



Hearing 91 – 202100419-420

Decision

LANDS AND SURVEY DEPARTMENT (LSD)

Sharon Roulstone
Ombudsman

June 23, 2022

Summary:

An applicant made a request under the Freedom of Information Act (FOIA) to the Lands and Survey Department (LSD) for a number of cadastral claim files. The LSD conducted a search but could only locate some of the records. The applicant was unsatisfied with this and appealed the matter to the Ombudsman.

The Information Manager (IM) listed the LSD's search efforts, which included a search of records stored in the Records Centre at the Cayman Islands National Archive (CINA).

The Ombudsman found LSD had conducted a reasonable search, and no further steps are required.

Statutes¹ Considered:

- Freedom of Information Act (2021 Revision) (FOI Act)
- Freedom of Information (General) Regulation (2021 Revision) (FOI Regulations)

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¹ In this decision all references to sections are to sections of *the Freedom of Information Act (2021 Revision)*, and all references to regulations are to the *Freedom of Information (General) Regulations (2021 Revision)*, unless otherwise specified.

A. INTRODUCTION

- [1] On 18 January 2021 the applicant made a request to the LSD under the FOIA for:
1. "Jonathan Hole" Colliers - block 74A parcel 26/89;
 2. Claim File 10,103 including maps and drawings;
 3. Block 74A parcel 31 – cadastral claim file including maps and drawings;
 4. Block 74A parcel 45;
- [2] Due to technical difficulties, the LSD did not receive the request until 12 March 2021, after the applicant inquired about it and attached a copy in a follow-up email.
- [3] As the LSD had no previous knowledge of the request, the latter date was accepted as the date received, and the IM acknowledged receipt.
- [4] The LSD responded and granted access to records concerning parcel 74A 45 of claim file 9552. The applicant was informed that the file contained five (5) pages in total, and of that, only three pages were disclosed, as the other two pages were in delicate physical form making it impossible to unfold or copy them.
- [5] An extension was taken under section 7(4) to allow a further 30 days to complete the processing of the request as some records were still outstanding.
- [6] On 21 April 2021, the LSD informed the applicant that no claim was recorded in the registry concerning claim 10,103. In the same response, the applicant was also advised that the CINA could not locate the claim file requested for block and parcel 74A31 (claim 10,121). However, the adjudication record was found in the parcel register file. As this file is a public document, a copy was available to the applicant for a fee; however, given the applicant's personal circumstances, the LSD copied the pages and provided them at no cost.
- [7] The applicant was dissatisfied with the response received and submitted a 59-page letter dated 11 May 2021 seeking to amend his original request and asking for 30 additional records. The LSD acknowledged the request and informed the applicant that it would be treated as a new request. This related to the following records:
- Claim files relating to block 74A parcels 34, 32, 33, 30, 29, 50, 28, 27, 17, 15, 24, 22, 13, 64, 37, 38, 39, 40, 41, 42, 43, 44, 46, 57, 58, 49, block 75A parcels 116, 115, 114, 113 and Dispute file 436/C/D relating to 74A31 and Claim 10,121.*
- [8] The LSD granted full access to the records and submitted an estimate of the fees to be charged for providing copies of 25 records with an estimated page count of 273. Further, it was explained to the applicant that 5 records relating to block 75A parcels 116, 115, 114, 113, and

block 74A 64 and Dispute file 436/C/D were not located by CINA and were considered lost by the Registrar as they could not be found.

- [9] In July, the applicant was reminded by the LSD of the fees to be paid for the held records.
- [10] The applicant's request for an internal review concerning both FOI matters was received in July. In the internal review request, the applicant submitted that corrections needed to be made regarding a couple of the block and parcel numbers identified by the IM. The applicant also introduced a second amendment to the first FOI request.
- [11] Further, the applicant explained that the correct listings of the requested claim files would have to be confirmed before any payment could be considered, as well as the amendment to include additional claim files, amounting to an additional 14 records, namely; block 74A/ 51, 52, 54, 73A/ 62 REM 1 and 75A/ 122, 123, 74A/ 56.
- [12] In the internal review decision the LSD's Director upheld the decision of the IM concerning both requests. The applicant then made an appeal to the Ombudsman, which was accepted.
- [13] During the informal appeal process, the applicant explained his inability to pay the required fees for the records that were available for disclosure. He submitted a late request for a waiver of fees to the Chief Officer (CO) in the Ministry with responsibility for the LSD. The request for a waiver was granted, and the responsive records were disclosed to the applicant, followed by an index of the records as requested. The index was not a record that is usually kept by the LSD.
- [14] For the sake of efficiency, both appeals are being dealt with in a single hearing decision.

B. CONSIDERATION OF ISSUES

a) Did the LSD make reasonable efforts to locate records subject to an application for access, and did it make a record of search efforts?

- [15] I will consider these questions in tandem, as both relate to regulation 6, which states:

Reasonable search

6. (1) An information manager shall make reasonable efforts to locate a record that is the subject of an application for access.

