

ICO Hearing 57-02316
Decision

Department of Immigration

Jan Liebaers
Acting Information Commissioner for the Cayman Islands

31 August 2017

Summary:

An Applicant requested access to records relating to a fine imposed on an employer by the Department of Immigration. Some records were disclosed, but a ruling/advice provided by the Director of Public Prosecutions was withheld and remained in dispute.

The Acting Information Commissioner found that the exemption in section 20(1)(c) of the Freedom of Information Law (2015 Revision) applied to the ruling/advice, as it constituted "legal advice given by or on behalf of the Attorney General or the Director of Public Prosecutions". The public interest in disclosure does not outweigh the public interest in maintaining the exemption, and the record may remain withheld.

The Acting Information Commissioner pointed out a number of serious procedural deficiencies on the part of the Department of Immigration, including problems with how the exemption in section 20(1)(c) was claimed, the timing of the internal review, and the lack of a submission made to the ICO in the course of the hearing to provide reasons for withholding the responsive record.

Statutes¹ Considered:

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

¹ 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

- [1] On 13 May 2016 the Applicant made a request to the Department of Immigration (“the Department”) for: (a) the details of a specific fine imposed by the Enforcement Section of the Department on a private company (“the Company”), and (b) the written reasons for a decision which the Applicant alleged had adversely affected [his] interests” in regard to that fine.
- [2] An initial decision by the Department was rendered on 17 June 2016, which denied access to the first part of the request under section 17(b)(i) (actionable breach of confidence), and the second part under 20(1)(c) (legal advice given by, or on behalf of the Attorney General or the Director of Public Prosecutions)
- [3] The Applicant requested an internal review of that decision on 17 July. Upon expiry of the period allowed for the internal review on 17 August, the Department asked the Applicant for an extension to allow more time.
- [4] No internal review having been conducted, the Applicant appealed to the Information Commissioner’s Office (“ICO”), which accepted the appeal on 29 November 2016.
- [5] After the fact, the Chief Officer communicated the results of an internal review on 7 December, resulting in the disclosure of the records that are responsive to the first part of the request, and dropping reliance on section 17(b)(i). The Chief Officer maintained the exemption in section 20(1)(c) in regard to the reasons in the second part of the request, which were said to have been provided to the Department by the Director of Public Prosecutions (“DPP”).
- [6] Extensive negotiations took place, facilitated by the ICO, and a further record relating to the second part of the request was disclosed by the Department on 17 March 2017. However, the Applicant remained of the opinion that the advice contained in the ruling form provided to the Department on behalf of the DPP, needed to be disclosed.

- [7] During the ICO's interactions with the Department in the course of the appeal, much time was lost waiting for responses and sending reminders to the Information Manager ("IM"), apparently due to the IM's other work demands.
- [8] In spite of the ICO's attempt at finding an amicable solution, no further common ground could be found between the parties, and the dispute was forwarded to a formal hearing before the Acting Information Commissioner.

B. BACKGROUND

- [9] The Department is responsible for securing Cayman's borders and controlling immigration into the Islands, as well as for issuing Cayman Islands Passports.
- [10] The Department also includes the Business Staffing Plan Board, the Caymanian Status & Permanent Residency Board, the Immigration Boards of Grand Cayman, the Passport & Corporate Office Services Office, and the Work Permit Board.
- [11] In the course of this appeal, the topic of immigration was more or less constantly in the news, with various stories indicating a significant backlog in the processing of applications for permanent residency, and an unusually high number of work permits being issued.

C. PROCEDURAL ISSUES

Initial decision claiming the exemption in section 20(1)(c)

- [12] Subsection 20(2) specifies that an initial decision claiming the exemption in 21(1)(c) may only be made by a Minister or Chief Officer, not by an IM.
- [13] The exemption was initially claimed by the IM on 17 June 2016, which was contrary to the Law.
- [14] Subsequently, the Chief Officer attempted to claim the same exemption in the internal review decision. As explained below, the internal review did not conform to the Law since it was made outside the statutory period allowed for a review, and it was reached after the matter had already been appealed to the Information Commissioner.
- [15] The exemption in section 20(1)(c) was included in the Fact Report and Notice of Hearing in relation to the present hearing, which was agreed by both parties, but the Department did not make a submission to explain which exemptions it is relying on or provide reasons for such reliance, as also described below.
- [16] Therefore, the exemption in section 20(1)(c) has not been claimed correctly either in the initial decision, the internal review decision, or at hearing.

