ICO Hearing 47-00515
Decision

Department of Health Regulatory Services

Jan Liebaers
Acting Information Commissioner for the Cayman Islands

18 September 2015

Summary:

In December 2014 an Applicant requested records relating to complaints made against him as a medical practitioner to the Department of Health Regulatory Services. The Department disclosed a number of related records, but withheld the actual complaints and related emails on the basis of the exemptions in section 23(1) (personal information) and 24(a) and (b) (health and safety) of the *Freedom of Information Law 2007*.

The matter was appealed to the Information Commissioner's Office and the Acting Information Commissioner found that the records were not exempt under either of the exemptions that had been claimed, except for the contact information of the complainants, (i.e. their addresses, email addresses and phone numbers) and their dates of birth, which in the circumstances of this case are private and sensitive. The Commissioner ordered the Department to disclose the records to the Applicant only, with the contact information and dates of birth redacted by reason of section 23(1).

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*, and all references to regulations are to the *Freedom of Information (General) Regulations 2008*, unless otherwise specified. Where several laws are being discussed in the same passages, all relevant legislation has been indicated.

A. INTRODUCTION

[1] On 18 December 2014 the Applicant made a request to the Department of Health Regulatory Services (the "Department") for:

> *All records in correspondence, emails, tapes, sound tracks, photographs, complaint/witness statements, and minutes of all meetings in regards to myself which was brought up before the HPC Board and also all records photographs, complaint/witness statements and minutes of all meetings in regards to the facility Grand Harbour Dental where I practiced and operated. This also includes all records from the Health Inspector Barrie Quappe and The Department of Health Regulatory Services.*
>
> *Lastly, any records, correspondence, emails, witness statements minutes of all meetings regarding myself and my health care facility from the Medical and Dental Council. The particular time frame is from July 2012 to present day 2014.*

[2] On 24 December 2014 the Department sought a clarification, asking that the scope of the request be narrowed. The Applicant agreed and the request was modified to include "only the actions regarding the Health Practice Boards (HPC) and the Medical and Dental Councils (MDC), but not including the [Health Insurance Commission] HIC."

[3] Since the responsive records contained third party personal information, the Department consulted with third party individuals and it informed the Applicant on 29 December 2014 that it needed to extend the time required to respond by an additional thirty calendar days, as allowed under section 7(4).

[4] On 24 February 2015 the Department granted partial access, but withheld certain information and records under the exemptions in sections 16(b)(i) (law enforcement investigation and/or prosecution), 20(1)(c) (legal advice from the Attorney General), 23(1) (unreasonable disclosure of personal information) and 24(a) and (b) (endangerment of health and safety of any individual). One day later the Department provided the Applicant with an amended version of the decision letter, which also addressed the Applicant's right to an internal review of section 16(b).

[5] The Applicant requested an internal review of the decision to withhold information on 13 March 2015, and the initial decision was upheld by the Chief Officer (CO) on 8 April 2015.[2] No internal review was conducted of the use of section 16(b) by the Department.

[2] For more on the request for internal review, see part C below.

[6] On 17 April 2015 the Applicant appealed to the ICO, and the appeal was accepted four days later.

[7] In the course of the appeal, some additional records were disclosed, and reliance on sections 16(b) and 20(1)(c) was abandoned by the Department.

[8] On 29 June 2015 the Applicant agreed that the records that remained in dispute were "the complaints received by the Health Practice Commission (HPC) and the Medical Dental Council (MDC) concerning [the Applicant] and [his facility] between August 2013 and August 2014".

[9] The appeal could not be resolved amicably, and the matter proceeded to a formal hearing on 25 June 2015.

B. BACKGROUND

[10] According to its website, the Department of Health Regulatory Services was formed in 2008 following the merger between the Health Insurance Commission (HIC) and the Health Practice Commission (HPC). It consists of the Health Insurance Commission Board, the Health Practice Commission Board, the Medical & Dental Council, the Nursing & Midwifery Council, the Pharmacy Council, and the Council for Professions Allied with Medicine.

[11] The Department regulates health insurance and health care services in the Cayman Islands, and assists the general public in resolving disputes pertaining to health insurance and health care services under the provisions of the Health Insurance Law, Health Insurance Commission Law, the Health Practice Law, and the Pharmacy Law and associated Regulations.

