Information Commissioner's Office

ICO Hearing 22 – 00712
Decision

Cabinet Office

Jan Liebaers
Information Commissioner for the Cayman Islands (Acting)

7 December 2012

Summary:

An Applicant was refused full access to extracts of Cabinet minutes and papers relating to Cayman Islands Estates Ltd. and certain named blocks and parcels of land by the Cabinet Office.

The Acting Information Commissioner overturned the decision of the Cabinet Office to partially redact the records under section 23(1) of the Freedom of Information Law 2007, and required that the records be disclosed in full.

Statutes[1] Considered:

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

Contents:

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

A. INTRODUCTION

[1] On 9 November 2011 the Applicant made a Freedom of Information ("FOI") request to the Cabinet Office for:

> *All documents relating to:*
>
> *1. Cayman Islands Estates Ltd.*
> *2. Section: West Bay Beach North, Block: 10 A, Parcel: 43*
> *3. Section: West Bay Beach North, Block: 10 A, Parcel: 43 Rem 2*
> *4. Section: West Bay Beach North, Block 10 A, Parcel: 192*
>
> *1. This request for information, documents and correspondence includes but is not limited to all (i.e. within Government, individuals and private sector) in relation to the subject FOI Request:*
>
> *1. Letters*
> *2. Faxes*
> *3. Reports*
> *4. Drawings*
> *5. Maps*
> *6. Emails*
> *7. Memos*
> *8. Minutes of meetings*
> *9. Meeting notes*
> *10. Phone logs*
> *11. Phone conversation records*
> *12. Dredging proposals*
> *13. List of all Government agencies contacted / consulted in reference to any planning applications / approvals / refusals / complaints / revocations of planning, development permission, dredging proposals or any other matter connected with on the subject company or parcel of land.*
> *14. Government agencies reports / comments / correspondence.*
> *15. Comments from civil society.*
> *16. If any documents are not released then list those documents, showing the originator, addressee, date, subject, copy addressees and reason for withholding the document.*
> *17. Any other information relevant to the subject FOI requests.*

[2] The Cabinet Office reached an initial decision on 29 December 2011, confirming the existence of Cabinet minutes and relying on the exemption in section 19(1)(b) for withholding these from the Applicant. This exemption protects from disclosure "a record of consultations or deliberations arising in the course of, proceedings of the Cabinet or of a committee thereof."

[3] The request was also transferred to the Ministry of District Administration, the Ministry of Health, the Lands and Survey Department and the Planning Department, who answered separately.

[4] Following a request from the Applicant, the Cabinet Secretary completed an Internal Review of the matter on 1 February 2012, upholding the exemption in section 19(1)(b).

[5] The matter was appealed to the Information Commissioner's Office ("ICO") on 20 February 2012, and the ICO commenced a pre-hearing investigation following normal ICO procedures.

[6] Since the exemption in section 19(1)(b) does not apply after a record has been in existence for twenty years or more, as provided in section 6(2), and since a number of the minute extracts were nearly twenty years old, the two parties agreed to a release schedule for those records.

[7] Additional responsive records which were more than 20 years old were located following an expanded search, and the Cabinet Office provided a number of extracts from Cabinet minutes to the Applicant, some of which were redacted under section 23(1) – personal information.

[8] Additional supporting documents, i.e. Cabinet papers, also existed, but the Cabinet Office considered that these were not "held" under the FOI Law.

[9] The Applicant remained unsatisfied for three reasons:

1. The Applicant believed that the Cabinet Office should have considered the Cabinet papers "held" under the Law, and should have disclosed them;
2. The Applicant disagreed with the redactions of the minute extracts; and,
3. The Applicant was not satisfied with receiving extracts of Cabinet minutes, as opposed to copies the same.

[10] These issues could not be resolved informally, and the matter proceeded to a formal Hearing before the Commissioner on 8 June 2012.

[11] The first of the above questions was addressed in a Preliminary Decision on 24 August 2012, in which I concluded that any Cabinet papers were indeed "held" by the Cabinet Office as they were in their possession, control and custody, as per the definition in section 2. The Cabinet Office was required to conduct a new search for all such records relevant to the request, consider them under the Law and submit a Revised Submission to the ICO.

