DECISION: HEARING 19 - 01911

Information Commissioner's Office

ICO Hearing 19 - 01911
Decision
Port Authority of The Cayman Islands

Jennifer Dilbert, MBE, JP
Information Commissioner for the Cayman Islands
13 December 2011

Summary:

An Applicant was refused access by the Port Authority to "...a copy of all notes and or minutes of meetings between the Government and the Port Authority (as well as any other governmental body) that touches and or concerns the [GLF] project… . The relevant period is from December 2010 to date."

The Information Commissioner overturned the decision of the Port Authority to withhold the responsive records and required that the Port Authority disclose to the Applicant all the responsive records that have been provided to the Commissioner.

Statutes[1] Considered:

Freedom of Information Law, 2007
Freedom of Information (General) Regulations, 2008

Exclusions and Exemptions Considered:

Sections 20(1)(b) and 20(1)(d) of the *Freedom of Information Law, 2007*

Contents:

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

A. INTRODUCTION

[1] On 16 June 2011 the Applicant made a request to the Port Authority of the Cayman Islands ("PA") under the Freedom of Information ("FOI') Law for the following records: "...a copy of all notes and or minutes of meetings between the Government and the Port Authority (as well as any other governmental body) that touches and or concerns the [GLF] project… . The relevant period is from December 2010 to date."

[2] After seeking an extension under section 7(4), the PA responded to the Applicant, denying access and citing the exemptions in sections 20(1)(b) and 20(1)(d).

[3] As the initial decision had been taken by the Chief Officer, there was no Internal Review and the matter was appealed to the Information Commissioner's Office ("ICO").

[4] The matter could not be resolved through mediation, and a formal Hearing commenced before me on 20 September 2010.

B. BACKGROUND

[5] The Port Authority is responsible for managing ports and port areas on behalf of the Government of the Cayman Islands under the provisions of the Port Authority Law (1999 Revision). This includes the "establishment and control of berths". The Port Authority is governed by a Board of Directors, which is appointed by the Cabinet and is responsible to the Ministry of Finance, Tourism and Development.

[6] The responsive records pertain to the termination by Government of an agreement to construct a new cruise berth in the George Town port with one developer, the signing of a new agreement with another developer, and the overhaul of the Board of Directors shortly thereafter. These matters have received, and continue to receive up to the date of this Decision, a great deal of attention in the media.

C. PROCEDURAL MATTERS

[7] The only procedural matter that emerged during this Hearing was the erroneous claim of the exemptions in section 20(1)(b) and (d) by the Information Manager in the initial decision. Section 20(2)(b) clarifies that these exemptions may only be claimed by the Minister or Chief Officer concerned. When the Applicant pointed out this error, the PA corrected its position and the Director/Chief Officer confirmed his reliance on the same exemptions.

[8] The PA did not submit responsive records for this Hearing. Instead it relied on the responsive records previously made available at the investigation stage of this appeal. In order to avoid any confusion, the ICO contacted the PA and confirmed the precise scope of the responsive records after the Hearing had commenced. The responsive records which have been provided to me are:

a) A copy of the Memorandum of Understanding between the Cayman Islands Government and China Harbour Engineering Company Ltd, dated 13 June 2011;
b) Legal advice from Priestleys, dated 19 April 2011;
c) Financial analysis, dated 20 April 2011;
d) Minutes of five meetings of the Board of Directors, dated between 20 April and 25 June 2011.

[9] I find it noteworthy that no notes or minutes of meetings between the Government and the Port Authority (as well as any other governmental body) that touch on or concern the GLF project, as requested by the Applicant, have been provided for the period prior to 20 April, despite my specific request that the PA confirm that they hold no other pertinent records.

[10] Due to the heavy workload in the ICO, and the relative shortage of adequate resources, I informed both parties in writing on 22 November 2011 that I was seeking an extension of the period allowed for my Decision, as per section 43(1).

D. ISSUES UNDER REVIEW IN THIS HEARING

[11] The issues to be decided in this Hearing are:

1. **Section 20(1)(b):** Are the responsive records exempt from disclosure because their disclosure would, or would be likely to, inhibit the free and frank exchange of views for the purposes of deliberation?

