release of the Requested Record [sic] or any further proceedings in connection therewith will no doubt re-ignite the media coverage in connection with Operation Tempura … [which has already been described as] "the $10 million-plus, U.K.-orchestrated, Cayman Islands-financed fiasco."*

[86] The latter quote ("the $10 million-plus… fiasco") is not attributed by the Governor's Office, but a search established that it appeared in a newspaper editorial in the Cayman Compass of 26 February 2014. The editorial did not criticize Mr. Bridger, but did accuse the Government of spending over $500,000 "just to continue the concealment of records sought in a Freedom of Information request"[24], which is a reference to the present case. It is rather unfortunate for the Governor's Office to take a lively quote like that, apparently, out of context.

[87] The Governor's Office points to Acting Justice Sir Alan Moses's observation in the course of the first judicial review of the present FOI case, that,

> *The malicious and malign would probably rejoice in the re-publication of the allegations and ignore the fact that they had been dismissed after the consideration of a 445 paragraph report of some 185 pages, which considered the facts and the relevant law in great depth.*[25]

[88] However, the Governor's Office fails to clarify that Moses Ag J. in the same passage also made the following countervailing observation:

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[22] *R v Dytham* [1979] QB 722 at 728
[23] *Dytham* op cit ibid
[24] Editorial Board "Operation Tempura: What's the $500,000 secret?" in: *Cayman Compass*, 26 February 2014
[25] *Governor v Information Commissioner* Cause G 0003 of 2013 op cit para 51

> *The [Information] Commissioner was entitled to take the view that disclosure could not simply be dismissed on the basis that it would merely rekindle flames which had long since died away. They had not. …* [26]

[89] Although the judicial review claim considered by him related to the same responsive records, in this paragraph Moses Ag J. was plainly not commenting on the issue of fair trial or the exemption of a law enforcement record, and section 16(b) was not before him. In addition, as the full quote reveals, Sir Alan did not simply accept the notion that the disclosure would "rekindle" an otherwise dead story, since, as he observed, the story was very much alive, as indeed it remains today. I believe this significantly reduces the significance of the passage quoted by Governor's Office for the present Reconsideration.

[90] The Governor's arguments on Press coverage are somewhat unclear, but the position seems to be that any public discussion of the responsive records, or indeed *Operation Tempura*, poses dangers for Mr. Bridger's right to a fair trial. In this regard, I note that discussion and debate in good faith of matters that are clearly of great public interest ought not be stifled lightly. I also note that it seems certain that the media will publish articles and opinions on this subject, no matter how the question of disclosure of the responsive records is resolved, and that the police investigation and possible prosecution of Mr. Bridger, itself, is certain to elicit continued interest.

[91] The arguments of the Governor's Office relating to the pre-trial publicity and the Press are in my view also weakened by the fact that numerous articles have already been published on the subject of both *Operation Tempura* and the Governor's challenge to the disclosure of the responsive records under the FOI Law. This has been noted on several previous occasions, including by the Governor's Office itself. For instance, its 2014 submission in the previous Reconsideration (Hearing Decision 41-00000) affirmed that much of the information contained in the responsive records is already in the public domain. In fact, in that document the Governor's Office argued that so many of the relevant facts were already in the public domain that publishing the entire document [i.e. the Governor's Response] "will add little to what is already in the public domain."[27] While I disagree with that conclusion, the general public in the Cayman Islands is clearly already well informed about *Operation Tempura* and its aftermath, not only by means of press articles, but also in the form of the rulings of Justices Cresswell, Moses and Williams in the cases associated with *Operation Tempura*.[28] The Governor's Office's arguments in respect of the public domain therefore appear internally contradictory, and seem difficult to reconcile: on the one hand it is said that the responsive records should not be published since doing so would unfairly influence a possible trial of Mr. Bridger, while on the other hand so much is already said to be in the public domain that publishing the responsive records would add little new information to what is already public knowledge..

[92] The Governor's Office points to what is said to be the likely negative impact of pre-trial publicity of the costs associated with *Operation Tempura* and its aftermath, which are said to have exceeded US$ 8,000,000 not counting the damages paid out to Justice Henderson and former Police Commissioner Kernohan. The Governor's Office also refers to the costs of producing the Aina report, the two judicial reviews and the current Reconsideration. I note that the costs of the ongoing criminal investigation and possible prosecution of Mr. Bridger are not mentioned.