[12] On 17 September the ICO received the Revised Submission which mentioned no exemptions that were being applied. The Applicant was offered a chance to respond to the Revised Submission, and did so on 4 October 2012. The records themselves were not made available to the Applicant until 9 October and to the ICO on 15 October 2012, under circumstances further elaborated below.

[13] Some of the responsive Cabinet papers were redacted under exemption 23(1) while others were released in full. Some of the Cabinet papers relate to the minute extracts that are more than 20 years old and have already been partially released, while others relate to more recent meetings of the Cabinet dating between 1993 and 2006.

[14] The minutes that are less than 20 years old, themselves, were exempted under section 19(1)(b), as explained above. During the pre-hearing investigation the Applicant accepted the application of this exemption to the minutes, and the two parties have agreed a release schedule.

[15] Therefore, this Hearing considers the access status under the FOI Law of the following responsive records:

- The minute extracts that are more than 20 years old; and,
- The Cabinet papers of any age.

B. BACKGROUND

[16] The Cabinet Office is responsible for a number of cross-governmental policy areas, as reflected in its internal structure which includes a number of sections and departments whose work has cross-governmental scope.

[17] The Cabinet Office also coordinates the weekly meetings of Government ministers and is responsible for the records of Cabinet and Cabinet Working Committees. The Cabinet Secretary attends Cabinet meetings as a non-voting member.

[18] Before Cabinet became known by its present name it was called "Executive Council" or "EXCO" until 2003. For the purposes of this Decision these two names are taken as interchangeable.

C. PROCEDURAL MATTERS

Are all the responsive records "held"?

[19] On the basis of the information in the extracts of Cabinet minutes which were released to the Applicant by the Cabinet Office (some of which in redacted form), it appeared that a number of additional records supportive of the minute extracts, i.e. Cabinet papers, existed. However, Cabinet Office did not follow the advice of ICO staff about considering these records responsive to the request. This forced a more formal approach in the form of the Preliminary Decision.

[20] The question whether records were "held" under the FOI Law has been dealt with in the Preliminary Decision of 24 August 2012.[2] The Decision confirmed that any records, including Cabinet papers, that are either in the possession, custody or control of the Cabinet Office must be considered in the context of the request made by the Applicant, as defined in section 2.

Adequate searches

[21] On two occasions after their initial decision the Cabinet Office had to expand its search for responsive records. In the first instance, ICO staff conducting the pre-hearing investigation advised the Cabinet Office to expand its search and consider materials more than 20 years old, a significant number of which were located and released to the Applicant.

[22] The second new search followed the Preliminary Decision which required the Cabinet Office to consider all relevant records that were held, including Cabinet papers.

[23] Under regulation 6 of the FOI (General) Regulations 2008 an Information Manager (IM) is required to conduct a reasonable search for all records that are the subject of an application under the Law. As the request obviously from the start related to events that took place several

[2] See: ICO *Preliminary Decision 22-00712 Cabinet Office* 24 August 2012. All referenced ICO Decisions are available at: www.infocomm.ky

decades ago – going back as far as the 1970s - it was not reasonable to stop the initial search at the 20 year mark. As the Cabinet papers were held by the Cabinet Office, it was also not reasonable to exclude them from the responsive records.

Questions raised in relation to the Revised Submission

[24] The Revised Submission does not argue any exemptions, and instead raises a number of practical questions relating to the question already dealt with in the Preliminary Decision – when records are "held" and whether Cabinet Office must seek advice from other entities in Government that have submitted Cabinet papers. While the Revised Submission itself did not mention any exemptions, the redacted records were clearly marked with the exemption relied upon in each instance, i.e. exemption 23(1).

[25] Following the Preliminary Decision, the new responsive records were only provided to the Applicant on 9 October (in redacted form), and to the ICO on 15 October 2012 (in both redacted and unredacted form). This was several days after the Revised Submission itself had been received. This is obviously not an acceptable course of events since it denied the Applicant a fair chance to reply. However, since the Applicant had extensively argued their case in their Submissions, and significant delays had already been encountered, it was decided to proceed with the Hearing as scheduled.

[26] A Revised Submission is not an appropriate forum to raise the same questions already dealt with in the Preliminary Decision. If the Cabinet Office disagreed with the Preliminary Decision on a point of law, they had the option of seeking a judicial review with the Grand Court as per section 47. Instead, the Revised Submission should have been used to argue any exemption that was being claimed in relation to the responsive records, especially the newly found records.