2. **Section 20(1)(d):** Are the responsive records exempt from disclosure because their disclosure would otherwise prejudice, or would be likely to prejudice, the effective conduct of public affairs?

In accordance with section 26(1), these exemptions are subject to a public interest test, which is further discussed below.

E. CONSIDERATION OF ISSUES UNDER REVIEW

1. Section 20(1)(b)

[12] The Port Authority seeks to deny access to the responsive records under section 20(1)(b) which states:

> *"…a record is exempt from disclosure if- … its disclosure would, or would be likely to, inhibit the free and frank exchange of views for the purposes of deliberation…".*

The position of the Port Authority

[13] Neither of the two parties has made a Submission, but both have instead chosen to rely on the correspondence preceding the Hearing as their respective submissions. In the case of the PA, this relates in particular to the letter dated 22 August 2011 in which the Director/Chief Officer informed the Applicant of the position of the PA. In his letter, the Chief Officer does not separate the arguments in respect of the two exemptions claimed.

[14] According to the PA the responsive records consist of "opinions, recommendations and other reflections of staff thinking integral to the pre-decisional, deliberative process". The PA submits that the exemption should apply because the minutes "contain individual opinions and exist in draft form as well as are unsigned, therefore, not formally adapted [sic] by the Board." This last point is due to the fact that "the Board that Created the minute(s) was dissolved and a new Board is now in effect."

[15] The Chief Officer claims that,

> the document(s) contain or reflect advisory opinions, recommendations and deliberations comprising part of a process by which governmental decisions and policies relating to this particular project was formulated. Therefore, it is seen that in order to enhance the quality of the decisions, there needs to be a privilege which protects open and frank discussion among those who make these decisions within the Port Authority and Government.

[16] In addition,

> these documents reflect the collaboration of personal opinions, advice, etc. of individuals on the board and if released, would inaccurately reflect or prematurely disclose the views of the previous Board and by which a table of events have already unfolded as the information contained was to assist in the Board's decision making at a later date as the draft minutes are: first, prepared, then finalized and adapted for signature. The deliberations, in this case, were not yet concluded and disclosure would have the effect of interfering with the conduct of public affairs. [sic]

The position of the Applicant

[17] While it is helpful for any applicant to put forward arguments to support their position, it is important to note that, as per section 43(2) of the FOI Law, in any appeal under section 42, the burden of proof shall be on the public authority to show that it acted in accordance with its obligations under this Law.

[18] The Applicant has not made a specific submission for this Hearing, but instead refers to the preceding correspondence, as well.

[19] In response to the arguments raised by the PA, the Applicant points out, in their email of 8 August 2011, that,

> though the original board at the material time was disbanded, my understanding is that the new board still comprises a certain number of members from the old board – hence there is consistency in members with actual knowledge of the facts.

[20] The Applicant also states that "the issues concern a high-profile project where it is very much in the public interest that the relevant minutes be disclosed", and that "until the minutes are seen, a decision cannot be made as to any privilege that may claim to be attached", and "the minutes likely contain actual decisions by the board, not just deliberations."

Discussion

[21] I have previously considered the parameters of the exemption in section 20(1)(b) in detail in my Hearing Decision 9-02210.[2]

In that Decision I concluded that,

> the exemption in section 20(1)(b) of the FOI Law intends to protect against disclosure which would result, with a certain degree of probability, in restraining the unimpeded, open and honest exchange of views expressed for the purpose of evaluating competing arguments or considerations with a view to making a decision of an issue before a public authority.

I also stated that,

> for a record to have any prospect of protection under this exemption it is a prerequisite that the record must actually document a free and frank deliberation in the first place. I can think of no circumstances where free and frank deliberation would be inhibited by the release of any other record, or partial record, than the account of an actual free and frank deliberation itself. This is not to say that other exemptions may not apply.

I will consider the potential application of this exemption to the various responsive records in the order indicated in part C above.

[22] (a) The Memorandum of Understanding ("MOU") between the Cayman Islands Government and China Harbour Engineering Company Ltd, dated 13 June 2011:

The MOU was published in the media in June 2011.[3] Therefore, this document is already in the public domain and no exemption applies to it.

