Information Commissioner's Office CAYMAN ISLANDS

ICO Hearing 51-01914
Decision
Cayman Airways

Jan Liebaers
Acting Information Commissioner for the Cayman Islands

17 March 2016

Summary:

On 2 September 2014 an applicant made a request under the *Freedom of Information Law 2007* for records relating to his employment with Cayman Airways.

In the initial response from Cayman Airways several records were disclosed. However, the applicant was not satisfied and asked for an internal review, and subsequently made an appeal to the Information Commissioner's Office, claiming that Cayman Airways had not made reasonable efforts to locate the responsive records. Although a number of additional records were released during the appeal, the dispute could not be resolved amicably and the matter was decided at hearing.

In this Hearing Decision the Acting Information Commissioner, Mr. Jan Liebaers, found that Cayman Airways did not conduct an adequate initial analysis or search for responsive records in relation to the request, resulting in the provision of an inadequate initial response.

However, in view of the reasonable and constructive approach taken by Cayman Airways in the course of the appeal, and their declared intention to continue providing additional records of a similar nature to the Applicant on condition that they are clearly identified, the Acting Commissioner found that Cayman Airways has now made "reasonable efforts to locate" the records responsive to the request, as required under regulation 6(1) of the *Freedom of Information (General) Regulations 2008*, and dismissed the appeal.

Statutes[1] Considered:

Freedom of Information Law 2007

[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. At the time the request in this case was made the 2015 revision of the FOI Law had not yet come into effect, and therefore this Decision is made under the 2007 FOI Law.

Freedom of Information (General) Regulations 2008

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A. INTRODUCTION

[1] On 2 September 2014 the Applicant made a request under the Freedom of Information Law 2007 ("FOI Law") to Cayman Airways ("CAL") for:

> *…a full copy of all documents/records relating to my employment with Cayman Airways Ltd including but not limited to my personnel and training files. In the event they are not in my files I would also request that I be provided copies of any and all reports concerning my employment, minutes of any meetings relating to me, and all emails and correspondences concerning my employment. In making this request I would highlight that I am requesting disclosure of my own personal information*.

[2] The next day CAL's Information Manager (IM) acknowledged receipt of the request.

[3] On 1 October 2014 CAL informed the Applicant that it needed to extend the period for a response, as allowed under section 7(4) "for good reason".

[4] On 27 October 2014 CAL released a number of documents. However, on 7 November 2014 the Applicant requested an Internal Review under section 33, on the basis that "the document [sic] received do not amount to a full record of [his] employment term and information has been withheld". The Applicant also complained that he had not been properly informed that only partial access had been granted.

[5] Not having received a response within the statutory timeline for conducting an Internal Review – which in accordance with section 34(1)(a) is 30 calendar days - the Applicant made an appeal to the Information Commissioner on 12 December 2014, on the basis that the records provided were "incomplete and missing relevant information", as he was allowed to do under sections 33(3) and 42.

[6] On 19 December 2014 the CEO of CAL belatedly gave the Applicant the Internal Review Decision, in which he pointed out that the request was very broad, and that responding to it would unreasonably divert CAL's resources. The CEO stated that,

> *… the records that you were supplied with, in my view, substantially represents [sic] the full content of records maintained in relation to your departmental and personnel files, as well as your training file.*

[7] The CEO also invited the Applicant to narrow down the request "by outlining, if possible the specific records you are seeking and which you feel have been withheld from you", in order to avoid the alleged unreasonable diversion of resources (i.e. the exception in section 9(c)). The Information Commissioner's Office ("ICO") was not made aware of the Internal Review Decision until 27 March 2015.

[8] Also on 19 December 2014 the Applicant provided the ICO with a detailed listing of the records he believed to be outstanding.

[9] On 21 January 2015 the ICO accepted the appeal in relation to regulation 6(1) which requires that an IM make reasonable efforts to locate records responsive to a request.

[10] On 22 January 2015 the ICO forwarded the detailed listing of requested records received on 19 December to CAL.

[11] In the ensuing months there were a number of interactions between the ICO and the parties. CAL conducted further searches for outstanding responsive records, and released additional records in July, August and September 2015.