[27] On the question of public authorities consulting with others - short of formally transferring a request to another public authority as provided in section 8 - it may be appropriate for an IM to seek input from third-party individuals, public authorities or private enterprises who may have a relevant perspective on the determination of the disclosure status of a requested record. However, the time to seek such advice is when the request is first received, not after several months have passed, nor when the matter has proceeded to a formal Hearing before the Information Commissioner. Public authorities should be mindful that time is of the essence in respect of FOI requests, and that any consultations, while potentially helpful, must not delay resolution of a request, let alone a Hearing.

[28] IMs should be aware that any third party advice is not binding on them. As well, records created by another person or organization that are held by a public authority, particularly when these were used in the decision-making process, must also be considered when searching for responsive records.

[29] The ICO encourages IMs to coordinate between themselves when a request affects more than one public authority, so that duplication of work can be avoided, all the while keeping in mind that the Applicant has distinct rights under the Law, including in respect of the timelines that must be met in responding.

Extracts or copies?

[30] The Applicant expressed their dissatisfaction with receiving extracts of minutes, rather than with copies of the same, as asked for.

[31] Section 10 deals with the form in which responsive records must be provided to an Applicant under the FOI Law. It provides:

> *10. (1) Access to a record may be granted to an applicant in one or more of the following forms-*
>
> > *(a) the applicant may be afforded a reasonable opportunity to inspect the record;*
> >
> > *(b) the authority concerned may furnish the applicant with a copy of the record;*
> >
> > *(c) in the case of a record from which sounds or visual images are capable of being reproduced, arrangements may be made for the applicant to hear the sounds or view the visual images;*
> >
> > *(d) in the case of a record by which or in which words are-*
> >
> > > *(i) recorded in a manner in which they are capable of being reproduced in the form of sound and images; or*
> > > *(ii) contained in the form of shorthand writing or in codified form;*
> >
> > *the applicant may be furnished with a transcript of the data or the words, sounds and images recorded or contained in that record.*
>
> *(2) Subject to subsection (3), where an applicant requests that access be given in a particular form, access shall be given in that form.*
>
> *(3) A public authority may grant access in a form other than that requested by an applicant where the grant of access in the form requested would-*
>
> > *(a) be detrimental to the preservation of the record, or be inappropriate, having regard to its physical state;*
> >
> > *(b) constitute an infringement of intellectual property rights subsisting in any matter contained in the record.*
>
> *(4) Copies of records to which access is granted shall be authenticated by such persons and in such manner as may be determined by the Attorney-General, including by whom and how this will be done.*

[32] This section allows an applicant to request a responsive record in a particular form. Subsection 10(2) places a strong obligation on a public authority to provide responsive records in the requested form, subject to the exceptions in subsection 10(3), none of which apply in the present case.

[33] "Form" is not defined in the FOI Law or in the Interpretation Law, and therefore must assume its normal, daily meaning. The Oxford Dictionary defines it as: "the visible shape or configuration of

something… a particular way in which a thing exists or appears… a type or variety of something.."[3]

[34] Section 10(1) helpfully provides examples of what may constitute different types of "form" in the context of a disclosure under the FOI Law, including, but not restricted to: (a) inspection of a record; (b) a copy of a record; (c) hearing a sound recording or viewing a visual record; and (d) a transcript of a sound, image, shorthand or codified record.

[35] It has been generally accepted that, where a public authority has an established manner of providing its records to applicants, including where such access is provided at a cost to the applicant, such means of access (and fee) may continue to apply, and there is no reason why the access mechanism provided under the FOI Law should replace such routine access procedures. However, where access is denied, in whole or in part, the public authority must apply the provisions of the FOI Law and explain the reasons for withholding or partially withholding records, and meet the other requirements of the FOI Law as well.

[36] The provision of minute extracts is an established, routine procedure used by the Cabinet Office in order to provide access to minutes of Executive Council and/or Cabinet. In general, therefore, I do not consider that the provision of minute extracts is more or less desirable than the disclosure of a copy of the full minutes with irrelevant matter deleted, which is how most public authorities would respond to a request for minutes relating to a particular topic. This is of course different from a request for the full minutes of a particular meeting without specification of the topic of interest.

