

Hearing 55-00916  
**Decision**

Royal Cayman Islands Police Service

Sandy Hermiston  
Ombudsman

14 November 2017

**Summary:**

An Applicant made a request to the Royal Cayman Islands Police Service (RCIPS) under the *Freedom of Information Law (2015 Revision)* for information relating to a death which was the subject of an investigation by the RCIPS.

An appeal was made to the Information Commissioner's Office (ICO), in relation to its refusal to disclose a letter written to the Police Commissioner. The RCIPS claimed three exemptions, respectively relating to personal information, breach of confidence and endangerment of physical or mental health. The author of the letter was invited as a party to the hearing.

In this Decision, the Ombudsman finds that the exemption in section 23(1) of the Law relating to personal information is engaged in regard to some of the personal information of the Third Party (contact information). The other exemptions do not apply, and the letter in dispute is ordered disclosed in redacted form.

**Statutes<sup>1</sup> Considered:**

*Freedom of Information Law (2015 Revision)*  
*Freedom of Information (General) Regulations 2008*

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<sup>1</sup> In this Decision, all references to sections are to sections under the *Freedom of Information Law (2015 Revision)* and all references to Regulations are to the *Freedom of Information (General) Regulations 2008*, unless otherwise specified. Where several laws are discussed in the same passages, the relevant legislation is indicated.

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**A. INTRODUCTION**

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- [1] On 6 May 2016 the Applicant made a request to the RCIPS for "... a copy of or access to review all information held by the RCIPS in relation to the death of [the Deceased] including all correspondence." The Applicant provided letters of administration in relation to the estate of the Deceased as authority for the request.
- [2] The Applicant's initial request for records and his subsequent request for an Internal Review were not acknowledged by the RCIPS in the time required by the Law. Consequently, on 12 July 2016 the Applicant made an appeal to the Information Commissioner's Office (ICO).
- [3] In the ensuing months the ICO contacted the RCIPS and urged the Information Manager (IM) to contact the Applicant and to begin conducting a search for responsive records.
- [4] In August the IM indicated that he was making arrangements for the Applicant to inspect certain responsive records. However, such inspection did not materialize at that point in time, and the IM failed to respond to subsequent communications from the ICO.
- [5] The ICO met with the Acting Police Commissioner on 13 October 2016, who committed to comply with the Law and fully respond to the request.
- [6] Subsequently, the Applicant inspected a number of responsive records, including correspondence, but the Applicant continued to have unanswered questions. The IM then undertook to locate and consider access to further records, and the IM answered a number of additional questions.
- [7] During the ensuing months the IM and ICO obtained advice from RCIPS investigators and staff at the Courts Administration. Various communications between the IM, the Applicant and the ICO resulted in narrowing down the request significantly.
- [8] On 12 April 2017 the IM sent a copy of redacted records to the Third Party, in a further attempt to resolve the issue to the Third Party's satisfaction. However, the Third Party again objected to the disclosure on 19 April 2017.
- [9] In a letter to the Applicant dated 3 May 2017 the IM clarified that the redactions were based on section 13(2)(c) of the Regulations – later modified to section 23(1) of the Law

(personal information) – and sections 17(b)(i) (actionable breach of confidence) and 24(a) (endangering the physical or mental health of any individual) of the Law.

- [10] The Applicant confirmed on 13 June 2017 that he already received one of the two remaining letters in dispute, thereby narrowing down the appeal to a single letter, which is the only remaining responsive record.
- [11] The matter was referred for hearing on 19 July 2017.
- [12] In preparation for the hearing, given the fact that it is claimed that the responsive record contains the personal information of a third party, it was decided to invite that Third Party to be a party to this Hearing, so that all views would be considered.

### **Third party appeal under section 12(2) of the Regulations**

- [13] The Third Party launched an appeal under section 12(2) of the Regulations but this appeal was closed prior to the commencement of this Hearing, after the RCIPS decided to withhold the record.