[23] (b) Legal advice from Priestleys, dated 19 April 2011:

Legal advice is normally protected under the exemption in section 17(a) on the basis that "it would be privileged from production in legal proceedings on the ground of legal professional privilege." I find it very poor on the part of the PA that they did not raise this exemption at any point in their argumentation.

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[2] Information Commissioner's Office ICO Hearing 9-02210 Decision Cayman Islands National Insurance Company (CINICO) 24 March 2011 paras 39 and 42 http://www.infocomm.ky/pubdocs/file/March%202011/ICO%20Decision%209-02210%20CINICO%20(FINAL).pdf

[3] See: http://caymannewsservice.com/politics/2011/06/21/chinese-get-49-yrs-concession

Nonetheless, this document has recently been widely discussed and published in the media.[4] Consequently, it is also already in the public domain and is not protected from disclosure under the FOI Law.

[24] (c) Financial analysis, dated 20 April 2011:

The report is an analysis commissioned by the PA relating to the relative commercial merits and risks of, and a comparison between, the then existing arrangement with one developer, and the new agreement with a new developer.

Clearly, the exemption in section 20(1)(b) does not apply to this responsive record as it does not contain any free and frank deliberations. As such, following the reasoning of Decision 9-02210 outlined above, it is not the case that the free and frank deliberations of a public authority would be inhibited, or in any way impeded as a result of the disclosure of this record.

[25] As an additional point, I note that the report is marked as "private and confidential". This has no bearing on the applicability of section 20(1)(b), but I want to raise it to clarify that I have considered it.

I concluded in my Hearing Decision 15-00611 that

> the mere marking of a document as "confidential" "does not provide a good indication of whether the information has the necessary quality of confidence, and … it remains the public authority's duty to decide whether or not an exemption should apply. A duty of confidentiality does not arise merely because the responsive record is stamped as "confidential"…. [5]

I believe that this same reasoning is also valid in respect of the markings of the report.

[26] (d) Minutes of five meetings of the Board of Directors dated between 20 April and 25 June 2011:

The minutes of the PA are consistently structured, in that they each contain a title block with the date, time and location of each meeting, as well as a list of present and absent members, and additional attendees. The body of the minutes contains titles of matters that were discussed and under each title a brief bullet-point account of the major points made, actions taken, or decisions reached. Each minute ends with a notice and time of adjournment.

[27] Under section 12(1) a public authority is required to provide partial access where an entire record cannot be disclosed. As explained above, the exemption in section 20(1)(b) can only apply to those parts of the minutes which actually document a free and frank discussion. Therefore, it is clear to me that the exemption does not apply to most of the minutes, including the title block (date, time, location, members, attendees), the titles of matters discussed, the details of actions taken and decisions reached, and the adjournment notice and time.

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[4] See: http://www.caymannewsservice.com/politics/2011/11/25/glf-may-get-public-cash

[5] Information Commissioner's Office ICO Hearing 15-00611 Decision Ministry of Finance, Tourism and Development 2 September 2011 para 69 http://www.infocomm.ky/pubdocs/file/September%202011/ICO%20Decision%2015-00611%20Min_%20F,T%20&%20D%20%20(FINAL).pdf

[28] The bullet-point accounts of topics considered during the documented meetings may potentially be subject to the exemption in section 20(1)(b), as they may harbour free and frank deliberations. Based on the criteria explained above, I have reviewed the minutes and find that the exemption applies as follows.

[29] The minutes of the meetings of 20 April, 19 May and 15 June 2011 do not contain any information that can be characterized as an open and honest exchange of views expressed for the purpose of evaluating competing arguments with a view to making a decision of an issue before the PA. While these minutes contain decisions, they do not contain a record of discussion or opposing views. Similarly, the minutes of the meeting of 24 June 2011 contain the opinions of various attendees, but there were no competing arguments. Consequently, this cannot be characterized as a "free and frank discussion".

[30] In the minutes of the meeting of 25 June, the 3rd, 7th and 9th bullet points reflect an open and honest exchange of views for the purposes of deliberation.

[31] **Consequently, I find that the exemption in section 20(1)(b) does not apply to the minutes of 20 April, 19 May, 15 June and 24 June 2011. However, the exemption does apply to the 3rd, 7th and 9th bullet points in the minutes of 25 June.**

Public Interest Test

[32] Even where the exemption in section 20(1)(b) applies, I am obliged as per section 26(1) to consider whether disclosure would nevertheless be in the public interest.