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[26] *Governor v Information Commissioner* Cause G 0003 of 2013 op cit ibid

[27] Submissions on behalf of the Governor of the Cayman Islands, 4 April 2014, para 62.

[28] In the matter of *Operation Tempura* [2008] CILR 111; *R. v Ebanks, ex parte Henderson* [2009] CILR 57; *Kernohan v H.E. The Governor, Bridger, Acting Commissioner of Police and H.M. Attorney General* [2011] (2) CILR 8; *Attorney General v Martin Bridger* [2013] Cause 486 of 2011 (redacted public version)

[93] The Governor's Office argues there are specific risks associated with any pre-trial publicity given to the costs of *Operation Tempura*, stating:

> *… there is a real danger that a Juror influenced by the pre-trial publicity, particularly relating to costs, may return a guilty verdict notwithstanding a warning by the trial judge… in the belief that a guilty verdict will help the country recover the costs associated with all the issues resulting from Operation Tempura*

[94] However, having read both responsive records, I can confirm that they contain no information on the costs of *Operation Tempura*, and any attention the disclosure of the responsive records would bring to the costs would therefore be indirect. In addition, the general public in Cayman is already well aware of the elevated costs of *Operation Tempura*.

[95] Moreover, it could certainly be argued that the high costs of *Operation Tempura* actually increase the need for transparency and openness, since there is an elevated need for Government accountability where expenses are very high, as is the case here.

[96] For these reasons I do not give much weight to the notion that the disclosure of the responsive records would significantly impair the objectivity of jury members in a possible future trial of Mr. Bridger by giving publicity to the costs of *Operation Tempura* and its aftermath.

[97] The Governor's Office also argues that the dangers of pre-trial publicity are magnified in a small country like the Cayman Islands. I accept this argument in principle and have borne it in mind in reaching my conclusions. However, it should also be borne in mind that the general public is already well informed about Operation Tempura, as noted in paragraph 91 above.

[98] Apart from the arguments further discussed below, the Governor's Office has also provided me with an exhaustive listing of general ways in which pre-trial publicity may harm a defendant's case, without any reasoning or attempt at connecting these to the particular circumstances of the present case.

[99] For there to be prejudice to Mr. Bridger's right to a fair trial, I consider that the pretrial information that is published would, at the very least, have to bear upon the allegations being tried. The arguments in favour of a blanket exemption of the responsive records by reference to the right to a fair trial are in my view significantly diminished by the fact that the vast majority of both the Complaint and the Governor's Response does not concern any actions taken by Mr. Bridger, but are in fact about other individuals acting quite independently from Mr. Bridger. Therefore, in the circumstances of the present case I fail to see how the numerous passages in the responsive records that describe actions and conduct of other individuals, i.e. passages which do not pertain to Mr. Bridger's actions and conduct, could reasonably be expected to relate to the alleged misconduct in public office or any other criminal allegations raised against Mr. Bridger, and thus "affect" his investigation or trial. The Governor's Office has not explained this specific point, nor was I able to find any reasons for the exemption to apply in such a broad manner in my own investigation.

[100] I find it particularly noteworthy that while the Governor's Office expresses a desire to withhold the responsive records from the general public out of concerns for Mr. Bridger's right to a fair trial, Mr. Bridger himself has given the disclosure of the responsive records his full support, and has repeatedly asked to be allowed to use the responsive records in his own defence against the criminal allegations now being raised against him.

[101] In this context it is worth remembering that Mr. Bridger was the second complainant and the recipient of the Governor's Response, and as such is in possession of a copy of both responsive records in this matter, albeit that he is not at liberty to divulge their contents because of a confidentiality agreement with the Governor.

[102] In my view this considerably deflates the Governor's Office's arguments about fair trial, since it seems unlikely that Mr. Bridger would be placed at a disadvantage in any proceedings by reason of the disclosure of the responsive records, if he himself, and I assume his legal counsel, are in favour of their disclosure.

[103] I believe this raises a legitimate countervailing argument, that the use of the records in court may, very well, be required to ensure the right to a fair trial for Mr. Bridger. In any event, I believe Mr. Bridger's position in regard to the responsive records poses a significant challenge to the Governor's Office's claim that the exemption should apply to those records because their disclosure would prejudice Mr. Bridger's right to a fair trial.