[37] For the purposes of section 10(2), an extract constitutes a copy of the relevant part of the record. As the Commissioner has in previous Decisions already stated that it is wasteful to consider irrelevant records or parts of records, and has allowed withholding such records or parts thereof, specifically also in the case of minutes,[4] I am satisfied that the provision of minute extracts, rather than redacted copies of the minutes themselves, is not in any way contrary to the Applicant's general right to access under the FOI Law, and I see no reason to impose upon Cabinet Office the added administrative burden of providing the Applicant with such copies instead of extracts which are readily available.

[38] In relation to the present Hearing, having checked the extracts against the full minutes, I am satisfied that the Cabinet Office has in each instance correctly copied the full minute item into the extract. In other words, the information contained in each extract is identical to the information the Applicant would have received if he/she had been provided with a copy of the corresponding minute from which irrelevant items had been removed.

D. ISSUES UNDER REVIEW IN THIS HEARING

[39] The Cabinet Office has applied the exemption in section 23(1) to redact a number of responsive minute extracts and Cabinet papers. This Hearing must decide whether this exemption was correctly applied.

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[3] Oxford Dictionaries Online available at: http://oxforddictionaries.com/definition/english/form?q=form

[4] See: ICO *Hearing Decision 25-00812 Port Authority of the Cayman Islands* 25 October 2012 paras 46 and 48-49

[40] In accordance with section 26(1), this exemption is subject to a public interest test, which is further discussed below.

[41] The minute extracts and most of the Cabinet papers under consideration in this Decision date between February 1981 and September 1991. While most exemptions under the FOI Law do not apply for longer than 20 years by virtue of section 6(2), the exemption in section 23 is not time-limited by virtue of subsection 23(3). The Cabinet Office is therefore at liberty to claim this exemption for all the responsive records.

E. CONSIDERATION OF ISSUES UNDER REVIEW

[42] Section 23(1) states:

> *23. (1) Subject to the provisions of this section, a public authority shall not grant access to a record if it would involve the unreasonable disclosure of personal information of any person, whether living or dead.*

[43] Personal information" is further defined in regulation 2 of the FOI (General) Regulations:

> *"personal information" means information or an opinion (including information forming part of a database), whether true or not, and whether recorded in a material form or not, about an individual whose identity is apparent, or can reasonably be ascertained, from the information or opinion, including but not limited to-*
>
> *(a) the individual's name, home address or home telephone number;*
>
> *(b) the individual's race, national or ethnic origin, colour or religious or political beliefs or associations;*
>
> *(c) the individual's age, sex, marital status, family status or sexual orientation;*
>
> *(d) an identifying number, symbol or other particular assigned to the individual;*
>
> *(e) the individual's fingerprints, other biometric information, blood type, genetic information or inheritable characteristics;*
>
> *(f) information about the individual's health and health care history, including information about a physical or mental disability;*
>
> *(g) information about the individual's educational, financial, employment or criminal history, including criminal records where a pardon has been given;*
>
> *(h) anyone else's opinions about the individual; or*
>
> *(i) the individual's personal views or opinions, except if they are about someone else;*
>
> *but does not include-*

(i) where the individual occupies or has occupied a position in a public authority, the name of the individual or information relating to the position or its functions or the terms upon and subject to which the individual occupies or occupied that position or anything written or recorded in any form by the individual in the course of and for the purpose of the performance of those functions;

(ii) where the individual is or was providing a service for a public authority under a contract for services, the name of the individual or information relating to the service or the terms of the contract or anything written or recorded in any form by the individual in the course of and for the purposes of the provision of the service; or

(iii) the views or opinions of the individual in relation to a public authority, the staff of a public authority or the business or the performance of the functions of a public authority;

[44] Section 26(1) subjects the application of a number of exemptions, including the exemption in section 23(1) to a public interest test:

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

[45] "Public interest" is further defined in regulation 2, as:

"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.

The position of the Cabinet Office

[46] The Cabinet Office's Revised Submission of 17 September 2012 does not give any supporting reasoning for the redactions, stating only that, as the records are "over twenty years old… the exemptions under section 19(a) and (b) would no longer apply to them." These exemptions had in fact already been dropped in the early days of the appeal.