## **B. ISSUES UNDER REVIEW IN THIS HEARING**

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The responsive record in this Hearing is a single letter, sent by the Third Party to the Police Commissioner. The issues under review are:

- 1) **Whether the responsive record is exempt from disclosure under section 23(1) of the Law, and, if so, whether access shall nonetheless be granted in the public interest;**
- 2) **Whether the responsive records are exempt from disclosure under section 17(b)(i) of the Law; and**
- 3) **Whether the responsive record is exempt from disclosure under section 24(a) of the Law, and, if so, whether access shall nonetheless be granted in the public interest.**

## **C. CONSIDERATION OF ISSUES UNDER REVIEW**

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- 1) **Whether the responsive record is exempt from disclosure under section 23(1) of the Law, and, if so, whether access shall nonetheless be granted in the public interest;**

The position of the RCIPS:

- [14] The RCIPS states that the Third Party has expressed concerns about the disclosure of the letter, even in redacted form.
- [15] The RCIPS argues that, under section 13(2) of the Regulations, the Applicant is not the person to whom the personal information relates – and has presented neither a power of attorney, a court order, probate or letters of administration, nor written authority as specified in section 13(2)(d) of the Regulations – and therefore is not authorized to have access to the information.
- [16] According to the RCIPS the responsive record is not part of the investigation file, and does not form part of the Deceased's estate.
- [17] In regard to the public interest, the RCIPS simply states that the public interest in maintaining the exemption outweighs the public interest in disclosing the requested information, without further argumentation.

The position of the Applicant:

- [18] The Applicant states that the request was made both in his personal capacity, and in his capacity as administrator of the Deceased's estate. He claims that only some of the personal information in the responsive record relates to the Third Party, while other personal information relates to the Deceased and still other personal information to

himself. Since the Applicant is the administrator of the Deceased's estate, he believes he should have access to those parts of the letter that constitute the Deceased's personal information, as well as those parts that are his own personal information. In support of this claim, the Applicant relies in particular on sections (h) and (i) of the definition of "personal information" which respectively state that personal information is "anyone else's opinions about the individual", and "the individual's personal views or opinions, except if they are about someone else."

- [19] The Applicant argues that section 23(2) of the Law supports his request, since the responsive letter relates to the affairs of the Applicant and to those of the Deceased. Under that section the exemption does not apply "where the application for access is made by the person to whose affairs the record relates".
- [20] The Applicant maintains that the Third Party has already made numerous statements to the Press and others, and the Third Party's identity is already known to him. He names the Third Party in broad terms, and also lists a number of individuals, belonging to the same family, who he believes are "the Third Party".
- [21] The Applicant claims to know that the responsive letter contains serious allegations against him, which he characterizes as a "witch hunt" and "intentional persecution" conducted by the Third Party. He concludes that he has a right to know the identity of his accuser. In that regard, the Applicant refers to the previous Hearing Decision in Hearing 47-00515 relating to complaints made to the Department of Health Regulatory Services.<sup>2</sup>
- [22] The Applicant addresses the question of "unreasonableness" in the context of section 23(1) of the Law, arguing that the information contained in the responsive letter is no longer sensitive due to the passage of time. He states that disclosure would not prejudice the privacy of the Third Party, as he claims their identity is already known to him. Furthermore, he asserts that "the information may be required to fairly determine the Applicant's rights against the Third Party to prevent access to the Deceased's children." This last statement is not further explained.
- [23] The Applicant argues a number of general public interest factors in favour of disclosure, namely:
- (1) disclosure would enable the Applicant to understand decisions made by public authorities affecting his life;
  - (2) disclosure would facilitate accountability and transparency in the spending of public monies; and
  - (3) disclosure may reveal untrue, incomplete or misleading information about the Applicant.

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<sup>2</sup> Information Commissioner's Office Hearing Decision

[24] The Applicant does not agree with disclosure of the responsive record to the world at large. In his Reply Submission, the Applicant concedes the redaction of the Third Party's contact details.

The position of the Third Party:

[25] The Third Party acknowledges writing the responsive letter, and is "vehemently opposed" to the disclosure, not only of his personal information, but of the responsive letter in its totality, as further discussed below.

[26] In his Reply Submission, the Third Party claims that the Applicant's Submission contains "a number of assertions based on incorrect assumptions", and that the Applicant "contradicts evidence that was submitted as part of a [legal proceeding]".

[27] The Third Party states his agreement with the position expressed in the IM's Submission to this Hearing.