[17] Nonetheless, section 42(4) provides:

(4) On the consideration of an appeal, the Commissioner-

(a) may, subject to paragraph (b), make any decision which could have been made on the original application;...

[18] Out of an abundance of caution, no matter how inadequate the Department's provision of reasons for the withholding of the record, it appears reasonable to me that the Department claims the exemption in section 20(1)(c), and I will permit the hearing to proceed on that basis.

Timing / extension of the Internal Review by the Chief Officer:

[19] Section 33(1) grants an applicant the right to request an internal review where the initial decision of the public authority was, amongst other things, to "refuse to grant access to the record". However, section 34(3)(b) requires that the internal review be conducted within a period of thirty calendar days after the receipt of the application for internal review. The Law does not provide for an extension of the period for an internal review, and all internal reviews must therefore be concluded within 30 calendar days.

[20] The Applicant requested an internal review on 17 June, but on 17 August, upon expiry of the statutorily allowed period of 30 calendar days, the Department asked for an extension. The Chief Officer of the Ministry of Home Affairs did not communicate his internal review decision until 7 December, several days after the Applicant had applied for an appeal with the Information Commissioner, and the ICO had accepted it.

[21] Consequently, it was incorrect of the Department to ask the Applicant to agree to an extension of the deadline, and it was inappropriate for the Chief Officer to take almost 6 months for the internal review to be completed.

[22] When an appeal to the Information Commissioner is made, ICO staff always verifies whether the ICO has jurisdiction. Once an appeal has been accepted, Chief Officers no longer have the option of issuing an internal review decision, especially outside the period of 30 days allowed for the review.

The Department's decision not to make a submission

[23] In accordance with established ICO appeals policies and procedures, both parties to a hearing agree beforehand to a Fact Report and a Notice of Hearing, which includes a time table for submitting argumentation and reasons. Submissions are then exchanged, and each party gets an opportunity to reply to the other side's arguments, after which all the documentation goes to the Information Commissioner for a binding decision. That, in short, is how the ICO's hearing process is supposed to work.

[24] However, despite receiving notification that a formal hearing was being held and agreeing to a Fact Report and a time table for the hearing, the Department informed me at the latest possible time that it would not be making any submissions in this hearing. I did not receive that communication until several deadlines for submissions and reply submissions had already passed, and ICO staff had repeatedly attempted to communicate with the IM about the issue.

[25] The Department's approach runs afoul of the basic principles of the FOI Law which is based on the premise that all records - except for limited exclusions identified in section 3, to which the FOI Law does not apply – are to be disclosed unless exempted. See also section 6(1), quoted below.

[26] The FOI Law requires that a public authority which withholds any record from disclosure must provide legal reasons. Therefore, the Department's refusal to make a submission ignores section 27 (of the FOI Law), which states:

27. Public authorities shall make their best efforts to ensure that decisions and the reasons for those decisions are made public unless the information that would be disclosed thereby is exempt under this Law.

[27] I note that section 19 of the Cayman Islands Bill of Rights, which is brought up by the Applicant, expresses a similar requirement to provide reasons.

[28] Furthermore, section 43(2) squarely puts the onus on the public authority to explain why it withholds records:

(2) 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.

[29] In a previous hearing decision I have clarified my views on the duty of public authorities to explain their actions unambiguously:

I wish to make it clear to ... 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.²

[30] Given the clear violation of these statutory obligations and procedural steps, which were communicated to the Department, it is hard to imagine how any public authority can defend its position to withhold a requested record for well over a year, in the end simply to

² Information Commissioner's Office *Hearing Decision 45-00000 The Governor's Office* 15 February 2016 para 157 available on: <http://www.infocomm.ky/images/ICO%20Decision%2045-00000%20Governors%20Office%20FINAL%202016-02-15.pdf>

refuse giving reasons for doing so, which is what the Department's refusal to provide a submission amounts to.