[12] The Department's functions are:

- To investigate and resolve complaints and respond to inquiries;
- To educate the public on health insurance and functions of the HIC;
- To enforce the Health Insurance Law and the Health Practice Law and Regulations;
- To collect Segregated Insurance Fund payments;
- To register healthcare practitioners and facilities;
- To inspect and certify healthcare facilities; and,
- To provide administrative services to the Board;

C. PROCEDURAL ISSUES

[13] The initial response from the Department indicated that the Applicant had the right to seek an internal review by writing to the CO. In its amended decision letter the next day the Department added: "for the exemption related to s.16", followed by the name and address of the responsible Minister. The Department was attempting to refer to the fact that, under section 34(1)(a), an internal review of section 16 may only be conducted by the responsible Minister.

[14] The Applicant wrote to the CO requesting an internal review. The CO conducted an internal review of sections 20(1)(c), 23(1) and 24(1), and explained that she was not authorized to review use of the exemption in section 16(b). The matter was not referred to the Minister for an internal review of that section.

[15] Section 7(5) requires that an applicant be informed of the "options available to the applicant" i.e. their right to an internal review and/or appeal to the Information Commissioner. I do not consider the wording the Department used to inform the Applicant of his right to an internal review of section 16 sufficiently clear, as the phrase used is not an understandable articulation of "the options available to an applicant" as required under section 7(5).

[16] Applicants cannot be expected to know the intricacies of the FOI Law, and should reasonably be assisted in making requests, including requests for internal review. Applicants should inform the Information Manager (IM) and/or the CO if they want an internal review. Logic and best practice demands that the IM and/or CO should forward the request to a minister if the latter is the legally authorized person to conduct the internal review. In the present case, the Applicant requested an internal review in general, but neither the IM nor the CO forwarded the request to the Minister who would have been authorized to review section 16(b).

[17] As sufficient time had passed without an internal review being conducted on section 16(b), the ICO considered this a "deemed refusal" and accepted the appeal on the basis of all four exemptions. In any event, the Department abandoned its reliance on sections 16(b) and 20(1)(c) in the course of the appeal.

D. ISSUES UNDER REVIEW IN THIS HEARING

[18] The records in dispute in this matter relate to three complaints made against a health practitioner who is also the Applicant in this case. Following receipt of the complaints, the Department decided to censure the Applicant and withdraw his license to practice. I have been informed that it has subsequently been reinstated.

[19] The Department has some other records on file concerning the Applicant, but these were not treated by the Department as complaints and do not fall within the scope of this Hearing given the narrowing of the request agreed by the Applicant on 29 June 2015, as described above.

[20] The issues under review in this hearing are:

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

2) **Whether the responsive records are exempt from disclosure under section 24(a) or (b) of the FOI Law, and, if so, whether access shall nonetheless be granted in the public interest.**

[21] Each of the claimed exemptions is subject to a public interest test pursuant to section 26(1) which provides:

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.

E. CONSIDERATION OF ISSUES UNDER REVIEW

1) Whether the responsive records are exempt from disclosure under section 23(1) of the FOI Law, and, if so, whether access shall nonetheless be granted in the public interest.

[22] Section 23(1) provides an exemption from the general right to access in section 6(1), as follows:

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.

[23] Regulation 2 defines "personal information" as follows:

"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;*

The position of the Department:

[24] The Department provides virtually no reasons for its reliance on section 23(1). It does not establish whether the information it seeks to exempt is, in fact, personal information and, if so, whose personal information it is. Nor does the Department address whether it would be unreasonable to disclose the information, as required under that section. In its overlapping treatment of the exemption in section 24, about which more below, the Department seems at times to conflate the two exemptions.

[25] The Department's submission asserts that the investigative rules of the Health Practice Law (2013 Revision) and the MDC's Code of Ethics & Standards of Practice (2007) were correctly applied after the complaints were received, but it does not indicate the process or outcome of any investigation or clarify what decisions were taken.