Discussion:

[28] As explained in ICO Guidance, determining whether the exemption in section 23(1) of the Law is engaged involves a three-part test. In deciding whether to disclose what appears to be personal information, the following three questions must be answered:

1. Whether the information is personal information (taking into account the full definition in the Regulations);
2. If so, whether it would be unreasonable to disclose the information; and
3. Whether the public interest nonetheless requires disclosure.<sup>3</sup>

**1. Is the information in the responsive records personal information?**

[29] The responsive record contains the following information relating to four individuals, namely the Applicant, the Deceased, the Third Party, and one other named individual:

- In relation to the Applicant: name and other information which renders the Applicant's identity apparent or from which it can be reasonably ascertained;
- In relation to the Deceased: name;
- In relation to the Third Party: name, contact details (address, email address, telephone number), and other information which renders the Third Party's identity apparent or from which it can be reasonably ascertained; and,

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<sup>3</sup> See part 10 of the ICO Guidance on Personal Information:  
<http://www.infocomm.ky/images/IM%20Seminars%20Series%20II%20Personal%20Information%20Handout%20-%20June%202013.pdf>

- In relation to the other individual: name and other information which renders that individual's identity apparent or from which it can be reasonably ascertained.

- [30] All the above types of information constitute "personal information" under section 2 of the Regulations, as they are either the name of an individual or other information which renders an individual's identity apparent or from which the identity can be reasonably ascertained.
- [31] The responsive record also contains the name and contact details of the Police Commissioner. However, that is not personal information as it relates to the position and functions of someone who occupies a position in a public authority, as provided in section (i) of the definition of "personal information".
- [32] Since section 23(2) of the Law provides that the exemption in section 23(1) does not apply "in any case where the application for access is made by the person to whose affairs the record relates", the exemption does not apply to the name and any other personal information of the Applicant himself.
- [33] Given that the Applicant has been granted letters of administration in regard to the estate of the Deceased, and the request was made by the Applicant, the name of the Deceased is not exempted under section 23(1) of the Law, in so far as the disclosure is to the Applicant only. Section 13(2) of the Regulations supports this finding, as letters of administration are listed as a type of "sufficient proof of authority" for a Third Party to apply for, and obtain, someone else's personal information.
- [34] **I conclude that the record contains personal information.**

## **2. If so, would it be unreasonable to disclose the information?**

- [35] Having eliminated the personal information relating to the Applicant and the Deceased, the further consideration of this exemption proceeds in relation to the personal information of the Third Party and the other named individual. Section 23(1) of the Law prohibits a public authority from disclosing a record if it would involve the unreasonable disclosure of that personal information.
- [36] In Hearing Decision 9-016104<sup>4</sup> the Information Commissioner laid out the questions that should be considered when deciding whether disclosure would be unreasonable under section 23(1) of the Law. My consideration of these questions in relation to the personal information which remains at issue is as follows:

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<sup>4</sup> Information Commissioner *Hearing 8-01610 Decision Health Regulatory Services (HRS)* 4 March 2011, pp.10-11.

**(i) Is the information sensitive?**

The responsive letter is quite general in nature. The personal information includes the Third Party's name, contact details and any information by which the Third Party could reasonably be identified. It also includes the name of another individual. I do not consider this information to be sensitive.

**(ii) Would disclosure prejudice the privacy of an individual?**

I believe the disclosure of the personal information of the Third Party constitutes a breach of the privacy of the Third Party since it contains his residential address, telephone number and email address. The Applicant concedes the redaction of the contact information of the Third Party.

I do not consider the disclosure of the name of the other individual to be prejudicial to their privacy.

**(iii) Would disclosure prejudice the public authority's information gathering capacity (e.g. as a regulator)?**

Although the RCIPS argues that the disclosure of the responsive record "may discourage individuals from confiding in the RCIPS", I do not find that argument convincing, given the circumstances of this case. The letter is of a general nature, and numerous, related records have already been disclosed to the Applicant. I do not believe the disclosure of the responsive record would jeopardize future investigations by the RCIPS.

**(iv) Has the information "expired"?**

The information has expired in the sense that it does not relate to an ongoing investigation or court case.

**(v) Is the information required for the fair determination of someone's rights?**

The Applicant stated that "the information may be required to fairly determine the Applicant's rights against the Third Party to prevent access to the Deceased's children." The Applicant did not identify a specific provision in law supporting the assertion of a right to prevent access, therefore this argument will not be addressed.