[12] The Applicant remained dissatisfied and claimed that yet more records remained outstanding. Therefore, the informal appeal resolution process ceased and the matter was forwarded to a formal hearing.

B. BACKGROUND

[13] Cayman Airways Ltd. is the national flag carrier of the Cayman Islands. As a government company in which the Cayman Islands Government holds more than 50% of the shares, the company falls within the definition of a "public authority" in section 2, and is therefore subject to the *Freedom of Information Law*.

C. PROCEDURAL ISSUES

Objections to Fact Report:

[14] The Applicant seeks to raise a number of new issues in his Submission. He complains that he was not invited to raise objections to the Fact Report, and only found out on 12 January 2016 that he had missed the opportunity to do so. The Applicant attempted to raise objections belatedly, and was told that any objections would have to be raised in his Submission.

[15] As well, the Applicant states that he did not receive "a copy of the correspondence from CAL" containing their objections to the Fact Report, in spite of the ICO's routine practice to

make all correspondence between a party and the ICO available to the other party in the course of a hearing.[2]

[16] The Applicant states that he has

> *…not been included in any of the communications between the ICO and CAL or its attorneys. I have no knowledge of any 'lengthy negotiations' that were said to take place. I don't understand what negotiation would be necessary as it is my understanding that CAL is required to comply with the law… Was there in fact 'lengthy negotiations' in March 2015, and then again in July and then again in August? This seems unlikely so in addition to being provided the actual facts of what took place I would invite the ICO to review this to ensure it is accurate.*

[17] The Applicant also wishes to raise CAL's alleged violation of the timelines for an internal review as an issue under review in this Hearing.

[18] In accordance with section 4(3) of the ICO's Appeals Policies and Procedures[3] at the beginning of a formal hearing both the Notice of Hearing and the Fact Report are communicated to both parties in the dispute, after which the Registrar gives both parties an opportunity to make objections. I have verified that the Registrar on 4 January 2015, at the beginning of this Hearing, did, indeed, send the Applicant a copy of the Fact Report and the Notice of Hearing, asking him to submit any objections by 11 January 2015. Therefore I dismiss the Applicant's observations in that regard.

[19] The ICO's correspondence with CAL regarding objections should indeed have been made available to the Applicant. However, having carefully reviewed the very limited nature of the changes that were made as a result of CAL's input, it is obvious to me that these were minor, and do not in any way prejudice the position of the Applicant. For instance, the inclusion of the following sentence in reference to events on 19 December 2015, is factually correct but could not be said to harm the position of the Applicant in any way:

> *On this same day the Applicant wrote to the ICO and provided a detailed list of the records he felt were still outstanding. This list was provided to CAL on 22 January 2015.*

[20] The ICO routinely puts significant efforts in seeking an amicable resolution when a matter is appealed under the Law. This often involves lengthy and confidential negotiations with both parties. Such interactions are always pursued in the interest of resolving the dispute in compliance with the provisions of the FOI Law. I am not sure why the Applicant considers it "unlikely" that the ICO engaged with CAL in "lengthy negotiations".

[21] The former Information Commissioner and I have routinely dealt with procedural issues in numerous Hearing Decisions. This is indicated in Fact Reports which always contain the statement that "Any procedural matters relating to the manner in which the Public Authority handled the request may also be reviewed by the Information Commissioner". I intend to continue this pragmatic approach.

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[2] See section7 of the ICO's Practical Guidelines for a Written Hearing, 14 February 2013 at: http://www.infocomm.ky/images/Document%20Library/Policies%20%20Guidance/Practical%20Guidelines%20For%20A%20Written%20Hearing%202013-02-14.pdf

[3] http://www.infocomm.ky/images/ICO%20Appeals%20Policy%20and%20Procedures%202016-02-22.pdf

The extension of the period allowed for an initial response:

[22] Section 7(4) provides:

> *(4) A public authority shall respond to an application as soon as practicable but not later than-*
>
> > *(a) thirty calendar days after the date of receipt of the application; or*
> >
> > *(b) in the case of an application transferred to it by another authority pursuant to section 8, thirty calendar days after the date of the receipt by that authority,*
>
> *so, however, that an authority may, for good cause, extend the period of thirty calendar days for a further period, not exceeding one period of thirty calendar days, in any case where there is reasonable cause for such extension.*

[23] In its communication to the Applicant dated 1 October 2014, CAL gave the following reason for extending the period allowed for an initial decision:

> *Unfortunately, it is taking longer than expected to answer [the Applicant's] request for information.*

[24] The Applicant was told that a decision would be reached by 17 October 2014, but in fact it took CAL another ten days after that date before providing the initial response. The Applicant has indicated that CAL informed him of this further extension on 16 October 2014. However, that communication has not been provided to me.