The public interest is defined in regulation 2 of the FOI (General) Regulations 2008 (the "Regulations"), 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) [sic] 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.

Section 4 also clarifies that the general right of access is balanced against the public interest in exempting from disclosure certain types of information.

Public interest factors in favour of disclosing the responsive records:

[33] The Applicant has briefly provided their views on the public interest in their email of 8 August 2011:

> The issues concern a high-profile project where it is very much in the public interest that the relevant minutes of meetings be disclosed.

[34] I believe that a number of other factors in favour of disclosure must also be taken into account. In particular, I consider that points (a), (b), (c) and (d) above are relevant, namely that the disclosure of the exempted parts of the minutes of 25 June 2011 would: promote greater public understanding of the decisions of the PA; provide reasons for decisions taken by the PA ; would promote the accountability of the PA for their decisions; and, perhaps most importantly, promote accountability for public expenditure or the more effective use of public funds.

Public interest factors in favour of withholding the responsive records:

[35] The PA has briefly, but explicitly, considered the public interest test, as it is required to do under section 26(1). The PA states, by means of the letter of the Chief Officer dated 2 August 2011, that,

> Although the interest for disclosure is very high, disclosure would hamper the current Board's ability to deliberate without fear of being labeled or penalized. This then, interferes with the Board's productivity and also the productivity of the country going forward. The deliberations were still at a stage where disclosure of such information could be inaccurate as that particular point of view or recommendation may or may not have been subject to change. And finally, disclosing would give an advantage to individuals or groups to which they are not entitled.

[36] I do not believe there are any further public interest factors that could be added in favour of withholding the responsive records.

Public interest conclusion

[37] Given the extraordinary attention the port extension and the other topics documented by the responsive records have received and continue to receive in the media, I wish in the first instance to clarify that "public interest" in the context of an FOI application and appeal means "something which serves the interests of the public", and not "something which the public is interested in". Therefore, the media attention for the port expansion is only relevant in so far as it is an indication of the former, not as an indication of the latter.[6]

[38] The port expansion is an exceptional capital project of Government, which has been called "the most expensive" of its kind in the Cayman Islands to date, involving construction costs of reportedly close to $ 200 million. As such, in my view it is entirely proper that this project and

[6] This is consistent with the guidance of the UK's Information Commissioner in respect of the public interest in: Information Commissioner's Office *Freedom of Information Act. Environmental Information Regulations. The Public Interest Test* Version 3 3 July 2009 http://www.ico.gov.uk/upload/documents/library/freedom_of_information/detailed_specialist_guides/fep038_public_interest_test_v3.pdf

the decisions relevant to it should receive very close scrutiny from Government and the general public alike. Indeed, the PA seems to agree with this point, since the Chief Officer, in his letter of 2 August 2011, states that "the interest for disclosure is very high".

[39] I believe that the PA's views are poorly expressed. The alleged "fear of being labeled or penalized" is in my opinion irrelevant. I assume this statement means that the Board would somehow be negatively labeled or penalized in the eyes of the general public if the minutes were disclosed. I find this argument less than convincing: a public authority, including the members of a Board of Directors, must be willing to accept responsibility for its actions and decisions. This is the essential meaning of governmental accountability and transparency, which, as section 4 makes clear, are some of the "fundamental principles underlying the system of constitutional democracy", central to Freedom of Information and a healthy democracy.

[40] I fail to see how disclosure would interfere with the Board's or the country's productivity. The production of the minutes and the other responsive records does not impose any particular hardship or cost on the PA. Indeed, it could be argued that the withholding of the responsive records, as the PA has chosen to do, has caused more work for the PA than their disclosure would have done.

[41] I will discuss the alleged draft status of the minutes separately, below, as I do not consider this to be a relevant factor in the balancing of the public interest. A draft document is as much a record under the Law, as a final document. All that is required is that an applicant is informed of its draft status.