**(vi) Would the social context render disclosure reasonable?**

No social context argument was raised and I am not aware of any relevant social context that ought to be considered.

**(vii) Is there any suggestion of procedural irregularities or wrongdoing?**

Any questions of accountability of any public authority are in my view adequately revealed by disclosing the responsive record.

- [37] In his Submission, the Applicant states “the IM appears to have appropriately redacted the official record to remove any Personal Information of the Third Party”. In the Reply Submission the Applicant also states: “... the Applicant has no objection to [the Third Party’s contact details] being redacted.”
- [38] The contact details of the Third Party are not essential to understanding the nature of the letter, and the letter remains comprehensible in its redacted form.
- [39] **In view of the above considerations and circumstances I find that the personal information (the contact information including address, telephone number and email address) of the Third Party, is personal information which it would be unreasonable to disclose. The responsive record should therefore be redacted accordingly.**

**3. Does the public interest nonetheless require disclosure?**

- [40] As noted above, the Applicant raises three public interest factors in favour of disclosure:
- disclosure would enable the Applicant to understand decisions made by public authorities affecting his life;
  - disclosure would facilitate accountability and transparency in the spending of public monies; and
  - disclosure may reveal untrue, incomplete or misleading information about the Applicant.
- [41] The disclosure of the contact details of the Third Party would not in any way contribute to an understanding of decisions made by public authorities, to accountability or transparency in the spending of public monies, or to the disclosure of untrue, incomplete or misleading information, nor to any other public interest that comes to mind.
- [42] **For these reasons, I find that it is not in the public interest to grant access to the contact information of the Third Party.**

[43] **Consequently, the exemption in section 23(1) of the Law is engaged in relation to the personal information of the Third Party, being his contact information (address, email address and telephone number).**

**2) Whether the responsive record is exempt from disclosure under section 17(b)(i), of the FOI Law;**

[44] Having found that the exemption in section 23(1) of the Law applies to the contact information of the Third Party and that such information should be redacted, the outstanding exemptions will be considered and decided in relation to the unredacted parts of the responsive record only.

The position of the RCIPS:

[45] The RCIPS claims that the Third Party sent the responsive record to the Police Commissioner “in confidence that the Commissioner would not disclose the correspondences to persons not authorized to receive them.”

[46] The RCIPS also states: “if persons write in confidence ... they should be given assurances that their confidences should be respected should the information fall within the scope of an FOI request or otherwise.”

[47] The RCIPS Submission also argues that “any disclosure of personal information that relates to a Third Party [by the RCIPS] may discourage individuals from confiding in the RCIPS if they don’t have a degree of certainty that this trust will be respected.”

[48] Finally, the RCIPS raises a decision of the UK Information Tribunal (emphasis by the RCIPS):

***In Waugh v the Information Commissioner and Doncaster College (EA/2008/0038), a senior investigative journalist sought disclosure of information held on the investigation into the principal of the College including any reports drawn up during the enquiry or its conclusion. This request was refused on the basis that disclosure would contravene data protection principles and would likely cause damage or distress to the subject. On an appeal to the Information Appeal Tribunal, the Tribunal was obliged to consider in terms of fairness, what would be the Principal’s reasonable expectations about the use and subsequent release of the material. It concluded that disclosure of the information would represent a significant invasion of Mr. Gates privacy and would be unfair. **Additionally witnesses who gave evidence during the investigation would also have a reasonable expectation that the information they provided in the context of the investigation would not be released to the general public. The Tribunal therefore ruled that the disclosure of personal data would be unfair to them as well as to the Principal and dismissed the appeal.*****

[49] The RCIPS alleges disclosure would have a stressful impact on the Third Party.

The position of the Applicant:

[50] The Applicant considers the three-part test for breach of confidence, as follows:

- the record does not have the necessary quality of confidence, since many of its (assumed) contents are already believed to be in the public domain, placed there by the Third Party in the form of statements to the Press. This diminishes any expectation of confidence.
- there is no implicit obligation of confidence, since it has not been argued that the records are subject to the exemption relating to law enforcement (s.16), and the author must have intended for the Police Commissioner to action the letter in some manner, and in that process the letter would be expected to be disclosed to others
- there would be no detriment to the Third Party resulting from the disclosure.