[104] In making this point, I recognize that the question before me is not whether Mr. Bridger may use the responsive records in court. That question is quite separate, since even if I were to find that both responsive records or parts thereof are to be withheld, a trial judge might very well agree that Mr. Bridger could use them (or those parts exempted) in his own defence whether in open court or not. Of course, if I order the disclosure of the records, and assuming the Governor does not challenge my order and releases them to the public at large, they will be in the public domain and Mr. Bridger would presumably be free to use them, at least within the confines imposed by section 54.

[105] Nonetheless, in regard to the question before me it is very important to note that the above twists and turns demonstrate one crucial fact, namely that both the Governor and Mr. Bridger appear to be in agreement that at the very least certain parts of the Governor's Response, is relevant to a potential trial of Mr. Bridger. Therefore, it seems likely that the disclosure of the records "would, or could reasonably be expected to affect" the trial. On that basis and to that extent, I accept that the exemption in section 16(b) is engaged.

[106] **Consequently, while I reject the Governor's Office's reasons for claiming that the disclosure of the responsive records in their entirety would, or could reasonably be expected to affect the trial of Mr. Bridger, in the light of the low threshold required for the exemption to be engaged, I find that certain parts of the responsive records are exempted under section 16(b) because their disclosure "would, or could reasonably be expected to affect" the trial of Mr. Bridger.**

[107] The challenge remains to identify what those "certain parts" are, particularly bearing in mind the requirement that any non-exempted information must be disclosed pursuant to section 12(1).

4. Do the allegations against Mr. Bridger provide evidence for the exemption?

[108] The Governor's Office lists seven "Cayman Islands criminal offences" which Mr. Bridger is alleged to have committed, as enumerated in Mr. Schofield's First Affidavit of 2014. In the course of my own investigation the Police Commissioner has to some degree verbally clarified the nature of the allegations.

[109] Based on the Submissions and the clarifications provided to me by the Police Commissioner, a number of the allegations appear to relate to events that occurred sometime after the subject matter of the responsive records. Some of the allegations appear to relate to events that

occurred outside the Cayman Islands. One of the allegations arises from a UK Act, and it is not clear how it relates to what the Governor's Office calls "Cayman Islands criminal offences" which are alleged against Mr. Bridger.

[110] The Governor's Office has not clarified the parameters of the allegations, such as their date or range, and has not provided any evidence to support the relevance of six out of seven allegations to the exemption in section 16(b). Instead, it has limited its arguments, in this regard, to only one of the allegations, namely the allegation relating to the offence of misconduct in public office.

[111] In regard to the common law offence of misconduct in public office the Governor's Office states (without indicating the source or full demarcation of the quote provided in the middle of the paragraph) the following (my emphasis):

> *…**the entire conduct of Mr Bridger** as shown in allegations, facts and evidence contained in the Requested Records is material in … the Section 16(b) Exemption. Relevant will [sic] **everything that transpired** in the three-year investigation after Chief Superintendent Martin Bridger and Detective Inspector [sic] both from the Metropolitan Police "quickly established that there was no corrupt relationship between the Deputy Commissioner of the RCIPS and the editor of the Cayman Net News within weeks of starting their investigation [end quote?]. It may be determined that at that time Operation Tempura should have been concluded. The offence of misconduct in public office, contrary to the common law may be made out where the prosecution can prove that the police officer was performing his duties with the intention of gaining improper personal advantage.*

[112] The Governor's Office has not elaborated on the last sentence of this quote, nor explained how "the intention of gaining improper personal advantage" is relevant as the two responsive records appear to concern quite different matters. I was unable to clarify this point further during my own investigation.

a. <u>Is the exemption engaged in relation to "everything that transpired" after the initial allegations of corruption against the Deputy Police Commissioner were dismissed, as recorded in the responsive records?</u>

[113] In regard to this blanket claim, I draw attention to section 12(1) which requires that exemptions under the FOI Law are applied in a proportionate manner, by providing that access may only be denied to such part or parts of a record that are actually exempt, and that responsive records must be redacted accordingly.

[114] In his Judgment Owen Ag J. affirmed that it might be useful to consider "in light of the concerns expressed by Commissioner Baines… whether a redacted version of the Governor's… report might be capable of being published."[29]

[115] Clearly, the Judge indicated that partial access was one of the potential outcomes of the present Reconsideration. In the concluding passages of the Judgement he indicated:

> *Whether ultimately [the exemption in section 16(b)] prevents publication of the whole of the Governor's report (or merely identified parts of it), or whether future events wholly undermine the basis for the s.16(b) exemption are all matters for the Information*

[29] *Judgment* para 54

Commissioner to reconsider in light of all the relevant considerations and in light of the full exercise of his investigative powers.