[26] In the early stages of this FOI case the Department contacted three individuals who it identifies as former employees of the Applicant, who had raised the complaints against him. The Department asked the three complainants for written representations as would be required under regulation 11, if the information was their personal information and the Department intended to provide access.

[27] Responses were received from all three individuals who were contacted. Two individuals objected to the disclosure of the information, while the third individual did not.

[28] The reasons given by the two individuals for objecting to disclosure are summarized in the Department's submission, which indicates that the individuals fear abuse and retribution, and allege wrongful and illegal conduct on the part of their former employer against whom they raised the complaints.

[29] The reasons for opposing disclosure given by Respondent A are:

> *If this information be released to [the Applicant], I believe it will give him ample time and ammunition to find, discuss and implement reasons with his lawyer(s) as to why he did the things that he did. I refuse to give him that loophole from the get-go; being armed with my complaint, so he may find grounds on which he may cover up his wrong dealings and unlawful conduct, possibly causing a loss to me.*

[30] The reasons for opposing disclosure given by Respondent B are:

> *This man has verbally abused me and has called my references after he fired me. I had to call the police on him while I was in Cayman. He tried to be a friend on facebook with me also. I am cannot [sic] get another job in Cayman due to my letter. It seems everyone knows of me and my letters.*

[31] Respondent C did not object to the disclosure.

[32] While only two of the three individuals objected to disclosure the Department nonetheless argues that the complaints of all three individuals should be withheld. The reason it gives for this is that, "Once the [complaint of the individual] who agreed to the release of their record [was disclosed], it would then be easy for the applicant to identify the other complainants, therefore the decision not to release any was made to protect [these] former employees."

[33] The Department says its decision not to disclose the records was reached after "careful consideration of the third party responses, and discussion with HPC Board and Councils involved."

[34] In so far as the Department has addressed the public interest test, which both the exemptions in sections 23(1) and 24(a) and (b) are subject to by virtue of section 26(1), it states that disclosure of the complaints would not have been "in the best interest of the public; as if they were found untrue, could have caused significant harm to the applicant's personal and professional reputation, and impact his economic status."

The position of the Applicant:

[35] The Applicant counters the exemptions claimed by the Department by saying he is entitled to know who his accusers are, especially since the complaints are serious, have caused a great deal of personal loss, and are "spurious, malicious and vexatious".

[36] The Applicant rejects that there is any basis for "fear of abuse or retribution". Although he claims to know the identities of the complainants, and names three individuals, he says he has not been in contact with them.

[37] In regard to the representations made by the third parties, the Applicant points out that all three individuals, upon signing their complaints, signed a waiver agreeing to the disclosure, and are simply trying to keep the false nature of the allegations from becoming known.

[38] The Applicant focuses particular attention on the procedures followed by the MDC in reaching its decision to censure him. He alleges that the proper steps required under sections 36 and 37, and schedule 3 of the Health Practice Law (2013 Revision) were in fact not taken. Under these provisions he would have been entitled to see the evidence against him and defend himself at a hearing. It is his contention that the MDC exceeded its lawful authority in the manner in which it censured him, and that the MDC's decision was therefore *ultra vires*.

[39] The Applicant claims that the exemptions under the FOI Law are being used to obscure the incorrectness of the MDC's decision and decision-making process. Non-disclosure

would allow the discrediting of his good name to continue and would validate the complaints which, he says, were not proven to be correct.

Discussion:

[40] I want to emphasize that it is not within my powers to reach any conclusions on the subject matter of the complaints or the manner in which the Department dealt with them. My concern in this Hearing is whether the Department has correctly applied the exemptions under the FOI Law.

[41] The first question that needs to be addressed is whether the information contained in the responsive records is in fact personal information, and, if so, whose personal information it is.

[42] The records consist of the complaint forms and related email correspondence between the three complainants and departmental staff dealing with the complaints. While the complaints are clearly about the Applicant, each complaint form and email is signed by the respective complainant and includes that individual's name, address, phone number and email address applicable at the time the complaint was made, as well as their date of birth.