[51] Since the Applicant argues that no duty of confidence has arisen, he believes an action is not likely to succeed, and therefore any breach is not actionable, as required for the exemption to be engaged.

[52] The Applicant points to the same public interest arguments already listed above, and also states that it is not in the public interest for the RCIPS to be “badgered to re-open investigations or pursue avenues of investigation which are irrelevant,” stating: “the resources of the Cayman Islands are finite and the public has a right to review how these resources are used.”

[53] In relation to the decision of the Information Tribunal quoted by the RCIPS, the Applicant says the *Waugh* case is not relevant since the factual situation is different from the current Hearing.

The position of the Third Party:

[54] The Third Party states that the responsive letter was,

“... sent to the RCIPS in the belief that this was being done completely in confidence. I would consider having them released whether publically [sic] or to a nominated Third Party would be a serious breach of that trust.”

[55] The Third Party seeks to raise the exemption in section 16(b)(i), stating that the jury in the Coroner’s Court reached an open verdict, and that this means that it is “entirely feasible” that a new police investigation might be commenced, based on “evidence currently held ... or evidence that may be made public in the future.”

[56] The Third Party supports the position taken by the RCIPS.

## Discussion:

[57] The meaning of the exemption in section 17(b)(i) of the Law has been considered in a number of hearings by the Information Commissioner, most recently in Hearing Decision 48-01115. The following general interpretation of the wording of the exemption is based in part on that Decision.<sup>5</sup>

- The meaning of “would”

[58] In the *McIntyre* case the UK Information Tribunal clarified, in relation to similar wording used in the UK FOI Act, that “would” is to be interpreted as “*more probable than not*”.<sup>6</sup>

- The meaning of “actionable”

[59] As the UK Information Tribunal found in *Higher Education Funding Council for England v ICO and Guardian News and Media Ltd.*<sup>7</sup> the meaning of “actionable” in the parallel exemption in the UK FOI Act is not unambiguous. However, in the parliamentary discussions relating to the UK FOI Bill, Lord Falconer, the sponsor of the UK Act, clarified that “*the word ‘actionable’ does not mean arguable ...*”, but that “[it] means that one can take action and win.”<sup>8</sup>

[60] Guidance from the UK Ministry of Justice supports this view, namely that the exemption may apply “if a person could bring a legal action and be successful.”<sup>9</sup>

- The meaning of “breach of confidence”

[61] In *Coco v. A. N. Clark*, Megarry J held that in order for a case of breach of confidence to succeed, three elements are required:

- the document must have the necessary quality of confidence about it;
- the information must have been imparted in circumstances importing an obligation of confidence; and
- there must be an unauthorized use of that information to the detriment of the party communicating it.<sup>10</sup>

<sup>5</sup> Information Commissioner’s Office *Decision Hearing 43-00814 Portfolio of Legal Affairs* 10 April 2015 paras 66-80; see also Decision 15-00611, 16-00811 and 24-00612.

<sup>6</sup> *McIntyre v Information Commissioner and the Ministry of Defence* EA/2007/0068 4 February 2008 para 40

<sup>7</sup> *Higher Education Funding Council for England v ICO and Guardian News and Media Ltd.* EA/2009/0036 13 January 2010 para 25

<sup>8</sup> United Kingdom *Hansard* HL (Series 5) Vol. 618, col. 416 and Vol. 619 col 175-6; quoted in *HEFCE v ICO* op cit ibid

<sup>9</sup> Ministry of Justice *Freedom of Information Guidance. Exemptions guidance. Section 41 – Information provided in confidence* 14 May 2008 p. 2

<sup>10</sup> *Coco v A.N. Clark (Engineers) Limited* [1968] F.S.R. 415 at 419. I note that Megarry J could “conceive of cases where a plaintiff might have substantial motives for seeking the aid of equity and yet suffer nothing which could fairly be called detriment to him” at 420-421.

- **Does the information itself have the necessary quality of confidence about it?**

[62] The term “necessary quality of confidence” means that “it must be information which is worthy of protection – someone must have an interest in the information being kept confidential.”<sup>11</sup> The information cannot already be in the public domain or be trivial in nature.<sup>12</sup> The courts will hold that information is subject to a duty of confidence where there is an express agreement to keep it confidential, or where there is an implied duty of confidence.