[116] On the basis of the Affidavits of Messrs. Schofield and Baines, the Governor's Office's own Submission of June 2015 spoke of certain "material in the report" that was claimed to be exempt, implying that not all the information in the two records might be exempt, without, however, indicating which parts are or are not covered by the exemption in their view.[30]

[117] Based on the same affidavits, the Governor's Office explicitly argues on a number of occasions for the exemption of what it calls "the report", by which is meant the Governor's Response to the Complaint. It is at times unclear whether the same arguments are also meant to apply to the Complaint. I have taken the position of the Governor's Office to be that the exemption applies to both records equally.

[118] The former Information Commissioner and I have commented in a number of previous Decisions upon the inappropriateness of a blanket application of exemptions, as follows:

> *While a public authority can legitimately believe that all responsive records are covered by the same exemption, a blanket approach is rarely the correct approach, particularly where the responsive records are extensive.*[31]

And,

> *Questions of disclosure under the FOI Law must relate to specific records and a blanket application of an exemption … is unjustifiable and disproportionate. Section 12 requires that exemptions be applied only to those parts of a record that are actually exempted. This could never be achieved with a blanket approach.*[32]

[119] While the UK's *Freedom of Information Act 2000* (unlike the Cayman Islands FOI Law) relates to "information" and not to "records", and as such in the UK the requirement for partial access is implicit, rather than explicit, nonetheless, the practice of partial access and redaction is virtually identical in both countries, as guidance from the UK Information Commissioner explains. In the UK FOI Act the general right to access,

> *…compels authorities to consider the relevance and sensitivity of each piece of information in a document, instead of taking a broad-brush document-by-document approach… This intention was made clear by Lord Falconer during the passage of the FOI Bill [who said:] "… When a document contains a mixture of disclosable and non-disclosable information the disclosable information must be communicated to the applicant." … It follows that an authority cannot withhold the entire contents of a document on the grounds that it contains some information that is exempt. It still has a duty to communicate all the disclosable information in the document to the requester. … The most practicable way to do this is to provide a copy of the original document with the exempt material redacted.* [33]

[120] Given the complexity of the responsive records and the potential relevance of partial disclosure in this case, in my letter of 27 August 2015, in which I gave the Governor another opportunity to

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[30] Governor's Office *First Affidavit of Mr. Schofield*, quoted in para 53 of the *Judgment*
[31] Information Commissioner's Office *Hearing Decision 25-00812 Port Authority* 25 October 2012 para 35
[32] Information Commissioner's Office *Hearing Decision 37-02613 Planning Department* 22 July 2014 para 104, quoting from: House of Lords *Hansard* 17 October 2000 col 931
[33] Information Commissioner's Office (UK) *The right to recorded information and requests for documents. Version 0.3.* 26 March 2014 paras 38-41

present her case, I asked the Governor's Office explicitly to consider the question of partial access:

> *The new Submission must… adequately apply section 12 of the FOI Law by clarifying which paragraphs of the responsive records are claimed to be exempt under section 16(b) of the FOI Law, and provide detailed reasoning as to how the release of these paragraphs would, or could reasonably be expected to affect the investigation or prosecution of any or all of the seven allegations against Mr. Bridger.*

[121] Throughout the Supplemental Submission of October 2015 the Governor's Office states or implies that the exemption applies to the responsive records in their entirety. In paragraph 55 of the Supplemental Submission, the possibility of providing partial access is specifically dismissed, as follows:

> *With regard to the suggestion that the Requested Records could be redacted to avoiding [sic] prejudice to the current criminal investigation and trial while upholding basic principles of FOI law, we would urge against "tampering" with the evidence in the Requested Records at this stage, because we do not know how the trial judge will allow counsel at trial to deal with the evidence contained in the Requested Records. The issue of possible redaction of the Requested Records can be revisited after the trial when the application of the Section 16(b) Exemption can be ultimately determined*.

[122] I am surprised by this position since Counsel for the Governor explicitly expressed a willingness to consider partial access as a positive way forward, during the last hearing before the Court. I also note that the notion that the matter of partial disclosure could be "revisited after the trial", seems flawed as no charges have yet been laid, and the exemption in section 16(b) would not appear to be applicable after the conclusion of a trial and possible appeal.