[25] Public authorities are allowed 30 calendar days for providing their initial response to a request made under the Law. They may extend that period by another 30 calendar days "for good reason". The extension of the response time should not be treated as a matter of routine, and I do not consider that informing an applicant that "it is taking longer than expected" is sufficient "good reason" to warrant delaying the execution of an applicant's right to access.

[26] Therefore, while CAL did acknowledge the request and inform the Applicant in a timely fashion that delays were being encountered and that an extension would be needed, I do not consider that an adequate "good reason" for the extension was provided by CAL, and therefore section 7(4) was not applied appropriately in this instance.

The timing of the Internal Review Decision

[27] In relation to conducting an internal review, section 34(3)(b) provides:

> *(3) A person who conducts an internal review-*
>
> > *…*
> >
> > *(b) shall take that decision within a period of thirty calendar days after the date of receipt of the application.*

[28] The Applicant requested an internal review on 7 November 2014. However, the CEO did not provide his decision until 19 December 2014, or some 12 days after the period allowed for an internal review under the section quoted above.

[29] Not having received the requested Internal Review Decision within the proper timeline, on 12 December 2014 the Applicant made an appeal to the Information Commissioner, as he was entitled to do.

[30] The Law is clear that where no internal review is completed within the specific time, this constitutes a refusal to do so. Section 33(3) provides:

> *(3) For the purposes of subsections (1) and (2), a failure to give [an internal review] decision … within the time required by this Law shall be regarded as a refusal to do so.*

[31] There is no provision in the Law for the extension of the period allowed for conducting an internal review beyond the period of 30 calendar days specified in section 34(3)(b).

[32] Consequently, CAL did not meet its obligation to conduct the internal review in a timely fashion, and was deemed to have refused to provide a response. In its Reply Submission CAL denies that there was "some form of refusal or neglect… to respond". However, the CEO has acknowledged this failure and has stated that the delay in conducting the internal review was unintentional and due to an administrative oversight.

D. ISSUES UNDER REVIEW IN THIS HEARING

[33] The issue under review in this hearing is:

1. **Whether reasonable efforts were made to locate records subject to the access request as required by regulation 6(1) of the FOI Regulations.**

[34] Regulation 6 stipulates certain requirements in relation to a reasonable search, as follows:

> *6. (1) An information manager shall make reasonable efforts to locate a record that is the subject of an application for access.*
>
> *(2) Where an information manager has been unable to locate the record referred to in paragraph (1), he shall make a record of the efforts he made.*

[35] Section 43(2) provides:

> *(2) In any appeal under section 42, the burden of proof shall be on the public or private body to show that it acted in accordance with its obligations under this Law.*

E. CONSIDERATION OF ISSUES UNDER REVIEW

1. **Whether reasonable efforts were made to locate records subject to the access request as required by regulation 6(1) of the FOI Regulations.**

The position of CAL:

[36] CAL points out that the request was "very large", and required collecting records from several departments within the organization. The IM forwarded the request to the relevant departmental heads who then supplied the IM with "the documentation… which in their opinion met the applicant's request". In this manner CAL says some 186 records were supplied to the Applicant in the initial response of 27 October 2014, "some of which themselves included a multitude of records". CAL states this was "a substantive and reasonable response to the applicant's broad request."

[37] CAL states that, while the Applicant's request for an internal review claimed that records were missing from the initial response, he did not specify what those records were until later in the process.

[38] In the (redundant) Internal Review Decision of 19 December 2014, the CEO reached the conclusion that the request was too broad, and that it would be an unreasonable diversion of resources to process the request further without it being narrowed.