[47] In its initial Submission the Cabinet Office explained that it is the "names of private individuals and one individual who held office as a Member of the Legislative Assembly" which were redacted from the records. The MLA's name was redacted because they were not acting in their official capacity, but "in the capacity of their private practice". The Cabinet Office states that therefore the provision in subsection (i), restricting the definition of "personal information" in relation to public officers, does not apply. I take it that these observations apply to both the minute extracts and the Cabinet papers.

[48] The Cabinet Office does not address the question whether disclosure of the personal information would be unreasonable.

[49] In its initial Submission the Cabinet Office has very briefly considered the public interest, and agrees that, in the event that disclosure of the names, in particular the name of the MLA, "were to bring to light any improprieties [as suggested by the Applicant] the release of the names would be in the interest of the public." However, the Cabinet Office rejects this notion in respect of the responsive records in this case, saying, "as the minutes revealed no improprieties the decision to redact under section 23… was made."

The position of the Applicant

[50] 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.

[51] The Applicant wrote a lengthy initial Submission and provided a number of attached documents, including a chronology of events surrounding the matters documented in the records, and the response to the same FOI request received from the Planning Department. The Applicant was also granted the opportunity to respond to the Cabinet Office's Revised Submission – as noted above, without the benefit of having seen the new responsive records which were not released until some days later - and did so extensively, mainly by responding to the questions raised about the meaning and consequences of "holding" records under the Law.

[52] The Applicant does not dispute that the redacted names are "personal information" under section 23(1) of the Law. However, in considering whether disclosure would be unreasonable, they point out what they believe are inconsistencies in the approach of the Cabinet Office which has redacted some personal names, while releasing others, without apparent logic. As examples, the Applicant cites the names "Rich and Connolly" and "Joseph Tomkins of [law firm] Sidley and Austin", which are mentioned several times throughout the minutes.

[53] The Applicant also raises public interest factors which, in their opinion, cause the balance of the public interest test to rest firmly on the side of disclosure. The Applicant finds the following

factors from the definition in regulation 2 of the *Freedom of Information (General) Regulations 2008*, particularly relevant:

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

[54] In addition, the Applicant raises the following specific public interest factors in favour of disclosure:

- There is great public interest in understanding "how government appropriated this property from private owners."
- The land which is the subject of the request, and which was at one time owned by Cayman Islands Estates Ltd., is part of the agreement recently reached between the Cayman Islands Government and the Dart Group. Therefore, given the importance of the "deal with Dart" the public has an interest in Cabinet's initial involvement with, and acquisition of this land;
- It is unclear how the rezoning from Low Density Residential/Mangrove Buffer Zone to Public Open Space/Mangrove Buffer Zone was accomplished. It is in the public interest to know all the factors Cabinet took into consideration in the rezoning process "to retain the economically important natural environment in the Mangrove Buffer Zone of the subject lands when other parts of the lands were rezoned from Low Density Residential to Public Open Space some years ago." One of the documents the Applicant has attached to their Submission is a response from Planning Department which states that the date of the rezoning is unknown, but that it must have taken place between 1977 and 2003.
- Rezoning of land has a wider impact on the general public, including "social, financial, cultural, environmental, transportation, conduct of business, neighborhood community life, tourism, quality of life" and other impacts. It is therefore in the public interest to "see all matters in the decision making process [relating to] the rezoning of lands.
- It is in the public interest to know whether Cabinet took into consideration the "further degradation of our economically important natural environment when a Mangrove Buffer Zone is removed."

[55] The Applicant also raises the following point in their initial Submission, which was subsequently in large part addressed by the new search and the inclusion of the related Cabinet papers in the Hearing:

- The Applicant rejects the Cabinet Office's claim that there were no "improprieties". While the minutes may not reveal any improprieties, Cabinet Office has been very selective in what it has disclosed, and the Applicant believes that the history of this land appropriation cannot be gauged until all documents, including the supporting

"Cabinet papers" are considered and disclosed, e.g. the "full review", "full chronology" and "valuation" as mentioned in the disclosed minutes.

Discussion

[56] As the Information Commissioner has found in previous Hearing Decisions,[5] in considering whether a record is exempt under section 23(1), the following three questions have to be answered:

1. Is the redacted information personal information?
2. If so, would it be unreasonable to disclose the personal information?
3. If so, would disclosure nonetheless be in the public interest?