[123] In so far as the term tampering with evidence means "the act of altering a thing; esp., the act of illegally altering a document or product, such as written evidence or a consumer good."[34] I disagree with the assertion that any consideration of partial access in this case would amount to a willful intent to alter evidence. Rather than "tampering with the evidence", as asserted by the Governor's Office, the redaction of only those parts of the responsive records that are actually exempt, and the concomitant disclosure of those parts which are not exempt, is required by Law. In the present case the provision of partial access may guard against an indiscriminate, blanket approach which appears to me to be unreasonable and not borne out by the contents of the records, the reasoning provided by the Governor's Office, nor my own investigation.

[124] I observe that the Governor's claim that the exemption applies to "everything that transpired [after the initial allegations of corruption against the Deputy Police Commissioner were dismissed]" contradicts the position adopted throughout the remainder of the Governor's Supplemental Submission, which states or implies that the exemption applies to the two responsive records in their entirety.

[125] This is so, because the responsive records contain information on events prior to the point in time when the allegations against the Deputy Police Commissioner were dismissed. Such information should therefore, by the Governor's own admission, not be exempted. However, the Governor's Office has neglected to identify those passages which would thus be disclosable.

[34] *Black's Law Dictionary* 10th Edition

[126] The exemption of "everything that transpired [after the allegations against the Deputy Police Commissioner were dismissed]" or the broader positon that both responsive records are exempt in whole, also do not account for the many paragraphs in the responsive records, in particular in the Governor's Response, which describe events and actions that are clearly already in the public domain, and to which therefore no exemption can be applied. Elsewhere, the Governor's Office has acknowledged that much of the information on this complaint is already in the public domain.[35] However, it has neglected to identify those passages that are already in the public domain and for that reason cannot be exempted, as well.

[127] For the above reasons, while it is not impossible for an entire record to be exempted, a blanket application of the exemption to the responsive records would have to be supported by appropriately robust reasoning, which I do not consider has been presented to me by the Governor's Office. Nor am I able to support this conclusion based on my own investigation.

[128] **In the light of the above considerations and the lack of clear and cogent reasoning on the part of the Governor's Office in support of a blanket application of the exemption to references in the responsive records to "everything that transpired [after the initial allegations of corruption against the Deputy Police Commissioner were dismissed]", or - insofar as this is being asserted by the Governor's Office – to the responsive records as a whole, I reject the Governor's Office's claim that the exemption in section 16(b) would, or could reasonably apply in that manner.**

b. <u>Is the exemption engaged in relation to "the conduct of Mr. Bridger" as recorded in the responsive records?</u>

[129] As I have confirmed above, on the basis of the evidence submitted by the Governor's Office and my own investigation I accept that Mr. Bridger is the subject of an ongoing criminal investigation and, should charges be laid, possible prosecution and trial.

[130] Having carefully read the responsive records on several occasions, it is clear to me that they contain very little information on Mr. Bridger's actions or conduct. Nonetheless, I accept that some of the allegations raised in the investigation and potential prosecution and trial overlap in part with his actions and conduct during *Operation Tempura*, some of which are described in the responsive records.

[131] Both the Governor's Office and Mr. Bridger have expressed the view that the disclosure of at least some parts of the Governor's Response may affect his potential trial, and I have accepted that the exemption is, to that extent, engaged.

[132] However, the application of the exemption to all information in both responsive records relating to "the conduct of Mr. Bridger" is too wide, since at least some of what is written in the responsive records about Mr. Bridger is innocuous and/or already in the public domain. For instance, the general public already knows that Mr. Bridger was appointed as Senior Investigating Officer ("SIO") in *Operation Tempura*. Since this information is mentioned in the responsive records and relates to Mr. Bridger, according to the Governor's Office's reasoning it should be withheld. I do not agree that the exemption in section 16(b), or indeed any exemption, can apply so widely.

[133] Therefore, to the extent that information in the Complaint or the Governor's Response relates to Mr. Bridger's actions or conduct, and is not innocuous or already in the public domain, I am

[35] See paragraph 91 above

willing to err on the side of caution and agree with the Governor that such information is exempted from disclosure under section 16(b) at this time.

[134] I have reached this conclusion particularly in the light of the following facts:

a) the RCIPS is investigating several allegations against Mr. Bridger, some of which overlap in time with his role of Senior Investigating Officer ("SIO") during Operation Tempura;
b) the Police Commissioner, who is closely associated with that investigation, believes there is a possible connection between the investigation and potential trial of Mr. Bridger, on the one hand, and the responsive records, on the other, although he was not able to specify what that connection is or which parts of the records are relevant in this regard;
c) the DPP has been asked to consider whether Mr. Bridger is to be prosecuted, in relation to allegations which overlap in part with his actions and conduct during his time as SIO for *Operation Tempura*;
d) the Governor believes the records are relevant to the investigation and potential trial of Mr. Bridger; and,
e) Mr. Bridger himself has expressed the view that some parts of the records are relevant to his potential trial.