[42] It is unclear to me what the meaning is of the final statement in the PA's discussion of the public interest, that "disclosing would give an advantage to individuals or groups to which they are not entitled." I believe this statement is at best misplaced, at worst indicative of a bias against openness. It is precisely for this reason that the FOI Law does not require that an applicant provides his real name, or reasons for the request, namely that – with the exception of a record containing personal information – it should be irrelevant who the applicant is or what he will use the information for. A record is either open, or it is not, just as government is either transparent, or it is not.

[43] **I do not find that the arguments in favour of withholding the exempted parts of the minutes of 25 June 2011, outweigh the arguments in favour of disclosing, and it would therefore be in the public interest to disclose these sections.**

2.Section 20(1)(d)

[44] The Port Authority seeks to deny access to the responsive records under section 20(1)(d) which states:

> *"A record is exempt from disclosure if…its disclosure would otherwise prejudice, or would be likely to prejudice, the effective conduct of public affairs."*

The position of the Port Authority

[45] Since the PA did not separate their arguments in respect of the two exemptions it has claimed, I refer to the description of the PA's position on section 20(1)(b), above.

The position of the Applicant

[46] For the Applicant's position on this exemption, I also refer to the statements outlined in respect of section 20(1)(b), above.

Discussion

[47] (a) The Memorandum of Understanding ("MOU") between the Cayman Islands Government and China Harbour Engineering Company Ltd, dated 13 June 2011:

As discussed, above.

[48] (b) Legal advice from Daniel Priestley, dated 19 April 2011:

As discussed, above.

[49] (c) Financial analysis, dated 20 April 2011:

I accept that a public authority is entitled to receive advisory opinions and recommendations from an outside consultant, such as is the case here. As long as a Board has not formulated a decision on the basis of this opinion, there may be a need to protect it from disclosure, at least until a reasonable period of time has passed.

[50] I note that this type of information has been considered in another exemption, namely the exemption in section 19(1)(a), which protects "opinions, advice or recommendations". However, this exemption only applies where such materials are prepared for proceedings of Cabinet or a committee thereof. The PA in the present matter cannot be construed as being a "committee of cabinet". I refer in this regard to my decision 13-00511.[7]

Clearly, in my view, the legislators intended the protection of such materials only where it is directly concerned with Cabinet or a Committee thereof, and I do not see any reason why the financial analysis would need to be exempted from disclosure, especially since the decision which it might have influenced has been taken and its subject matter is therefore no longer under consideration. Therefore, I can find no reasons why the exemption in section 20(1)(d), namely that the disclosure would otherwise prejudice, or would be likely to prejudice, the effective conduct of public affairs, should apply to the financial analysis dated 20 April 2011.

[7] Information Commissioner's Office ICO Hearing 13-00511 Decision Ministry of Finance, Tourism and Development 29 July 2011 para 36 http://www.infocomm.ky/pubdocs/file/August%202011/ICO%20Decision%2013-00511%20Min%20%20F%20T%20%20D%20(FINAL)%20.pdf

[51] (d) Minutes of five meetings of the Board of Directors dated between 20 April and 25 June 2011:

To the extent that they are not protected by other exemptions, I do not find that in general, minutes which document the decisions of a Board of Directors of a public authority, i.e. a public sector body that is funded by Government, should be exempt on the general grounds that their disclosure would otherwise prejudice, or would be likely to prejudice, the effective conduct of public affairs. In my mind, this is especially the case since the matters dealt with in the minutes under consideration here have been decided and are no longer part of an ongoing decision making process.

[52] The PA repeatedly refers to the draft status of the minutes. Since this issue appears most relevant to the exemption in section 20(1)(d) I will discuss it briefly here, particularly as there appears to be some confusion about this question.

Whenever a public authority creates a document, in whatever medium or format, including if it is a draft document, I consider that it falls within the definition of a record for the purposes of the FOI Law, as defined in section 2. It is clear to me that a draft record is indeed "information held in any form including… a record in writing". Therefore, the FOI Law applies to it, unless, of course, the record falls outside of the application of the Law, for instance where it is a record that documents a judicial function of a court. I disagree with the view that it somehow has to be validated before the Law applies to it. I believe this is particularly true in view of the fact that a draft document may clearly represent the accountabilities of its author, for instance where the different versions or subsequent alterations of a document are in some way significant.