[39] Since CAL agreed to conduct further searches for the records in the course of the appeal the matter of unreasonable diversion of resources under section 9(c) was effectively abandoned and is no longer at issue in this Hearing.

[40] CAL says that the Applicant's response to the invitation to narrow the request was to appeal the matter to the ICO without narrowing the scope of the request, and without – at least initially - specifying what was missing from the records already provided.

[41] According to CAL, when the Applicant did provide a list of missing documents to the ICO, they turned out to be in part documents that had already been disclosed in the initial response of 27 October 2014, including training records. CAL states that "it was apparent … that the applicant did not review what was released to him in a diligent manner."

[42] When the ICO accepted the appeal, CAL started what it calls "a process of very labour intensive physical and deep electronic searches, looking for any and all records that could be responsive to the request and not previously provided." CAL says this approach was "more than reasonable" since rather than pursuing the claim of unreasonable diversion of resources, it chose to "work with the applicant and ICO in the spirit of mediation", and rejects any suggestion that it deliberately employed delaying tactics or was uncooperative, as suggested by the Applicant.

[43] CAL says that on 9 July 2015 it again invited the Applicant to narrow the request and identify the specific records that remained outstanding. In an email sent on that day, CAL provided the Applicant with approximately 50 additional documents, and also attempted to explain the difficulties raised by the very broad nature of the request. CAL says that a search for the Applicant's name in their computer systems "produced well over two thousand documents in several formats", each of which had to be individually verified. This ongoing process resulted in the disclosure of an additional seven records in August 2015.

[44] CAL states that the above approach demonstrates that it was seriously undertaking a search despite the challenges posed by the continued broad nature of the request. CAL

also states that it supplied any documents that were specifically mentioned by the Applicant.

[45] On 3 September 2015 CAL says it was surprised by what it considers "the acrimonious response" from the Applicant, who identified more records he wished to obtain, including flight logs, a record of flight hours, information about specific flights in which the Applicant took part, a flying roster, letters relating to the Applicant's training, records relating to a grievance, and more. CAL says this was the first time the Applicant provided a definitive listing of the records that were outstanding, and in this sense, finally narrowed the request.

[46] In its response about three weeks later, CAL provided a listing of the items requested by the Applicant on 3 September, indicating that all records had already been provided beforehand, or were subsequently provided. CAL believes this "demonstrates…that CAL had made reasonable efforts to locate records all along". CAL says that once it was provided with specific details it "responded promptly and effectively thereafter."

[47] CAL believes that the Applicant did not provide sufficient details about what records he wished to access until his communication of 3 September 2015, and that once he did, CAL went to "great lengths to conduct further searches and to provide additional information". By doing so, CAL believes that "these supplementary efforts have more than fulfilled [CAL's] obligation to make all reasonable efforts… and [CAL] has… gone beyond the spirit and intent of the FOI Law."

[48] Finally, CAL expresses its willingness to make additional records of a similar nature available, "provided <u>the same are identified in a specific manner</u>" (emphasis added by CAL). However, in the event that the Applicant were not inclined to identify additional records specifically, this would in the views of CAL "constitute a further unreasonable diversion of resources."

[49] CAL's Reply Submission asks me to reject the appeal as "an abuse of process", on the basis that the Applicant has failed to frame the request "in a manner that…is rational and proportionate" which it calls "inimical to the objects of the Law, namely to provide access to information in a timely fashion." CAL states:

> *A Public Authority should not be held to a standard of perfection in circumstances where the predicate request is itself imperfect, irrational and disproportionate. To hold otherwise would impose an unjustified burden on a Public Authority and render nugatory and meaningless the statutory regime contemplated by the Law.*

[50] The Reply Submission contends that "A request should be subject to constraints and ought not to be constructed in a broad and unparticularised fashion."

[51] CAL asks me to reject the appeal, asserting that, where a request made under the FOI Law as "an adjunct to civil proceedings", as in the present case, there is a risk of abuse of process, namely,

> *…where an Applicant in other proceedings particularizes the information sought but fails unjustifiably in the current proceedings [i.e. the FOI appeal] to similarly particularise and now contends that the Public Authority has acted unreasonably.*

[52] Specifically, CAL claims that "Factually, had [CAL] been given a more precise request, it would have complied", as it claims it did in the parallel civil proceedings.