[43] I have already quoted the full definition of personal information in regulation 2, above, but I draw attention in particular to regulation 2(h) and (i) which provide that "personal information" includes:

> *(h) anyone else's opinions about the individual; or*
> *(i) the individual's personal views or opinions, except if they are about someone else;*

[44] Consequently, while the information that identifies the complainants is their own personal information, the actual complaints and opinions about the practitioner are his personal information. Some of the complaint information may simultaneously be the personal information of both the complainants (to the extent that they are identifiable from the information) and the Applicant (to the extent that the information is an opinion or views relating to him).

[45] Subsection 23(2) provides:

> *(2) Subsection (1) shall not apply in any case where the application for access is made by the person to whose affairs the record relates.*

[46] The exemption in section 23(1) is therefore not engaged in respect of the personal information of the Applicant contained in the records, in so far as it is not, also, the personal information of one of the complainants. This means the exemption does not apply to the complaint information and any opinions or views expressed about the Applicant, except where it may identify the person making the complaint. It is not necessary, in regard to personal information that relates only to the Applicant, to consider whether disclosure would be "unreasonable" as would otherwise be required for the exemption to apply, or conduct a public interest test under section 26(1).

[47] In relation to the personal information relating to the complainants, the Department should have considered whether it would be unreasonable to disclose, as demanded by section 23(1).

[48] In considering the reasonableness of disclosure of the complainants' personal information I note that the Department's complaint form, which was completed and signed by two of the complainants, includes the following waiver (underline added):

> ***After fully understanding the following, please sign and date this form below:***
> *To the best of my knowledge, the above statements are correct. I understand that a copy of this form and any attachments that are needed may be shared with necessary organizations or individuals (e.g. practitioner, facility, specialist practitioner, etc.). I authorize the Health Practice Commission (HPC) to release only essential information, relating to this complaint to required persons in order to assist with the investigation. I also give authorization to the HPC to obtain records from practitioners, medical departments (private or public), insurer, employer, or any other relevant part my behalf. I represent that I have the proper authority to execute this release.*

[49] The third complainant signed a different waiver, which was under the heading "Disclosure" and indicated the following (underline added):

> *I… hereby acknowledge that I have been made aware that this complaint/letter… will be disclosed to the individual against whom I have made the complaint. … I am aware that I may not be contacted prior to the release of complaint.*

[50] Clearly, at the time the complaints were made, none of the three complainants could have had any expectation that the information they were providing would be kept from the practitioner against whom they were raising a complaint. In fact, they explicitly consented to such disclosure.

[51] Nonetheless, as explained above, two of the complainants subsequently gave the Department representations in which they objected to the disclosure.

[52] It seems to me that the reasoning of Respondent A, quoted in paragraph 29 above, adds nothing to the consideration of the reasonableness of disclosure or the application of any exemption under the Law.

[53] Respondent B, as quoted in paragraph 30, objects to the disclosure of their personal information, indicating that there is, or has been, a serious falling out with the former employer, and alleging there may be an abusive or vindictive response on the part of the latter if the information were released. This Respondent also informs the Department that "it seems everyone knows about me and my letters."

[54] In the Decision in Hearing 9-01610[3] - which as it happens also dealt with records of the HRC, the former Information Commissioner laid out the questions that should be considered when deciding whether disclosure would be unreasonable under section 23.

[3] Information Commissioner *Hearing 8-01610 Decision Health Regulatory Services (HRS*) 4 March 2011, pp.10-11.

These questions are also explained in detail in guidance available on the ICO website.[4] They are as follows:

1. Is the information sensitive?

The personal information of the complainants would largely be known to the Applicant at the time since he was their employer, as the Department's submission states. However, the contact information (addresses, email addresses, phone numbers) and dates of birth may be sensitive as the may differ to the ones provided to the Applicant when he was their employer.

2. Would disclosure prejudice the privacy of an individual?

I do not believe the disclosure of some of the information would prejudice the privacy of the individuals, since it concerns information that would have been known to the Applicant as the complainants' employer at the time. As well, the complainants could not have had an expectation of confidentiality when the complaints were made since they signed the waivers, as discussed above. Nonetheless, the contact information and dates of birth are private and do not relate to the substance of the complaints.