- [31] This course of action is particularly regretful since the Department has in the past responded to more FOI requests than any other public authority, and its staff should therefore be well aware of the routine requirements of the FOI Law and the ICO. It seems implausible that the lack of communication and cooperation in the present hearing can be attributed to a want of understanding about what is required. Nor can I find a reason why the unrelenting efforts of several ICO staff members who tried to inform the Department of its duties were ignored. Under these circumstances, the Department's refusal to provide reasons for withholding the ruling/advice can only be described as wilful, egregious and unlawful.
- [32] Even a casual reader of the news will realize that immigration resources are currently under severe strain, as several urgent matters demand the attention of a finite number of departmental staff, for instance the ongoing backlog in permanent residence applications and the peak in work permits being processed. While I sympathize with this predicament, such pressures do not in any way absolve the Department – one of the largest departments in the Cayman Islands Government – from meeting its legal obligations in all other statutory areas, including responding to FOI requests and cooperating with the ICO in the course of appeals and hearings.
- [33] Despite the broad investigatory powers granted to the Information Commissioner by section 45(1), which include “requiring the production of evidence and compelling witnesses to testify”, I do not believe it would be correct for me to try and compel the Department to justify the withholding of the requested record, since it refused to defend its own position voluntarily, even after repeated reminders.
- [34] In my mind the Department's refusal to provide reasons for withholding the requested record demonstrates a blatant lack of respect for the laws of the Cayman Islands, the FOI Law and the ICO. There is no excuse for it, and I feel that I would be justified on that basis alone, to order the record disclosed.
- [35] As I stated in a previous hearing decision:

I categorically reject that it is up to the Commissioner to consider each and every possible exemption which might apply in any given case proactively. Doing so would undermine the appeal process which has been carefully crafted with fairness and expediency in mind, and would be highly likely to invite a cavalier attitude on the part of many public authorities in regard to their duty to provide reasons for decisions under the FOI Law. Furthermore, placing the burden on the Information Commissioner, as put forward by the Portfolio, contradicts section 43(2) [quoted above].

...It is not up to the Information Commissioner to raise and consider every possible exemption that might apply in a given case since the burden of proof is squarely on the public authority, but I accept that it is within the discretion of the Information Commissioner to take into consideration an exemption on his own initiative, or one that is raised late...³

- [36] Upon careful reflection, and out of an abundance of caution, I feel it is proper for me to consider the exemption, where there is *prima facie* evidence in the document itself or in the preliminary documentation to this hearing, that the exemption applies, and, if it is engaged, conduct the required public interest test, regrettably without the benefit of detailed argumentation from the Department. I will proceed with this hearing on that basis.

D. ISSUES UNDER REVIEW IN THIS HEARING

- [37] Consequently, despite the serious deficiencies explained above, this hearing moves forward on the basis that the Department claims the exemption in section 20(1)(c) is engaged in respect of the ruling/advice form provided to the Department by, or on behalf of, the DPP.

- [38] Therefore, the issue under review in this hearing is:

❖ **Whether the responsive record is exempt from disclosure under section 20(1)(c) of the FOI Law, and, if so, whether access shall nonetheless be granted in the public interest.**

E. CONSIDERATION OF ISSUE UNDER REVIEW

❖ **Whether the responsive records are exempt from disclosure under section 20(1)(c) of the FOI Law, and, if so, whether access shall nonetheless be granted in the public interest.**

- [39] Section 6(1) grants a general right of access:

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.

³ Information Commissioner's Office *Hearing Decision 43-00814 Portfolio of Legal Affairs* 10 April 2015 paras 19 and 21 available on: <http://www.infocomm.ky/images/ICO%20Decision%2043-00814%20Legal%20Affairs%20FINAL%202015-04-10%20JL.pdf>

[40] Section 20(1)(c) provides for an exemption relating to advice from the Attorney General and the DPP:

20. (1) A record is exempt from disclosure if-

...

(c) it is legal advice given by or on behalf of the Attorney General or the Director of Public Prosecutions; or

[41] Section 20(2)(b) applies to subsection 20(1)(c), as follows:

(2) The initial decision regarding-

...

(b) subsection (1)(b), (c) and (d) shall be made not by the information manager but by the Minister or chief officer concerned.

[42] Section 20(1)(c) is subject to a public interest test by virtue of section 26 which states:

26. (1) Notwithstanding that a matter falls within sections 18, 19(1)(a), 20(1)(b), (c) and (d), 21, 22, 23 and 24, access shall be granted if such access would nevertheless be in the public interest.

(2) Public interest shall be defined in regulations made under this Law.