1. Is the redacted information "personal information"?

[57] I agree with the Cabinet Office that all the redacted names in both the minute extracts and the Cabinet papers are personal information. This includes the parties involved in the sale, purchase and development of a parcel of land and the ensuing administrative and legal steps taken in respect of the land and the company named in the application. Also included is the name of the MLA, who I accept was not acting in an official capacity as MLA in addressing the Cabinet in this matter.

[58] Also redacted are the names of the plaintiffs in a court case quoted (p.1 171/81), the name of a land valuer (pp.2 and 4 480/81), and the names of four individuals whose rights had been protected by the registration of a caution, and three individuals who had purchased lots (p.3 480/81). These, too, constitute personal information under the Law.

[59] A number of public officials acting in an official capacity are named without redaction. These include "C.D. Powell of the Prime Minister's Office" (64/90) and "Prime Minister Margaret Thatcher" (61/90), who I assume were mentioned in an official capacity.

[60] While I do not consider the names "Rich and Connolly" and "Sidley and Austin" to be personal names, since they refer to the law firms by that name and not to the individual attorney-owners, I do believe that certain other names which were disclosed by the Cabinet Office were personal names of private individuals (see documents (88/86, 146/88, 92/11, 93/91, 99/91, 113/91, 114/91 and 141/97).

[61] I agree with the Applicant that there is an inconsistency in disclosing some personal names, while rigorously withholding others with similar characteristics. Such inconsistencies are not sufficiently explained by the Cabinet Office. However, this does not mean that the redacted names are not personal information and must be disclosed.

[62] **I agree with the Cabinet Office that the redacted information is personal information as defined in the FOI (General) Regulations.**

[5] ICO *Hearing Decision 8-01610 Health Regulatory Services Department* 4 March 2011 pp.8-12; ICO *Hearing Decision 13-00511 Ministry of Finance, Tourism and Development* 29 July 2011 paras 84-101

2. If so, would it be unreasonable to disclose the "personal information"?

[63] As explained in previous Decisions, public authorities should not assume that the FOI Law protects all personal information from disclosure. Only personal information which it would not be unreasonable to disclose, is protected.

[64] As the Information Commissioner has previously established, in determining what is unreasonable, it is important to consider all of the circumstances relevant to the request and the records, including:

(a) Is the information sensitive?
(b) Would disclosure prejudice the privacy of the individual?
(c) Has the information "expired"?
(d) Is the information required for the fair determination of someone's rights?
(e) Does the social context render disclosure reasonable?
(f) Is there any suggestion of procedural irregularities?

[65] The Cabinet Office has not addressed this question in its Submissions.

(a) Is the information sensitive?

[66] The subject discussed in these records concerns the sale and purchase of land, and the ensuing administrative and legal steps taken in respect of the land and the company named in the application. Judging from the Applicant's Submission and attachments, this matter is already known in great detail to the Applicant, including the names of each of the main participants.

[67] In the Cabinet papers, the names of the plaintiffs in a court case quoted (p.1 171/81), and the name of a land valuer (pp.2 and 4 480/81) are not sensitive, as these types of information are routinely disclosed.

[68] It can be assumed that the names of four individuals whose rights had been protected by the registration of a caution, and three individuals who had purchased lots (p.3 480/81), are not known to the Applicant. However, this information is more than 20 years old, and is not sensitive since such names are also routinely available to the general public from the Land Registry.

[69] The two redacted Cabinet papers, dating from 1993 and 2006, only contain the names and characteristics of individuals already known to the Applicant, e.g. the fact that a person owned the land.

[70] Given these considerations, the fact that some of the named individuals are no longer living, and that the vast majority of the records is well over 20 years old and/or already publicly available, I do not believe any of the redacted information is sensitive.

(b) Would disclosure prejudice the privacy of the individual?

[71] Given that the involvement of each of the main participants in this matter is already known to the Applicant in some detail, I do not believe that disclosure would prejudice the privacy of those individuals in a significant way.

[72] Given that the information relating to the other individuals is over twenty years old, and/or is already public available, I also do not believe that disclosure would prejudice their privacy.

(c) Has the information "expired"?

[73] Most of the records, except for six Cabinet papers (four of which were disclosed in full) are over 20 years old. While the exemption in section 23(1) itself does not expire, the reasonableness of disclosure will be affected by the age of the records.