[135] **In light of the low threshold required for the exemption in section 16(b), for the above reasons I find that the information in the responsive records, which describes the actions and conduct of Mr. Bridger "would, or could reasonably affect" his investigation, and potential prosecution and trial, and that such information is therefore at this time exempted from disclosure under section 16(b), except where it is innocuous or already in the public domain.**

5. Do the Affidavits of Messrs. Schofield and Baines provide further evidence of the exemption?

[136] The Governor's Office reiterates that the Judge's findings were based, in part, on Mr. Schofield's First and Second Affidavits, together with the Police Commissioner's Affidavit, "…by way of updated evidence to supported [sic] the continuing engagement of the Section 16 Exemption", and asserts "there is ample evidence both in the sworn affidavits and in the Acting Information Commissioner's own words to support the continuing application of Section 16(b) Exemption".

[137] The Governor's Office does not specify which of my own words provide "ample evidence" for the engagement of the exemption. I assume this is a reference to my letter to the Governor of 26 August 2015, in which I mentioned the ongoing police investigation against Mr. Bridger. However, how or why the existence of the investigation supports the application of the exemption is not further elucidated.

[138] The Governor's Office reminds me that Mr. Schofield's Second Affidavit explained that he had worked closely with Police Commissioner on the,

> *now-concluded contempt of court action in the Cayman Islands in which former [sic] Mr Bridger was the Defendant, and a pending civil action in the United Kingdom in which Mr Bridger is the proposed Defendant.*

[139] I believe all these cases have now been concluded or abandoned, and their relevance is not further explained. The same Affidavit is also quoted as confirming that Mr. Schofield has,

> *… had sight of a six-page memorandum, dated 28 April 2015, from the Office of the Director of Public Prosecutions to Commissioner Baines… [which confirmed] that, after a review of the preliminary report delivered to the Director by the Commissioner on 28 November 2014, reviewing Crown Counsel agreed that there are proper grounds to continue the criminal investigation into Mr Bridger's activities during the period of Operation Tempura.*

[140] As I indicated above, during one of my visits to the Police Commissioner's office in the course of my investigation, the ADIC and I read the memorandum from the DPP indicated by Mr. Schofield, and I can therefore attest to its existence. The same document was also separately confirmed to me by the DPP.

[141] In his Affidavit of 8 June 2015 the Police Commissioner confirmed the correctness of Mr. Schofield's Second Affidavit on this point, and stated,

> *For the avoidance of doubt, I confirm that a criminal investigation into Mr Martin Bridger's activities during Operation Tempura is currently being conducted under my supervision by the Royal Cayman Islands Police Service*.

[142] The Governor's Office reminds me of the statement of the Police Commissioner, which was attached to the Governor's Submission in Hearing 41-0000 in April 2014, and which was also quoted by the Judge. In that statement the Police Commissioner said, *inter alia,*

> *It is too early for me to determine if a criminal investigation is warranted or not due to the further analysis required, however I can state that the publication of the Aina report would interfere with any investigation that were launched, not least as its contents cover the same of the issues [sic] [which are the] subject of controversy; in addition to being contradictory in their position to the earlier legal decision pronounced by the DPP, Chief Justice and others.*
>
> *The release would I consider be contrary to the rule of natural justice as it would enable one version of events relating to the subject matter and deny those subject of and named in the report an opportunity to counter the version of events and defend themselves. It should be noted that some named persons have been privy to the contents of the report, the majority of individuals subject to comment have not been canvassed or made aware of the contents. …*

[143] The above assertion relates to the investigation of complaints raised by Mr. Bridger against Governor Jack and others, and counter allegations raised against Mr. Bridger, both of which were being contemplated by the Police Commissioner at that time. A few months later the Police Commissioner determined that the allegations made by Mr. Bridger did not warrant further investigation, and the investigation of allegations against Mr. Bridger is, of course, ongoing.

[144] As I have already noted above, the Police Commissioner stated that he was uncertain which parts, if any, of the responsive records were relevant to the investigation of Mr. Bridger. He added that their relevance would depend on where the evidence might lead the investigation and he was not sure what direction that might be.