[53] The Reply Submission clarifies that in relation to a number of the types of information listed by the Applicant, CAL is not aware of any further records beyond the ones already disclosed. This is for instance the case in relation to training records, minutes of Board meetings, and emails and correspondence relating to the Applicant.

[54] In relation to the Applicant's assertion that CAL has violated regulation 6(2) by not providing a listing of efforts made to locate the requested records, CAL states that it has kept the ICO "fully aware of what records were provided to the Applicant and of the extensive efforts taken… to locate the same."

[55] Finally, CAL denies that its record keeping is deficient, as asserted by the Applicant.

The position of the Applicant:

[56] The Applicant claims that CAL did not make reasonable efforts to locate the records that are subject of the request made on 2 September 2014, and that CAL "has only provided partial and incomplete disclosure".

[57] The Applicant reiterates that CAL needed an extension of the deadline for their initial response, and notes that, when the first set of records was provided to him on 27 October 2014, they were "wholly incomplete and not in any order; no listing accompanied the documents to specify what was being provided."

[58] The Applicant notes that CAL did not meet the statutory deadline for the internal review, and points out that a Writ of Summons was served on CAL for the production of all documents and records on 18 March 2015, pertaining to the legal challenge the Applicant is mounting against CAL in relation to the termination of his employment. The Applicant says this was "primarily done to protect my rights due to the delay tactics being employed by CAL and especially given the fact that CAL had refused to provide me access to my records."

[59] The Applicant states that a draft Summons seeking disclosure of documents was served on CAL on 14 April 2015, after which documents were immediately provided to him. The Applicant observes: "once again I had not been provided with everything and proceeded with the appeals process [under the FOI Law]."

[60] The Applicant appears not to have considered the communication from the CEO dated 19 December 2014 to be an actual Internal Review Decision, and continued to ask for an internal review as late as May 2015.

[61] The Applicant acknowledges that the CEO released a number of documents on 9 July 2015, and that the CEO asked that the request be narrowed and that a listing of documents not yet disclosed be provided. The Applicant emphasizes that the many documents that were now being disclosed confirm the inadequacy of CAL's previous efforts. As well, the Applicant states that "it was obvious that some documents were still outstanding", for instance a certified copy of the Applicant's flying logs. When the Applicant informed CAL of the specific documents that remained outstanding, the CEO disclosed a number of further documents on 28 September 2015.

[62] In his Submission the Applicant states that "at least" the following documents presently remain outstanding:

i. *A detailed list of my personal records held and provided by CAL;*
ii. *My complete captain upgrade training records;*
iii. *All written communications between CAL and CAACI regarding my captain upgrade/training, any occurrences/events/incidents and my termination;*
iv. *My line supervisory flying records (2011-2012);*
v. *Minutes of any meetings relating to me;*
vi. *All emails/correspondence concerning my employment with CAL*

[63] The Applicant does not only claim that CAL has not made reasonable efforts, he also believes:

> *CAL has deliberately withheld my personal records … by delaying the matter and hiding behind the excuse of diversion of resources and the making of false statements as to my request being too broad. My request was and still is very simple: "CAL to provide me with a copy of my personal records".*

[64] In addition, the Applicant claims that the remaining outstanding records fall within the last few years of his employment with CAL, and should therefore be readily at hand. As well, the Applicant points out that the Civil Aviation Authority of the Cayman Islands (CAA) requires the type of training records he has requested to be carefully maintained and readily available upon demand. This leads him to reject the notion that such records could not be easily provided by CAL, and that it would be an unreasonable diversion of resources to do so.

[65] The Applicant makes a particular point of criticizing CAL for disclosing the records "in a piecemeal fashion", saying that "they have not been categorized, indexed or listed in any order or any sensible manner". He believes this is indicative of the "chaotic manner" in which his request has been handled.

[66] The Applicant claims that CAL is also in violation of regulation 6(2), in that, he claims, CAL has not provided the ICO with "its efforts… to find the documents."