(2) Where an information manager has been unable to locate the record referred to in paragraph (1), the information manager shall make a record of the efforts that information manager made.

[16] The question of reasonableness of a search under the UK's FOIA was addressed in the appeal to the Information Tribunal in *Bromley v Information Commissioner* in which the Tribunal concluded that,

...the standard of proof to be applied... is the normal civil standard, namely, the balance of probabilities.... [since] there can seldom be absolute certainty that the information relevant to a request does not remain undiscovered somewhere within the public authority's records...

[17] Furthermore, the Tribunal confirmed that a number of factors are relevant to this test, namely:

*- the quality of the public authority's initial analysis of the request,
- the scope of the search that it decided to make on the basis of that analysis and
- the rigour and efficiency with which the search was then conducted...²*

[18] Given the extensive similarities between the UK and Cayman Islands FOI Act, I will apply the same standard and factors.

[19] The LSD's historical files are stored at CINA. Although the cadastral claim files have been stored in the Records Centre of the National Archive for a number of years, LSD continues to own the records and control access to them.

[20] The regional cadastral survey and registration project took place between 1972 – 1977. Prior to this, the system of registration consisted of registration of the relevant deeds with the Public Recorder. When the modern land registry was created, individual owners could make land claims and present supporting documentation. These were documented in so-called claim files. Claim files were sent from the cadastral project team to LSD at the end of the adjudication process in the late 1970s, and have been stored in the Archive's Records Centre since the 1990s.

[21] The adjudication record for each parcel is stored with the related parcel file. In addition, it lists the claim numbers and whether there was a dispute or petition, for example, 456/C/D/P – C – for the Claim, D – for the dispute and P – for the petition.

[22] The LSD explained that the claim files were in many cases converted into dispute files, where land ownership was in dispute. However, in some cases, claim files would also note that there was a related dispute and provide the dispute file number.

[23] Petitions were kept separately and are also at CINA. The parcel root files (originals) hold the adjudication records.

² *Bromley v Information Commissioner and Environment Agency* (EA/2006/0072) [2011] 1 Info LR 1273 paras 12-13

[24] Therefore, when a claim file is requested, the parcel file is checked for the adjudication record. The information is then sent to CINA to request the claim files and associated dispute files, if any.

[25] The LSD is in the process of developing a disposal policy for its operational files, and did not dispose of any files. However, some files were damaged due to flooding.

[26] The LSD submits that;

...the records presented by the applicant in his initial submissions are immaterial to the issues being considered in this appeal as it does not relate to the Applicant's FOI request, which is the subject of this appeal. The Mutation Sheet clearly shows the first parcel created after the adjudication process. Therefore, it is evident that the records submitted by the applicant were not part of the adjudication claim files and did not relate to the adjudication period, which ended in the 1970s. Similarly, the memo shown for 74A88 is from 1998.

a claim file list was created upon the adjudication files being transferred to CINA in 1999. The list is the only record that exists that shows the adjudication files. When considering whether the Public Authority is in possession of an adjudication record, the list is checked as it is deemed to be accurate. Notwithstanding this, the Public Authority ensured that physical checks were carried out for the applicant's requested records.

[27] The IM's search efforts, in this case, consisted of the following:

- (a) A list of the block and parcel numbers submitted by the applicant was sent to CINA with a request for the claim files. Once the files were received by LSD, they would be checked against the list and verified that all requested documents were received. If some files were not received, inquiries were made, and CINA would respond with an indication of the status of the files, i.e. whether they were not found, that they were still checking or if they had no record of a claim file associated with that parcel.
- (b) The IM examined the files from CINA and created an excel spreadsheet of the found records. In the same spreadsheet, the IM documented the number of pages found in each file and the condition of the files, among other pertinent information.
- (c) As some files contained documents that were disintegrating due to age and water damage, the IM photographed the extent of the damage. This was to document the fragile physical condition of those papers, and to justify not handling or copying them further.
- (d) In addition, several other checks were undertaken to locate the missing records, such as the parcel change history for the particular block(s), checking the historic data sheets, graphic index maps and the survey files where available.

(e) The IM also consulted with relevant internal staff to verify whether the documents could have been elsewhere in cases where there was an indication of a claim. However, in some cases the relevant files could not be found.

[28] **Given the explanation of the intensive search that was undertaken, the scope of the IM's search was suitable under the circumstances of this case. The IM demonstrated a good understanding of the request, and the quality of her analysis was satisfactory, especially considering the historical nature of the requested records. Furthermore, the search appears to have been carried out rigorously, and the IM exhausted all reasonable search efforts.**

[29] **Consequently, I am satisfied that the LSD met the search requirements of regulation 6(1).**

[30] **I am also satisfied that the LSD made a record of the search efforts made, as required by regulation 6(2).**

b) Did the LSD conduct an interview with the applicant to ensure that the appropriate records were located, as required by regulation 21(b)?