[145] I find the reasoning of the Police Commissioner both in 2014 and 2015, in relation to the impact of disclosure of the investigation(s) unspecific. An exemption – even one with a low threshold such as section 16(b) - does not apply simply because a responsive record, created in a

different context for entirely different purposes, covers some of the same topics as a potential investigation and/or trial. As such, the Police Commissioner's thoughts are insufficient by themselves to warrant concluding that the exemption applies to the two responsive records, especially in their entirety.

[146] I note that the Police Commissioner states his belief that the contents of the "Aina report" (which, in the words of Owen Ag J, are "in all essential aspects identical" to the Governor's Response[36]) are "contradictory… to the earlier legal decision pronounced by the DPP, Chief Justice and others", and calls them "one version of events". It is not clear to me what the Police Commissioner means by this, or how it would impact Mr. Bridger's right to a fair trial, and I do not consider that it contributes anything to the question before me.

[147] In conclusion, I do not believe the Affidavits of Mr. Schofield and Police Commissioner Baines provide further evidence that the exemption under consideration has been appropriately engaged.

6. Does the general chronology of *Operation Tempura* presented by the Governor's Office provide evidence for the exemption?

[148] As indicated above, the Governor's Office provides a general chronology of *Operation Tempura* [the "Chronology"] and claims that "the follow [sic] extracts support the continuing application of the Section 16(b) Exemption bearing in mind the offences listed above". It also states that the Chronology "shows how and why the disclosure of the Requested Records would, or could reasonably be expected" to engage the claimed exemption.

[149] The Chronology rehearses once again the widely-known story of *Operation Tempura*, from the well-known events in 2007 and the appointment of Mr. Bridger, the quick resolution of the corruption suspicions relating to the Deputy Police Commissioner and the editor of Cayman Net News, to, as the Governor's Office says, the refocusing of the *Operation Tempura* investigation by Mr. Bridger on the Chief Justice, Justice Henderson, former Police Commissioner Stuart Kernohan, the Attorney General, and others.

[150] In respect of Mr. Bridger, the Chronology asserts,

> *vii. It appears from the evidence that the Chief Justice became the focus of Mr Bridger because the Chief Justice refused search warrants against "subject of investigation" requested by Mr. Bridger in connection with Operation Tempura, citing 36 cases in a 51 page judgment, on the grounds that there was no prima facie basis for apprehending a commission of any offence.*

[151] The Governor's Office does not intelligibly link the Chronology with the exemption being claimed. As far as can be discerned, the intention appears to be to provide background information on the Complaint, i.e. the first responsive record, which was written by Mr. Polaine and subsequently assumed by Mr. Bridger. However, this is neither here nor there when it comes to establishing whether the exemption is engaged, and I disagree that this provides further evidence of the exemption.

[152] I note that the statement that Operation Tempura refocused on the Chief Justice appears to be incorrect, although it is public knowledge that he is one of the subjects of the Complaint and the Governor's Response.

[36] *Judgment* para 11

7. Does section 24 of the Bill of Rights provide further evidence for the exemption?

[153] In the context of what it calls "the consideration of making an order resulting in the pre-trial disclosure of the Requested Records endangering the right to a fair trial", the Governor's Office raises section 24 of the Bill of Rights, quoting that section verbatim (emphasis added to the entire paragraph by the Governor's Office), as follows:

> ***It is unlawful for a public official to make a decision or to act in a way that is incompatible with the Bill of Rights unless the public official is required or authorized to do so by primary legislation, in which case the legislation shall be declared incompatible with the Bill of Rights and the nature of that incompatibility shall be specified.***

[154] The fact that this issue is being raised, and the emphasis added to the entirety of the quoted passage, seems to suggest that this is a point of some importance to the Governor's Office. However, no attempt whatsoever is made to explain the relevance of this provision to the application of the exemption to the responsive records. I assume it is meant to impress upon me the dangers of disagreeing with the Governor's fair trial arguments, but I do not believe it adds anything to those arguments or their relevance to the question before me.

8. Additional observations:

[155] In this Reconsideration I have diligently and sincerely tried to understand each of the arguments raised in the Governor's Office's Submissions, in order to consider them fairly and impartially and reach appropriate conclusions under the Law. However, interpreting the Governor's arguments has been extraordinarily difficult because of the way they have been presented, which can only be described as disjointed, repetitive and at times illogical and even fraught with grammatical errors.