[67] Finally, the Applicant claims poor record keeping on the part of CAL, and therefore a violation of section 52(1) which provides:

> *52. (1) Every public authority shall maintain its records in a manner which facilitates access to information under this Law and in accordance with the code of practice provided for in subsection (3).*

Discussion:

[68] The two parties clearly have very different perceptions of the nature of the initial request and the resulting search for responsive records. While the Applicant calls the request "simple", and believes the search was "inadequate", "piecemeal" and "chaotic" because all responsive records should be readily at hand, CAL refers to the request as "very large" and "too broad", and says it necessitated "very labour-intensive physical and deep electronic searches" which it says it conducted "beyond the spirit and intent of the FOI Law".

[69] Applicants should do their best to cooperate with a public authority whose information they apply for by making their request as clear and precise as possible, and avoid shifting or expanding the scope of the request, as I believe has happened to some degree in the present case.

[70] In particular, section 7(2)(b) requires that,

> *(2) An application … -*
>
> *…*
>
> *(b) shall provide such information concerning the record as is reasonably necessary to enable the public authority to identify it.*

[71] However, when responding to a request for access under the Law public authorities clearly have a duty to assist applicants.

[72] Section 7(3) provides:

> *(3) A public authority to which an application is made shall-*
>
> *(a) upon request,* ***assist the applicant in identifying the records to which the application relates;***

[73] Section 11(1) provides:

> *11. (1) Where the information provided by the applicant in relation to the record is not reasonably necessary to enable the public authority to identify it,* ***the authority shall afford the applicant a reasonable opportunity to consult with the authority with a view to reformulating the application so that the record can be identified****.*

[74] Section 49(1)(b) provides:

> *49. (1) Every public authority shall appoint an information manager who, in addition to any duties specifically provided for under this Law, shall, under the general and specific supervision of the head of the authority concerned,-*
>
> *…*
>
> *(b) …* ***assist individuals seeking access to records****…*

[75] Regulation 21(b) provides:

> *21. An information manager shall-*
>
> *…*
>
> *(b)* ***conduct interviews with applicants to ensure that the appropriate records are located****;*

[76] In Hearing Decision 35-01213/35-01313 I have explained the test of the reasonableness of searches conducted under the FOI Law, as follows:

> [*51] ….A similar question was the subject of a case, Bromley v Information Commissioner, before the UK Information Tribunal, in which the Tribunal concluded that,*

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

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

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

[53] This is the routine approach in the UK's ICO, and it is relevant in the present Caymanian case as well, even though the Cayman Islands FOI Law relates the right to access directly to "records", and not to "information", and the UK Act puts this issue in terms of whether information is held, rather than requiring reasonable search efforts. Therefore, I intend to use these criteria to examine the reasonableness of the public authority's search efforts.[4]

1. The quality of the public authority's initial analysis of the request:

[77] CAL has not specified what specific steps it took in terms of analyzing the request and searching for relevant records as it was preparing its initial response, although it has provided a general description of the steps taken by the CEO since the commencement of the appeal. While some general information is provided on the complexity of the search for physical and electronic records, it is not clear to me exactly which types or formats of records were searched, or how these are filed and managed by CAL.

[78] In the initial phase of this case the IM's responsibility of analyzing the request in order to locate all responsive records seems to have been passed onto departmental heads who were expected to supply documents to the IM "which in their opinion met the applicant's request."

[79] I find it surprising that the IM - who is after all the person appointed under section 49(1) to "receive requests…, assist individuals seeking access,…", and who is tasked by regulation 6(1) with making "reasonable efforts to locate a record,…" - does not appear to have played a more proactive role in analyzing the request and locating responsive records. Regulation 22(1) allows for delegation of the IMs functions, but emphases that the IM remains accountable:

22. (1) An information manager may delegate such of his functions as he thinks necessary or expedient but shall remain accountable for the discharge of those functions.

[80] While the methodology initially employed by CAL yielded a great number of records, it is not entirely surprising that some records may have been overlooked, particularly since the Applicant's request emanated from a delicate personnel matter. No thought seems to have been given to potential conflicts of interest in this regard.

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[4] Information Commissioner's Office *Hearing Decision 35-01213/01313 Ministry of Education, Employment and Gender Affairs* 14 March 2013 paras 51-53

[81] Based on the information before me, I do not consider that CAL adequately analyzed the request, which resulted in the provision of an inadequate initial response.