[31] Good communications between an IM and an applicant are vital for the success of the Act. There are several provisions in the FOI Act that require a public authority to assist an applicant in order to ensure that the focus of the request is clear and that relevant records if held, can be identified. These requirements are stated in sections 7(2)(b), 7(3) and 7(3A). In addition, regulation 21 explains the specific steps to be taken by IMs, including regulation 21(b), which states:

Functions of information managers

21. An information manager shall —

...

(b) conduct interviews with applicants to ensure that the appropriate records are located;

...

[32] IMs should utilize these sections when processing requests, where necessary. However, it is equally essential that applicants cooperate with IMs to ensure the clarity, accuracy and efficiency of their requests.

[33] While the requirement to interview an applicant can be essential in some circumstances, I do not consider that to be the case in this appeal. From the start, the parameters of the search were clear, as the request was for specific blocks and parcels of interest to the applicant.

[34] Upon review of the applicant's request, it is evident how certain file numbers could be misinterpreted. The applicant submitted to the LSD a total of 9 handwritten FOI requests from

2021 to date, all related to land issues dating back to the 1980s. In addition, the applicant tends to add a plethora of records from his research into the documented history of the lands in question, along with his requests, without explaining the meaning or importance of such appendices. Upon careful reflection, I failed to see the relevance of such documents to the issues under consideration in this decision.

- [35] The LSD argued that an outline of the request from the applicant was included in their acknowledgement letter. Therefore, if the applicant noticed that two out of thirty parcel numbers were incorrectly quoted, this was his best opportunity to inform the LSD. However, as no clarification was sent to the LSD, the LSD was of the view that it was searching for the correct records.
- [36] Further, the LSD considered the application sufficient for it to identify the records being requested. Therefore, the LSD did not see the relevance of consulting with the applicant to allow reformulation of the application under section 7(3A).
- [37] The LSD submitted a timeline of its correspondence with the applicant while processing these two requests. There were thirteen communications from the LSD to the applicant and six from the applicant, indicating a constant stream of communications between the parties.
- [38] **For these reasons, I find that LSD’s communications with the applicant were adequate to ensure that appropriate records could be located if they had been held. Therefore, I find that the LSD met the requirements of regulation 21(b).**

Additional Issues

Amendments and clarity of the request

- [39] The applicant submitted that he followed normal procedures in relation to the initial request, internal review and amendments. He highlighted that he submitted a response on 25 June 2021 to the internal review decision relating to his first request, and an amendment for his second request.
- [40] According to the LSD, the applicant continuously included amendments to his FOI requests at the internal review stage of the FOI process. This practice tends to complicate the logistics of the response, and results in confusion and delays, further exacerbated by the often unexplained, voluminous historical information provided by the applicant, at times submitted in camera without explanation.
- [41] When deciding on the internal review, the CO or delegated individual is expected to reconsider the decision taken by the IM in response to the initial request. Section 34(3) clearly indicates that the internal review is in relation to the “original application”. The internal review process is not intended for revision or expansion of the initial request which should be well established

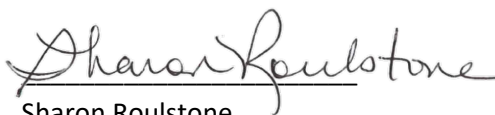
by the time an internal review is done. The applicant's practice of amending the request in the context of an internal review is therefore not helpful.

- [42] If the applicant notices that the original request or the response from the IM contains an inaccuracy or is incomplete, he should without delay inform the IM, so that the request can be adapted or narrowed. However, once a request has been acknowledged and a search has been set in motion, or a response has been given, it is not reasonable to expect the IM or the CO to significantly expand the scope of the request. Any such amendments should, correctly, be treated as new requests.
- [43] Although the roles of IMs, COs and others involved in the FOI process are statutory in nature, and should therefore be executed with appropriate urgency, given that IMs, COs and others involved in the FOI process often have other substantive duties within their public authorities, applicants should make every effort to be as concise, precise and clear in their requests for records under the FOIA. Doing so will greatly assist the public servants involved in the FOI process. If anything remains unclear, it is of course the duty of the IM and the public authority under the FOIA to communicate with the applicant and seek to clarify and/or narrow the request. The clarity of the exact scope of a request is paramount if the FOI process is to work efficiently and effectively.

C. FINDINGS AND DECISION

- [44] Under section 43(1) of the *Freedom of Information Act (2021 Revision)*, I make the following findings and decisions:
- I find that the Lands and Survey Department has conducted a reasonable search for requested records in compliance with regulation 6(1), and has compiled a record of its search efforts in compliance with regulations 6(2).
 - I find that the Information Manager of the Lands and Survey Department has conducted interviews with the applicant in accordance with regulation 21((b)).
 - No further steps are required to be taken by the Lands and Survey Department.

Within forty-five calendar days of this order, the applicant and the public authority may apply to the Grand Court for leave to seek a judicial review of this decision.



Sharon Roulstone
Ombudsman