[63] Having read the unredacted part of the responsive letter, I consider that its content is not personal or private in relation to the Third Party, but rather general. I am not convinced it inherently consists of “information which is worthy of protection”.

[64] The decision of the UK Information Tribunal quoted by the RICPS can be distinguished from the circumstances in the present case. The responsive record in the present appeal is not a witness statement and, according to the RCIPS itself, does not form part of an investigation file.

[65] **For these reasons, I do not find that the information in the redacted responsive record itself has the necessary quality of confidence about it.**

- **Was the information imparted in circumstances importing an obligation of confidence?**

[66] I accept that the RCIPS routinely deals with many confidential matters, but that does not mean any correspondence of a general nature to the RCIPS (as I believe is the case here) can reasonably be considered inherently confidential.

[67] I can appreciate the RCIPS’ concern that “any disclosure of personal information that relates to a Third Party [by the RCIPS] may discourage individuals from confiding in the RCIPS if they don’t have a degree of certainty that this trust will be respected.” However, in this case, there is no express indication in the letter itself indicating an expectation of confidentiality.

[68] The Third Party states that he expected the letter to remain in confidence. However, there is no mention, either directly or indirectly, of an expectation of confidentiality on the part of the Third Party in the responsive letter itself. I have seen the reply from the Police Commissioner to the responsive letter, and it, too, was general in nature and did not indicate that the matter discussed in the letter was considered confidential.

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<sup>11</sup> Ministry of Justice *Section 41* op cit p. 6

<sup>12</sup> *S v Information Commissioner and the General Registry Office* EA/2006/0030 9 May 2007 paras 37 and 42

[69] **Consequently, I do not find that the circumstances of the communication in this case imported an obligation of confidence.**

- **Would disclosure of the responsive record constitute an unauthorized use to the detriment of the confider?**

[70] The Third Party believes his safety would be at risk due to the disclosure of the responsive record, as further discussed below. The Applicant, on the other hand, states his belief that there would be no detriment to the Third Party as a result of the disclosure.

[71] While case law on breach of confidence relating to the privacy of individuals has evolved so that detriment to the person whose information is at stake is no longer strictly required for a potential breach of confidence to occur, this notion is not particularly helpful here, since I do not believe the remaining, unredacted part of the responsive record is personal or private in nature (except in so far as it is not the personal information of the Applicant or the Deceased).<sup>13</sup>

[72] Guidance from the UK Ministry of Justice indicates that

*Unauthorized disclosure could take place where disclosure runs contrary to the express wishes of the person to whom the duty is owed or where a department does not have the consent of the person concerned.*<sup>14</sup>

[73] While the Third Party has stated his desire that the record remain withheld in full, given my findings in respect of the first and second part of the *Coco* test above, I do not consider that this is a matter to which the rules relating to breach of confidence are helpful.

[74] **Therefore, the disclosure of the responsive record in redacted form does not constitute an unauthorized use harmful to the author.**

[75] **Since no duty of confidence is owed in respect of the redacted responsive letter, I do not consider that disclosure would constitute an actionable breach of confidence, as required for the exemption in section 17(b)(i) of the Law to be engaged.**

[76] **Having concluded that the exemption in section 17(b)(i) of the Law is not engaged, I am not required to conduct a public interest test which forms part of the actionable breach of confidence under common law.**<sup>15</sup>

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<sup>13</sup> On the first point, see: Information Tribunal (UK) *Pauline Bluck v The Information Commissioner and Epsom & St Helier University NHS trust* 17 September 2007 EA/2006/0090 para 15; on the second point, see: Information Commissioner's Office (UK) *Information provided in confidence (section 41) Freedom of Information Act Version 1* 22 July 2015 paras 58-60; Information Tribunal (UK) *Higher Education Funding Council for England v The Information Commissioner and Guardian News and Media Ltd* 13 January 2010 EA/2009/0026 paras 43-44

<sup>14</sup> Ministry of Justice *Section 41* op cit p 10

<sup>15</sup> See: *W v Egdell* [1990] 1 All ER 835

**3) Whether the responsive record is exempt from disclosure under section 24(a) of the FOI Law and, if so, whether access shall nonetheless be granted in the public interest.**

[77] As noted above, since I have found that the exemption in section 23(1) of the Law applies to the personal information of the Third Party which is to be redacted, I will consider the exemption in section 24(a) in relation to the unredacted parts of the responsive record only.