2. The scope of the search that it decided to make on the basis of that analysis:

[82] The fact that many more relevant documents were located and disclosed several months after the Applicant had received the initial response from CAL demonstrates *prima facie* that the scope of the initial search and response from CAL were not reasonably adequate. However, this consideration is somewhat tempered by the apparent expansion of the scope of the request over time by the Applicant. For instance, flight logs are not mentioned in the original request, and do not fall easily within the stated “personal” nature of the original request.

[83] If a public authority needs any clarification about a request, or if it considers a request too broad in scope, the Law requires that public authority to interact with an applicant to identify and locate responsive records. This is a matter of courtesy, common sense and effectiveness, but, above all, a statutory obligation.

[84] I have some difficulty sympathizing with CAL’s protestations that the request was too broad. Unlike what CAL seems to suggest, an applicant cannot be chastised for making a request in a “broad and unparticularised fashion”. If CAL believed the request was unreasonably broad, the IM should at an early stage have communicated with the Applicant to seek to narrow it down. If the Applicant was not conducive to that idea, it was open to CAL to raise section 9(c) - as done belatedly by the CEO in the redundant Internal Review Decision. That provision stipulates that a request does not have to be complied with if doing so would unreasonably divert the public authority’s resources.

[85] I have not seen any evidence that the IM communicated with the Applicant and sought to clarify or narrow down the request. The CEO attempted to do so in the Internal Review Decision, which however was redundant because it was not completed within 30 days and the Applicant had already raised an appeal, as he was entitled to do, as discussed above.

[86] Based on the above facts I find the scope of the initial search was not satisfactory.

3. The rigour and efficiency with which the search was conducted:

[87] The Applicant alleges that CAL has deliberately put obstacles in his way. Although significant delays were encountered, I have not found any evidence that these were the result of deliberate actions or decisions of CAL.

[88] Sometime after making the initial request, the Applicant provided a detailed listing of requested records to the ICO, which was passed on to CAL on 22 January 2015. It then took CAL more than five months to locate the bulk of the remaining responsive records and provide them to the Applicant on 9 July 2015 and in the ensuing months. Despite the explanation provided by the CEO, It remains unclear to me why this new search should have taken more than 5 months.

[89] While to some degree I understand CAL’s position vis-à-vis the breadth of the responsive records, the seemingly shifting nature of the request, and the significant efforts CAL made to locate responsive records, it is unsatisfactory for CAL to claim now, in the course of the

Hearing before me, that the original request was too broad, in an attempt to demonstrate the reasonableness of the overall search that was conducted.

[90] However, notwithstanding the piecemeal and delayed nature of its overall response, CAL belatedly did engage constructively with the Applicant and conducted a meaningful search which yielded additional responsive records which were disclosed.

[91] Also to its credit, CAL has expressed a willingness to provide further outstanding records on the condition that they are reasonably identified by the Applicant.

[92] The Applicant emphasizes that CAL did not provide him with a listing or the disclosed records. However, while providing such a listing would be helpful, there is no legal obligation to do so.

[93] **Consequently, despite the weaknesses of CAL's initial search and the lack of detailed documentation of the search conducted, considering all the efforts made by CAL to date I find that CAL has now made "reasonable efforts to locate" the requested records as required under regulation 6(1).**

F. FINDINGS AND DECISION

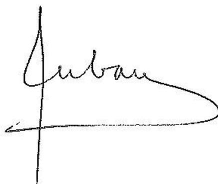
Under section 43(1) of the *Freedom of Information Law, 2007* for the reasons stated above I make the following findings and decision.

For the above reasons, I find that Cayman Airways did not conduct an adequate initial analysis or search for responsive records in relation to the request, resulting in the provision of an inadequate initial response.

However, in view of the reasonable and constructive approach taken by Cayman Airways in the course of the appeal, and their declared intention to continue providing additional records of a similar nature to the Applicant on the condition that they are reasonably identified, I find that Cayman Airways has made "reasonable efforts to locate" the responsive records, as required under regulation 6(1), and on that basis I dismiss the appeal.

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.



Jan Liebaers
Acting Information Commissioner
17 March 2016