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

The disclosure would not prejudice the public authority's information gathering capacity as a regulator of medical practitioners. The Department is authorized by law to gather information on medical practitioners, and complainants are routinely informed, by means of the waiver on the complaint form, of the fact that their information will be shared with the person or facility against whom a complaint is raised. Disclosure is therefore the norm and cannot be said to risk impeding the future information gathering capacity of the Department.

4. Has the information "expired"

Some of the complainants' personal information has likely expired, since I understand two of the individuals have left the Cayman Islands, and some of the contact information relates to their Cayman Islands address or contact numbers. However, some of the contact information and the dates of birth may remain current.

5. Is the information required for the fair determination of someone's rights?

It seems to me that the information should have been disclosed to the Applicant at the time his complaint was being considered by the Department, in accordance with the waiver signed by the complainants. Although the consideration of the complaint by the Department is no longer ongoing, the names of the complainants and the actual complaints may be required to allow the Applicant a full evaluation of the context within which the complaints were made, and to protect his rights to a fair defense under the rules of Natural Justice.

[4] See the ICO's guidance document for Information Managers on the exemption relating to personal information: http://www.infocomm.ky/images/IM%20Seminars%20Series%20II%20Personal%20Information%20Handout%20-%20June%202013.pdf

6. Would the social context render disclosure reasonable?

As the Department has stated, the complaints were made by employees about their, then, employer who is also the Applicant. As their former employer, the Applicant will likely already have access to some of the personal information of the complainants.

7. Is there any suggestion of procedural irregularities or wrongdoing?

There is a suggestion of procedural irregularities and wrongdoing in the way the HRC handled its investigation and decision-making process in relation to the complaints, which is explained in the Applicant's submission. The personal information of the complainants is relevant to this since the Applicant must be able to fully understand the context of the complaints made against him, including who made them. For the sake of proportionality this would require the disclosure of the complaints as well as the names of the complainants, but not their contact information or dates of birth.

[55] For these reasons, in the circumstances of this case I conclude that it would not be unreasonable to disclose the full complaint information and the names of the complainants contained in the responsive records, while keeping the contact information and dates of birth of the complainants withheld.

[56] For the sake of completeness, I want to mention that some of the information in the emails, and to a lesser degree on the complaint forms, relates to HRC staff members who dealt with the complaints in their official capacities. Since that information belongs to public officers acting in their official, work-related roles, it is not considered personal information under the Law, as it is caught by the exception in subsection (i) of the definition of "personal information" already provided above.

[57] **Therefore, for the reasons above I have reached the following conclusions on the application of section 23(1):**

- **By virtue of section 23(2) the exemption in section 23(1) does not apply to the personal information of the Applicant in the form of opinions or views relating to him contained in the complaints, except where the information would also identify one of the complainants.**

- **The exemption in section 23(1) is engaged in regard to the personal information of the complainants, but I do not find it unreasonable to disclose their names or any part of the complaint that would allow their identification. However, in the circumstances of this case I find it unreasonable to disclose their contact information, consisting of addresses, phone numbers and email addresses, as well as their dates of birth.**

Public interest test:

[58] Section 26(1) provides:

> *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.*

[59] Regulation 2 defines public interest as follows:

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

(a) promote greater public understanding of the processes or decisions of public authorities;
(b) provide reasons for decisions taken by Government;
(c) promote the accountability of and within Government;
(d) promote accountability for public expenditure or the more effective use of public funds;
(e) facilitate public participation in decision making by the Government;
(f) improve the quality of services provided by Government and the responsiveness of Government to the needs of the public or of any section of the public;
(h) deter or reveal wrongdoing or maladministration;
(i) reveal information relating to the health and safety of the public, or the quality of the environment or heritage sites, or measures to protect any of those matters; or
(j) reveal untrue, incomplete or misleading information or acts of a public authority.

[60] Given the provision and definition, and my findings above, the only part of the responsive records in relation to which a public interest test is required is the complainants' contact information and dates of birth, in order to confirm whether the withheld information should nonetheless be disclosed.