The position of the RCIPS:

[78] The RCIPS claims that the disclosure of the responsive record, even in redacted state, would place “a high amount of undue stress” on the Third Party, who has objected to the disclosure of the record, whether in full or in part.

The position of the Applicant:

[79] The Applicant attributes the Third Party’s opposition to disclosure of the responsive record to their reluctance to having “their disgraceful and baseless allegations disclosed”, which the Applicant alleges is what the letter contains.

[80] The Applicant acknowledges that this case may be causing some stress for the Third Party, but argues that this falls far short of “endangering mental health”, which in his view “implies that the disclosure ... might lead to a psychological disorder or make mental illness worse. This means that it has to have a greater impact than mere stress or worry.”

[81] The Applicant notes that no independent expert opinion has been provided to support the engagement of this exemption.

[82] As to the Third Party’s apparent safety concerns, the Applicant considers these “ridiculous” and notes that, while there are “obviously serious personal disagreements between the Applicant and the Third Party”, no evidence is provided that it would be likely “that they would be pursued personally” or have any reason to feel threatened. The Applicant vehemently denies any intention of even contacting the Third Party.

The position of the Third Party:

[83] The Third Party expresses a concern “that the Applicant would use [the responsive record] to pursue me personally.”

[84] The Third Party provides no further factual evidence or argumentation in support of this exemption.

Discussion:

- [85] For the exemption in section 24 of the Law to be engaged the disclosure “would, or would be likely to: (a) endanger the physical or mental health of any individual; or (b) endanger the safety of any individual.”
- [86] The UK Information Tribunal has found that the term “endanger” equates to “prejudice”.<sup>16</sup>
- [87] A prejudice-based exemption, according to guidance from the UK’s Information Commissioner, is one where “the authority has to satisfy itself that the prejudice or harm that is specified ... either would or would be likely to occur.”<sup>17</sup>
- [88] There is no evidence that the Third Party is suffering from a mental condition, or that threats have been made against him.
- [89] While I do not doubt that this FOI appeal and Hearing, as well as the underlying subject matter and broader context of the responsive record may cause a certain level of mental stress for the Third Party and the Applicant, I do not believe a credible case has been, or can be made, that the disclosure of the letter in dispute would, or would be likely to, endanger either the mental or physical health, or the safety, of any individual, including the Third Party.
- [90] **For those reasons, I find that the exemption in section 24(a) of the Law is not engaged in regard to the unredacted part of the responsive record.**
- [91] Having found that the exemption is not engaged, I am not obliged to balance the public interest in regard to this exemption.

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<sup>16</sup> *People for the Ethical Treatment of Animals Europe v The Information Commissioner and The University of Oxford* 13 April 2010 EA/2009/0076 para 30; See also: Information Commissioner’s Office (UK) *Health and safety (section 38). Freedom of Information Act. Version 1.0* 27 May 2016 para 9.

<sup>17</sup> Information Commissioner’s Office (UK) *The prejudice test. Freedom of Information Act. Version 1.1* 5 March 2013, p. 3; See: *Hogan and Oxford City Council v Information Commissioner* EA/2005/0026 and 0030 17 October 2006 paras 28-36



## D. FINDINGS AND DECISION

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Under section 43(1) of the Law for the reasons stated above I make the following findings and decision:

1. The exemption in section 23(1) of the Law is engaged in relation to the personal information of the Third Party comprised of contact information (address, email address and telephone number).
2. The public interest does not override the application of the exemption in section 23(1) of the Law to those parts of the letter.
3. No duty of confidence is owed in respect of the redacted responsive letter, and the disclosure would not constitute an actionable breach of confidence. The exemption in section 17(b)(i) of the Law is therefore not engaged.
4. The exemption in section 24(a) of the Law is not engaged in regard to the redacted responsive letter.

Consequently, I require that the responsive record, namely a letter communicated by the Third Party to the Police Commissioner, be disclosed with the redactions of the Third Party's contact information on or before November 30, 2017.



Sandy Hermiston  
Ombudsman

14 November 2017