[43] Regulation 2 defines public interest as follows:

“public interest” means but is not limited to things that may or tend to-

(a) promote greater public understanding of the processes or decisions of public authorities;

(b) provide reasons for decisions taken by Government;

(c) promote the accountability of and within Government;

(d) promote accountability for public expenditure or the more effective use of public funds;

(e) facilitate public participation in decision making by the Government;

(f) improve the quality of services provided by Government and the responsiveness of Government to the needs of the public or of any section of the public;

(h) deter or reveal wrongdoing or maladministration;

(i) reveal information relating to the health and safety of the public, or the quality of the environment or heritage sites, or measures to protect any of those matters; or

(j) reveal untrue, incomplete or misleading information or acts of a public authority.

The position of the Department:

[44] The Department has not made any submission or reply submission in this hearing, and has therefore not provided me with any arguments or reasons for withholding the requested record, in relation to the exemption in section 20(1)(c) or any other exemptions.

The position of the Applicant:

[45] The Applicant has not made a submission, but points to his email message of 18 July 2017, which he sent to the ICO when considering the Fact Report relating to this hearing, for his views.

[46] In that message, the Applicant expressed the view that, in addition to the sections of the Immigration Law cited in his original request, I should also consider section 19 of the Bill of Rights, and sections 10, 13, 17 and 19 of the Anti-Corruption Law, respectively dealing with bribery, breach of trust, abuse of office and conflict of interest, as well as:

...any other sections that could be applicable in the delivery of such legal advice on work permit matters where Caymanians/Caymanian spouses have been discriminated against and disenfranchised by the granting of work permits for jobs they're qualified for, especially considering the fact that the legal advice [sic] was delivered by persons who would otherwise be on work permits themselves if not for being employed by Government.

[47] The Applicant states that he has “no evidence at this time of any corruption concerns”, but he believes this should nonetheless ‘fall part of the ICO Commissioner's consideration as to “whether access shall nonetheless be granted in the public interest”.’

Discussion:

[48] The record in dispute in this hearing is a ruling/advice from the DPP, which is a document I understand to mean:

a formal advice or recommendation based on collected statements of potential witnesses as well as other material to the investigating entity.⁴

[49] The ruling/advice in dispute in the present appeal contains recommendations from the DPP to the Department in regard to certain alleged infractions by a number of private companies, including the cases the Applicant specifically asked about.

[50] The exemption in section 20(1)(c) has not yet been fully explored in previous decisions of the Information Commissioner.

⁴ Office of the Director of Public Prosecutions (Jamaica) *The Decision to Prosecute: A Jamaican Protocol* April 2012 p.7 available on:
<http://dpp.gov.jm/sites/default/files/pdf/Prosecution%20Protocol.pdf>

- [51] At first sight, it may seem puzzling why a separate exemption for legal advice from or on behalf of the Attorney General (AG) or the DPP is necessary, since section 17(a) already covers records subject to legal professional privilege (LPP).
- [52] Unlike section 17(a), which is an absolute exemption, section 20(1)(c) is subject to a public interest test by virtue of section 26(1). In other words, the legislators saw fit to hold the AG and DPP to a higher level of public scrutiny and accountability than legal advice communicated by other professional legal advisors.
- [53] If so, it seems to me that the exemptions in sections 17(a) and 20(1)(c) should not apply simultaneously to the same record, as legal advice is either given by the AG or DPP, or by another professional legal advisor. In other words, if the legal advice emanates from, or is made on behalf of, the AG or DPP, the exemption in section 17(a) cannot be claimed, and vice versa.
- [54] Although it is of course reasonable in certain circumstances for a public authority to claim more than one exemption in relation to a responsive record, this approach is consistent with what I wrote previously about overlapping exemptions:

A public authority must...use the exemption that best matches the “applicable interest” it is aiming to protect.⁵

- [55] The ruling/advice in this hearing is a communication received by the Department from its professional legal advisor in the Office of the DPP. It contains confidential legal advice within the relevant legal context, and it has not been claimed that it has been disclosed or that privilege was otherwise waived.
- [56] In the UK, a ruling/advice made by the Crown Prosecution Service (CPS) – the parallel entity to the Cayman Islands’ DPP - is referred to as a “charging decision”. There have been only a very small number of appeals to the UK Information Commissioner in relation to requests for access to charging decisions under the UK Freedom of Information Act 2000 (FOIA). None of these have been upheld by the Commissioner, and in all cases the records have remained withheld.
- [57] The UK’s FOIA is differently structured than the Cayman Islands FOI Law, in that there is no separate exemption for legal advice provided by the Attorney General or DPP/CPS. In the UK it is the exemption relating to legal professional privilege (LPP) (section 42(1) of FOIA) which is applied to withhold charging decisions. More specifically, CPS charging decisions are not protected by “legal advice privilege”, but by “litigation privilege”. According to the UK Commissioner LPP is:

14. *...a common law concept that protects the confidentiality of communications between a lawyer and client. In Bellamy v the Information Commissioner and the*

⁵ Information Commissioner’ Office Hearing Decision 41-0000 The Governor’s Office 10 July 2014 para 41 available on: <http://www.infocomm.ky/images/ICO%20Decision%2041-0000%20Governors%20Office%202014-07-10.pdf>

Secretary of State for Trade and Industry (EA/2005/0023, 4 April 2006) the Information Tribunal described it as:

“... a set of rules or principles which are designed to protect the confidentiality of legal or legally related communications and exchanges between the client and his, her or its lawyers, as well as exchanges which contain or refer to legal advice which might be imparted to the client, and even exchanges between the clients and third parties if such communication or exchanges come into being for the purpose of preparing for litigation.”

17. *In this case litigation privilege is the relevant privilege. For information to be covered by litigation privilege, it must have been created for the dominant purpose of giving or obtaining legal advice, or for lawyers to use in preparing a case for litigation. It can cover communications between third parties so long as they are made for the purposes of the litigation.*
19. *Litigation privilege applies to a wide variety of information, including advice, correspondence, notes, evidence or reports. The Commissioner has reviewed the withheld information and is satisfied that it consists of communications made for the dominant purpose of litigation, as it refers to the possible charging of Robert Black with the abduction and murder of Genette Tate. The Commissioner is therefore satisfied that the information is held for the dominant purpose of assisting in proposed litigation and that it attracts legal professional privilege.⁶*

[58] I accept this reasoning, and believe it should *mutatis mutandis* be extended to the question before me in the present hearing.

[59] **Therefore, the DPP ruling/advice which is the subject of this hearing is “legal advice given by or on behalf of the ... Director of Public Prosecutions”, and the exemption in section 20(1)(c) applies to it.**

Public Interest Test

[60] Notwithstanding that the exemption in section 20(1)(c) applies, by virtue of section 26(1) the responsive record may, nevertheless, be disclosed if doing so would be in the public interest.

[61] Because the Department did not make a submission, they have not provided any public interest considerations for or against disclosure.

⁶ Information Commissioner (UK) Decision Notice Crown Prosecution Service 10 May 2017 FS 50633763 paras 14, 17 and 19, available on: <https://ico.org.uk/media/action-weve-taken/decision-notices/2017/2014105/fs50633763.pdf>; see also: Information Commissioner (UK) Decision Notice Crown Prosecution Service 26 February 2013 FS 50462902 available on: https://ico.org.uk/media/action-weve-taken/decision-notices/2013/805954/fs_50462902.pdf

- [62] The Applicant has formulated some general public interest considerations, as quoted above. I have already discussed the impact of section 19 of the Bill of Rights above. As far as sections 10, 13, 17 and 19 of the Anti-Corruption Law (2016 Revision) are concerned, these deal respectively with bribery and breach of trust in relation to public officers, influencing or negotiating appointments or dealing in offices, and conflicts of interests. The Applicant places these considerations in the context of perceived discrimination against Caymanians, and appears to question the integrity of prosecutors, “who would otherwise be on work permits themselves if not for being employed by Government”. However, the Applicant states he has “no evidence at this time of any corruption concerns”.⁷
- [63] The Applicant’s references to implied wrongdoings on the part of departmental staff and others are not substantiated in any way in the documentation that I have seen, most of which has been disclosed to the Applicant in the earlier stage of the FOI appeal. Instead, the records document a defined process which seems to have been followed meticulously by the Department, resulting in fines at a level determined by the relevant policy. I did not see any hint of wrongdoing on the part of DPP or Departmental staff, and the Applicant’s accusations appear to me entirely unfounded, as he himself seems to agree.
- [64] After considering the records that have already been released to the Applicant, I believe that information adequately explains why the Department made the decision it did and therefore adequately ensures its accountability to the public.
- [65] There are general public interest factors in favour of disclosing the ruling/advice, such as the promotion of greater understanding of the processes and decisions of public authorities, the promotion of accountability of and within Government, the promotion of accountability for public expenditure (or, in this case, revenue in the form of fines imposed by the Department).
- [66] International research shows that similar rulings or advice from prosecutors is not disclosed except to the police or other investigating body (such as the Department of Immigration in the present case). For example, in the Irish Republic the DPP:

...does not give reasons to anyone else. This policy has been supported in recent years by a number of High Court and Supreme Court decisions... In many cases, giving a reason in public could amount to condemning a person without a trial. For example, the reason a person was not prosecuted might be because a key witness was abroad and would not come back to give evidence. But to say this publicly would be like saying that the accused was guilty even though he or she did not have a trial.