[74] Since the majority of the records is between 21 and 31 years old (dating from 1981-1991) it may be more reasonable to disclose these than the two more recent records which date from 1993 and 2006.

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

[75] The subject matter of this request is the appropriation of privately owned land by Government. Although some years have passed since the documented actions took place, it is precisely the appropriateness of the Cabinet's decisions in this matter which the Applicant is seeking to verify, as the descendant of an interested party. As such, the fullest possible understanding of the responsive records may indeed be necessary to determine the Applicant's rights.

(e) Does the social context render disclosure reasonable?

[76] The Applicant raises wider environmental and community questions surrounding the rezoning of the land in question and the current public debate in relation to the same land. I agree that this is an important social context that may increase the argument in favour of disclosure.

(f) Is there any suggestion of procedural irregularities?

[77] The Applicant questions whether both Cabinet and certain individuals involved in this matter acted properly. While I can make no pronouncements regarding the motivations of any individuals or members of Cabinet in this matter whatsoever, the appropriation of valuable land by Government is an unusual and consequential issue for which Cabinet should be fully accountable. In my view only the disclosure of the records in full will answer the legitimate questions raised by the Applicant.

[78] **Given these circumstances and considerations, I do not find that it would be unreasonable to disclose the names of the individuals which have been redacted.**

[79] **Consequently, I do not find that the exemption in section 23(1) applies to the responsive records.**

3. If so, would disclosure nonetheless be in the public interest?

[80] Since I have found that the exemption does not apply to the redacted information, there is no further need under section 26(1) to ask whether the public interest in disclosure outweighs the public interest in maintaining the exemption. However, for the avoidance of doubt I will briefly discuss the public interest.

[81] The Cabinet Office recognizes that disclosure may in certain cases bring improprieties to light, but rejects that this is applicable in this case, since "the minutes revealed no improprieties". The Cabinet Office has not provided any further details why it would or would not be in the public interest to disclose the particular names that have been redacted.

[82] As listed in full above, the Applicant indicates a number of strong factors in favour of disclosure. These include both general factors listed in the "definition" provided in the Regulations, as well as specific factors relating to the particular subject of the appeal.

[83] The appropriation of property by Government is a rare and serious matter. Although I have no reason whatsoever to suspect that any wrongdoing was involved in the particular case under consideration here, Cabinet must be accountable for its actions and decisions, particularly where these may have a significant impact on an individual's rights and property, as is the case in this instance.

[84] The potential impact of a decision to rezone a particular area of land on the natural environment is an equally weighty consideration, and Cabinet should be pleased to demonstrate its careful consideration of such matters as much as possible.

[85] On the other side of the balance is the strong public interest in the protection of personal information, as embodied in the exemption itself, which is the only exemption in the FOI Law whose application is explicitly unlimited in time. However, this is diminished by the age of the vast majority of the records, by the fact that the involvement of the named individuals is by and large already known to the Applicant, and by my findings above that the personal information involved is not sensitive, and that its disclosure would not significantly prejudice the privacy of the individuals concerned.

[86] **Having balanced the public interest factors for and against disclosure, I find that it is in the public interest to disclose the records.**

F. FINDINGS AND DECISION

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

Finding

I find that the minute extracts and papers of the Cabinet relating to Cayman Islands Estates Ltd. and the blocks and parcels of land in question are not exempt under section 23(1) of the *Freedom of Information Law 2007.*

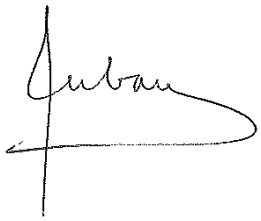
Decision

Under section 43(3)(a) of the Freedom of Information Law, 2007 I overturn the decision of the Cabinet Office to withhold the responsive records in this Hearing and require the Cabinet Office to disclose the records.

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 a judicial review of this Decision.

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

If judicial review has not been sought on or before 21 January 2013, and should the Cabinet Office fail to disclose the responsive records in this matter, the Information Commissioner may certify in writing to the Grand Court the failure to comply with this Decision and the Court may consider such failure under the rules relating to contempt of court.



Jan Liebaers MA CA LLM
Information Commissioner (Acting)

7 December 2012