[53] I disagree with the arguments expressed by the PA that the disclosure of the draft minutes "would inaccurately reflect or prematurely disclose the views of the previous Board". In fact, the views of the previous Board may more accurately be reflected in the so-called draft minutes than in the final revised version.

All records of a public authority are subject to the FOI Law, unless an exclusion or legal exemption applies. It is entirely possible that a Board's ultimate decision differs from the one expressed at a previous point in time, and that the interim decision documented in the minutes of an earlier meeting is therefore not reflective of the final course of action of the Board. Nonetheless, the accountability vested in a public authority's documentary evidence cannot be reduced to the final outcome of an issue only. It is the process, as well as the decision, which should be transparent and for which a public authority should be accountable to the general public.

[54] These considerations are highly relevant to the minutes in the present matter, and as such, draft minutes should not be exempted under section 20(1)(d) only on the basis that they may be "draft" minutes. Draft minutes should also be considered by the PA to be responsive to this request.

[55] In the same way as the marking a record with "confidential" does not render it confidential, neither can marking a record as a "draft" mean that the FOI Law should not apply to it, or that a particular exemption must apply to it.

[56] In the present matter, while the minutes cover a period of three months - ironically - all but the last set of minutes dated 25 June 2011 have been marked as "draft". I find it unreasonable that an Applicant would be expected to wait as long as several months, before the Board decides on the final version and signs off on its minutes. The Applicant correctly points out, in their email of

8 August 2011, that there is sufficient continuity in the membership of the new Board - despite the significant changes - to allow the new Board to have knowledge of what was said in previous meetings. Since the PA has confirmed that they hold no other records responsive to this request, the present "draft" minutes are the only record of how the Board dealt with the GLF project.

[57] Of course, a public authority that provides access to a draft record under the FOI Law should make its draft status absolutely clear to the Applicant, so that the Applicant is not confused as to the transitory or final nature of the document, whatever the case may be. Since these minutes have been stamped with the word "draft" this is sufficient notice to any reader that the actions and decisions may not reflect the final outcome of the matters discussed, but it does not absolve the public authority from its duties under the Law.

[58] As a further clarification, I wish to explain that access and retention should not be confused: the fact that the FOI Law applies to a record does not mean it must be retained forever. The retention of a draft record will depend on its nature and significance, including whether it carries any accountabilities for the author. In the Cayman Islands Public Sector the retention and disposal of transitory records such as drafts is generally governed by express guidance from the Cayman Islands National Archive, and all public authorities must deal with their records in accordance with the guidance and the demands of the National Archive and Public Records Law, 2007.

[59] As I have already concluded that the claimed exemption does not apply to the minutes, or any other part of the records in dispute, there is no need to consider the public interest under section 26(1).

[60] **Therefore, I find that the exemption in section 20(1)(d) does not apply to the responsive records.**

F. FINDINGS AND DECISION

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

Findings:

The Memorandum of Understanding between the Cayman Islands Government and China Harbour Engineering Company Ltd, dated 13 June 2011 is not exempt from disclosure as it is in the public domain.

Legal advice from Priestleys, dated 19 April 2011 is not exempt from disclosure as it is in the public domain.

The financial analysis, dated 20 April 2011 is not exempt from disclosure under sections 20(1)(b) or 20(1)(d).

The exemption in section 20(1)(b) does not apply to the minutes of 20 April, 19 May, 15 June and 24 June 2011. However, the exemption does apply to the 3rd, 7th and 9th bullet points in the

minutes of 25 June, 2011. Notwithstanding, I find that there is an overriding public interest in disclosing these sections of the minutes. The exemption in section 20(1)(d) does not apply to the minutes.

Decision:

I overturn the decision of the Port Authority of the Cayman Islands to withhold the responsive records under sections 20(1)(b) or 20(1)(d) of the *Freedom of Information Law, 2007,* and require the Port Authority to provide the Applicant with a copy of the responsive records.

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

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

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

If judicial review has not been sought on or before 27 January 2012, and should the Port Authority fail to provide the Applicant with the responsive record in this matter, I may certify in writing to the Grand Court the failure to comply with this Decision and the Court may consider such failure under the rules relating to contempt of court.

Jennifer P Dilbert
Information Commissioner
13 December 2011