[156] A great deal of background information is reiterated without clear purpose or explanation as to relevance. For instance, the Governor's Supplemental Submission includes a long Chronology of *Operation Tempura*, a comprehensive, five-page chronology of my own investigation, and lengthy statements concerning Mr. Polaine, amongst other things. Reading most of the Governor's Office's Submissions, one could – wrongly - assume that the question that has to be answered is whether a police investigation is indeed ongoing in respect of Mr. Bridger, rather than whether the exemption being claimed is engaged in respect of the responsive records.

[157] Such an approach can only be described as illogical and haphazard. I wish to make it clear to the Governor's Office and other public authorities which may be called upon to argue an exemption under the FOI Law in the future, that arguments should be supported by cogent and clear evidence, and should be systematically and logically laid out. The burden of proof rests on the public authority to demonstrate how and why any exemption applies, and it is not up to the Information Commissioner to build the case for the public authority.

E. FINDINGS AND DECISION

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

Findings and Decision:

In respect of the two responsive records subject to the present Reconsideration – i.e. the Complaint made to Governor Taylor in 2011 and the Governor's Response – I find that the exemption in section 16(b) applies to those parts of the responsive records which represent the actions and conduct of Mr. Bridger, to the extent that they are not innocuous or already in the public domain, for the reasons explained above.

Although the Governor's Office has not argued for it in the context of the present Reconsideration, and it was not part of the Judgment or Order issued by Owen Ag J., I consider the question of the exemption of a single segment on page 13 of the Complaint settled under the exemption in section 20(1)(d), for the reasons stated in Decision 41-0000. For clarity, this short passage comprises the third bullet point on page 13 of the Complaint, and starts after the phrase "… and his room" and ends the next paragraph starting with "There is also…".

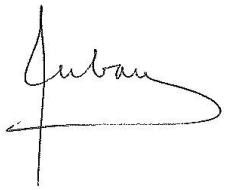
A general listing of the parts of the responsive records that are to be redacted is attached as an appendix to this Decision. I am separately providing the Governor's Office with a communication which indicates in greater detail those parts of the two responsive records that are to be redacted consequent to the above findings.

While the information in the two responsive records relating to Mr. Bridger's actions and conduct is at present exempted from the general right to access in section 6(1), to the extent that it is not innocuous or already in the public domain, I declare my intention formally to confirm the status of the investigation, prosecution and/or trial of Mr. Bridger in six months' time, at which time I may reopen my investigation into this matter, as I am authorized to do under section 46.

Under section 47 of the *Freedom of Information Law,* 2007, the Governor's Office may, within 45 days of the date of this Decision, appeal to the Grand Court by way of a judicial review of this Decision.

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

If judicial review has not been sought on or before 7 April 2016, and should the Governor's Office fail to disclose the responsive records 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.



Jan Liebaers
Acting Information Commissioner

15 February 2016

Appendix

Exempted parts of the Complaint:

1) Page 7, paragraph 6.
2) Page 13, paragraph 4, bullet point 3: [by reason of section 20(1)(d)].
3) Page 15, paragraph 3, 5th, 6th and 7th sentences.
4) Page 15, paragraph 6, 1st and 2nd sentences.

Exempted parts of the Governor's Response to the Complaint:

1) Page 22, paragraph 55.
2) Page 51, paragraph 116, 2nd sentence.
3) Page 57, paragraph 126.
4) Page 57, paragraph 128.
5) Pages 57-58, paragraph 129.
6) Page 106, paragraph 237, 2nd sentence.
7) Page 109, paragraph 248.
8) Page 109, paragraph 249, four words in 1st sentence.
9) Page 110, paragraph 250, 3rd sentence of quote.
10) Page 113, paragraph 259.
11) Page 115, paragraph 263.
12) Page 116, paragraph 266, 3rd sentence.
13) Page 117, paragraph 268, 2nd sentence.
14) Page 118, paragraph 269, 2nd part of 1st sentence.
15) Page 123, paragraph 283, 1st and 2nd sentences.
16) Page 124, paragraph 285.
17) Page 124, paragraph 286, 1st and 2nd sentences.
18) Page 126, paragraph 293, 2nd sentence.
19) Pages 126-127, paragraph 295.
20) Page 127, paragraph 296.
21) Pages 170-171, paragraph 410, 1st, 2nd, 3rd, 5th and 6th sentences.
22) Page 181, paragraph 437, 2nd and 3rd sentences.
23) Page 184, paragraph 444, 4th sentence.