Factors in favour of disclosure:

[61] The Applicant alleges that the Department did not follow the proper procedures required under the Health Practice Law (2013 Revision). Public authorities must ensure that their investigations are conducted, and decisions are made in full respect of the fundamental rights of individuals - including section 19 of the Cayman Islands Constitution which requires lawful administrative action by public authorities. These arguments are generally relevant to points (a), (b), (c) and (h) of the definition of public interest quoted above, as disclosure may, or may tend to: promote greater understanding of the decisions of the Department; provide reasons for such decisions; promote the accountability of the Department; and, deter or reveal wrongdoing. While this argument is strong in respect of the complaints and the names of the complainants, it is not relevant to the contact information and dates of birth of the complainants.

Factors in favour of withholding the contact information:

[62] The Department states that disclosure of the complaints would not have been "in the best interest of the public; as if they were found untrue, could have caused significant harm to the applicant's personal and professional reputation, and impact his economic status." I note that "the applicant's personal and professional reputation" and his "economic status" are private, not public interests, and that this argument is therefore not relevant in the context of a public interest test, and that this argument seems nonsensical since the information would be released to the person who would be affected by the disclosure.

[63] While there are strong arguments in favour of disclosure of the complaint information and the identity of the complainants in order to allow the Applicant a full understanding and a fair defense against the complaints raised against him, such arguments do not extend to the contact information of the complainants or their dates of birth, which in the context of

this case are private and sensitive, particularly in view of the fear for retribution expressed by the Department and one of the Respondents.

[64] In balancing the competing arguments relevant to the public interest in this case, while I do not consider the risk of actual retribution or harm to the complainants very high, I agree that the contact information and dates of birth of the complainants are private and sensitive, and I do not believe the disclosure of that information is relevant to promoting greater public accountability of the Department, explaining its decision-making processes, or revealing potential maladministration.

[65] **For these reasons, in the particular circumstances of this case I find that it would not be in the public interest to disclose the contact information consisting of the addresses, phone numbers and email addresses, or the dates of birth of the three complainants.**

2) Whether the responsive records are exempt from disclosure under section 24(a) or (b) of the FOI Law, and, if so, whether access shall nonetheless be granted in the public interest under section 26(1).

[66] Section 24 provides:

> *24. A record is exempt from disclosure if its disclosure would, or would be likely to-*
> *(a) endanger the physical or mental health of any individual; or*
> *(b) endanger the safety of any individual.*

The position of the Department:

[67] On the basis of two of the third party Respondents, which I have quoted above, the Department states that the Applicant was "verbally abusive, trying to cover up wrong dealings, unlawful conduct, tarnishing professional image on the island, and attempting to contact [the three complainants] through social media."

[68] The Department provides no evidence to back up these claims, for instance in the form of threatening email communications or abusive postings on social media.

[69] As explained above, the third Respondent did not oppose the disclosure of their complaint. Nonetheless, the Department decided to withhold records relating to all three individuals because "Once the [complaint of the individual] who agreed to the release of their record [was disclosed], it would then be easy for the applicant to identify the other complainants, therefore the decision not to release any was made to protect [these] former employees."

The position of the Applicant:

[70] The Applicant points to the waivers, already discussed above, in which all three complainants agreed at the time when they made their complaints that the information they provided would be shared with the practitioner against whom the complaint was being raised.

[71] The Applicant also claims that he was the vulnerable party in the conflict with, whom he calls, his "disgruntled employees". He says that he, himself, has felt threatened and endangered by the behavior and conduct of two of the claimants, whom he calls "instigators and aggressors" who, with their unfounded allegations, threatened his livelihood. The Applicant has indicated and provided some evidence that the conflict with some of the employees had erupted some time before the complaints were made.

[72] Finally, the Applicant argues that under the rules of Natural Justice he is entitled to know who his accusers are in order to be able to defend himself properly against the complaints.

Discussion:

[73] For the exemption in section 24 to be engaged the disclosure "would, or would be likely to (a) endanger the physical or mental health of any individual; or (b) endanger the safety of any individual."