Sometimes, the reason may be something that would be unfair to make public, such as the medical condition of a witness.

⁷ See paras 45-47 above

*If reasons were given in some cases but not in others, people might jump to the wrong conclusions about cases where no reason was given.*⁸

- [67] In the UK, where the exemption for LPP itself is subject to a public interest test, guidance from the UK Information Commissioner clarifies that the general public interest inherent in the exemption is strong,

*...due to the importance of the principle behind LPP: safeguarding openness in all communications between client and lawyers to ensure access to full and frank legal advice, which in turn is fundamental to the administration of justice.*⁹

- [68] The UK Information Tribunal, basing itself on numerous legal authorities, concluded in regard to the public interest test in relation to records subject to LPP:

*...there is a strong element of public interest inbuilt into the privilege itself. At least equally strong counter-weighing considerations would need to be adduced to override that inbuilt public interest. ...it is important that public authorities be allowed to conduct a free exchange of views as to their legal rights and obligations with those advising them without fear of intrusion, save in the most clear case, of which this case is not one.*¹⁰

- [69] **Therefore, in view of the above, in the present case the public interest in disclosing the responsive record, i.e. the ruling/advice of the DPP to the Department, does not outweigh the public interest in maintaining the exemption, and the record may consequently continue to be withheld.**

F. FINDINGS AND DECISION

Under section 43(1) of the *Freedom of Information Law, 2007* for the reasons stated above I make the following findings and decision.

1. I find that the ruling/advice from the Director of Public Prosecutions which is the subject of this hearing is “legal advice given by or on behalf of the ... Director of Public Prosecutions”, and the exemption in section 20(1)(c) of the Freedom of Information Law (2015 Revision) applies to it.
2. After conducting a public interest test under section 26(1) of the Freedom of Information Law (2015 Revision), I find that the public interest in disclosing the responsive record, i.e. the ruling/advice of the DPP to the Department of

⁸ Office of the Director of Public Prosecutions (Ireland) “The Role of the DPP” available on: http://www.dppireland.ie/about_us/the-role-of-the-dpp/

⁹ Information Commissioners Office (UK) *Legal professional privilege (section 42). Freedom of Information Act Version 1.3* 14 April 2016 para 52

¹⁰ Information Tribunal *Christopher Bellamy v The Information Commissioner and The Secretary of State for Trade and Industry* EA/2005./0023 4 April 2006 para 35

Immigration, does not outweigh the public interest in maintaining the exemption, and the record may consequently continue to be withheld.

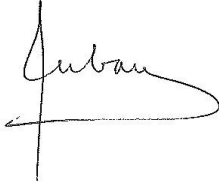
The Department of Immigration is not required to take any further steps in terms of disclosing the requested record.

I expect that my observations in regard to three serious procedural deficiencies noted above will not be ignored, namely in regard to: the correct process for claiming the exemption in section 20(1)(c); the correct timing of an internal review, and the need to make submissions in the course of a hearing before the Information Commissioner. I expect that the Department will take steps to avoid a repeat of these infractions in the future, and will meet all its legal obligations under the Freedom of Information Law (2015 Revision).

As per section 47 of the *Freedom of Information Law, 2007*, the Applicant or the relevant public body may within 45 days of the date of this Decision (i.e. by 15 October 2017) appeal to the Grand Court by way of a judicial review of this Decision.

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

Pursuant to section 48, upon expiry of the forty-five day period for judicial review referred to in section 47, the Commissioner may certify in writing to the court any failure to comply with this Decision and the court may consider such failure under the rules relating to contempt of court.

A handwritten signature in black ink, appearing to read 'Jan Liebaers', with a long horizontal stroke extending to the right.

Jan Liebaers
Acting Information Commissioner

31 August 2017