[74] I have clarified in Decision 41-00000[5] the meaning of "would, or would be likely to", as follows:

> *[48] In McIntyre the UK Information Tribunal clarified, in relation to similar wording in the FOIA,*
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> > *There have been a number of Tribunal decisions on the meaning of the two limbs of the prejudice test in qualified exemptions. The words "would prejudice" have been interpreted by the Tribunal to mean that it is "more probable than not" that there will be prejudice to the specific interest set out in the exemption and the words "would be likely to" have been interpreted to mean that there is a "real and significant risk of prejudice" to the interest in the exemption.[6]*
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> *[49] The meaning of "likely" has been considered on a number of occasions, including by Munby J in R (on the application of Lord) v Secretary of State for the Home Office [2003] EWHC 2073 (Admin):*
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> > *In my judgment "likely" … connotes a degree of probability where there is a very significant and weighty chance of prejudice to the identified public interests. The degree of risk must be such that there "may very well" be prejudice to those interests, even if the risk falls short of being more probable than not.[7]*
>
> *This meaning has been relied upon by the UK ICO and the UK Information Tribunal under the FOIA, and forms part of the guidance issued by the former.*
>
> *[50] I consider that this approach is consistent with the formulation of the test by Moses LJ in the Judgment [in Cause G0003 of 2013] , where he stated that "…the*

[5] ICO *Hearing 41-00000 Decision The Governor's Office* 10 July 2014 paras 48-50
[6] *McIntyre v Information Commissioner and the Ministry of Defence* EA/2007/0068 para 25, as quoted in: *Governor of the Cayman Islands… Judgment* op cit para 40
[7] *R (on the application of Lord) v Secretary of State for the Home Office* [2003] EWHC 2073 (Admin), paras 96-100

position is, as explained in McIntyre, that what [the Commissioner] had to consider was whether there was a real and significant risk of prejudice." [8]

[75] Parallel to my observation in paragraph 52 above I consider the reasoning of Respondent A to be irrelevant to the exemption in section 24, as it has no bearing on the endangerment of any person's health or safety.

[76] That there are, or were, mutual ill-feelings between the complainants and their former employer is beyond doubt. Both sides feel strongly that the other side has unreasonably maligned them. However, the Department has not provided any evidence to back up the claims made by Respondent B, quoted in paragraph 30 above, such as, for instance, threatening emails or abusive postings on social media.

[77] I understand that both of the third party individuals who objected to the disclosure of the information no longer live in the Cayman Islands. In any event, I consider any risk of "real and significant" prejudice to their health or safety by reason of the disclosure very low. Consequently, in my view the Department has not demonstrated that disclosure would, or would be likely to cause endangerment to the health or safety of any individual, and the exemptions in sections 24(a) and (b) do not apply.

[78] **For these reasons, I find that the exemptions in section 24(a) or (b) do not apply to the responsive records.**

[79] Since the exemption is not engaged, I am not required to conduct a public interest test under section 26(1).

F. FINDINGS AND DECISION

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

1. The exemption in section 23(1) does not apply to complaint information that constitutes an opinion or view on the Applicant, as that is the personal information of the Applicant himself, except where disclosure of that information would allow the identification of the complainant. Under section 23(2) the exemption does not apply to an applicant's own personal information.

2. The personal information of the complainants is subject to the exemption in section 23(1). While it would not be unreasonable to disclose the complainants' names and any part of the complaint that would allow their identification to the Applicant, it would be unreasonable to disclose their contact information, consisting of addresses, phone numbers and email addresses, as well as their dates of birth, as such information is private and sensitive in the circumstances of this case. Having conducted a public interest test, I find that it would not be in the public interest to disclose the contact information or dates of birth of the three complainants.

3. The exemptions in sections 24(a) and (b) do not apply to the responsive records.

[8] See for instance, *Connor v Information Commissioner* EA/2005/0005 para 15; see also: *Information Commissioner's Office (UK) The prejudice test. Freedom of Information Act. Version 1.1 5 March 2013,* paras 30-32

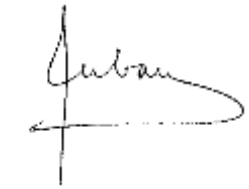
Therefore, I order the disclosure of the responsive records with the contact information of each of the complainants, consisting of addresses, phone numbers and email addresses, as well as their dates of birth redacted.

While under the FOI Law disclosure is normally to the world at large, in this case, I order disclosure to the Applicant only, as the information contained in the records is his personal information and/or concerns complaints made against him.

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

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

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



Jan Liebaers
Acting Information Commissioner

18 September 2015