

Everyone has the right to access information that allows them to participate in national decision making



Opening Doors to Information



“A nation under a well regulated government should permit none to remain uninstructed.

It is a monarchical and aristocratical government only that requires ignorance for its support.”

Thomas Paine
Right of Man

Information Commissioner's Office Newsletter
Cayman Islands

▪ Issue 3 ▪ March 2010 ▪

TRANSPARENCY

INFORMATION COMMISSIONER'S OFFICE STAFF TRAINING & RETREAT

The Information Commissioner's Office (ICO) held various in-house training sessions and a staff retreat in the last quarter. Staff completed a selection of team building tasks as well as attended presentations and training modules.

The retreat started out with some exercises directed at helping us to communicate better with each other and the public. This was followed by a written exercise and presentation on personalities in the workplace and how to get the best out of a team environment.



The ICO team during a training session discussing the action words used in the Law and how they can be interpreted.



Christina and Pasha present the group with some guidance tips on how to use the newly revised file plan of the ICO.

After lunch, a training session on the new ICO File Plan was given which explained new records management policies which have recently been introduced to the office and ensures we are in line with best practices for records management.

The day concluded on a fun note with the group watching a very interesting and inspirational video about the Aurora Borealis and a very creative session in which teams were assigned the task of designing various animals and objects out of aluminum foil.



The ICO Team together and displaying their finished creations.

The retreat was touted a success by all who attended and really allowed the small ICO team to build a better understanding of each other and our roles with the ICO.

ICO DECISION 2 - 01109



THE APPLICANT AND THE ROYAL CAYMAN ISLANDS POLICE SERVICE

Summary:

A media Applicant was refused access to a report filed with former Police Commissioner James Smith by Martin Bridger relating to Mr. Justice Alexander Henderson.

The Information Commissioner upheld the Public Authority's decision to refuse access to the responsive record and found that the record requested by the Applicant is exempt from disclosure under the Freedom of Information Law, 2007 ("FOI Law") as it would be privileged from production in legal proceedings on the ground of legal professional privilege.

Issues under review:

Is the record requested exempt from disclosure under sections; 17(a); 17(b)(i); 16(b)(ii); and 20(1)(d) of the FOI Law?

The following is a small excerpt from the Information Commissioner's decision:

Legal advice privilege "serves to promote full and frank communications between solicitor and client, thereby facilitating effective legal advice, personal autonomy (the individual's ability to control access to personal information and retain confidences), access to justice and the efficacy of the adversarial system".

In common law, in order for legal advice privilege to attach to all or part of a document, four things must exist:

- (i) *there must be a communication, whether oral or written;*
- (ii) *the communication must be of a confidential character;*
- (iii) *the communication must be between a client (or his agent) and a legal advisor; and*
- (iv) *the communication must be directly related to the seeking, formulating, or giving of legal advice.*

In this case, condition (i) is met as the responsive record has been identified.

With respect to (ii), having seen the report in its entirety, I am confident that the document was meant to be confidential not only because each page of the body of the report was marked – "confidential", but it was also copied to a limited number of people who had a vested interest in the maintenance of its confidentiality. The investigative and procedural nature of its contents,

also indicate to me that it was not intended to be a public document.

In this case it is clear that the RCIPS sought advice of a legal nature from the Cayman Islands Government Legal Department who advise and represent the public authorities of the country. This is evident in the memorandum from the Legal Department in which further details on Operation Tempura were requested so that it could better advise the RCIPS on how to proceed. Based on this evidence of a client-solicitor relationship, I am satisfied that the report was a communication between a client and its legal advisor which satisfies point (iii) of the solicitor-client privilege test set out above.

With respect to (iv), I am in receipt of a memorandum to the Acting Commissioner of Police James Smith from the Legal Department requesting further information to enable the Legal Department to prepare for litigation. This memorandum references previous correspondence which I have not seen, but I am confident that this previous correspondence represented the seeking of legal advice by the RCIPS. I therefore find that condition (iv) also applies to the document.

From the documents received from the RCIPS I am satisfied that the record requested was prepared to enable legal advice to be given, and as such represents confidential communication between the RCIPS and their legal representative. Legal advice privilege can therefore be claimed.

Findings:

The report written by Martin Bridger on 14 April 2009 related to the Operation Tempura investigation and the arrest of Grand Court Judge Alexander Henderson is exempt from disclosure under Section 17(a) of the FOI Law.

Decision:

As per section 43(3) of the FOI Law I reject the appeal of the Applicant.



The Information Commissioner, Jennifer Dilbert signs ICO Decision 2 - 01109 while Gary Cordes and Cory Martinson look on.

**To access the
entire decision
for ICO Hearing
2 - 01109,
please visit the
'Appeals'
section
of our
website at**

www.INFOCOMM.ky

GOVERNMENT

WHAT IS MEDIATION?

The ICO has adopted a policy in the first instance to mediate appeals filed with the office. The following are some of the ways this process can benefit all who participate

Mediation is an informal, relatively quick and inexpensive means to enable the Information Commissioner's staff to investigate and narrow the issues under dispute, to negotiate with either side and to minimize any perceived conflict between the parties.

Mediation is conducted on a voluntary basis and all information passed on to the mediator is also kept on a confidential basis and is not shared between the parties unless the originator's consent is provided. Information provided by the parties during mediation will not damage their case should the matter proceed to a formal Hearing before the Commissioner.

The mediator is not an advocate for either side. The mediator is rather an advocate for the legislation. The mediator is an impartial referee.

In practice, normally the mediator will discuss the matter separately with each party and review the records and/or issues under review. The mediator will provide an opinion on what he/she believes has been properly done, make remedial recommendations to the public authority and provide an assessment of the appellant's likelihood of success at a hearing should the matter proceed to that level.

The public authority is within its rights to stand by its original decision, and the applicant has the right to request that the matter proceed to a formal hearing before the Information Commissioner at any time.

While mediation may not result in either party changing their positions, successful mediation may result in disclosure of more records, clarification of a decision, receipt of a response, reduction or clarification of a fee, more records located, narrowing of a request or the issues under review, annotation or amendment of personal information or the better understanding of an exemption.

2010 PUBLICATION SCHEMES

It is a requirement of the FOI Law that all public authorities publish details of their agency and what it does as well as a comprehensive list of the records they hold and how these records can be accessed.

The 2010 Publication Schemes were Gazetted on 4 January 2010 in a special supplementary.

The ICO has reformatted this list to be more user-friendly and it can be found on the home page of our website. Just visit the link in the right hand column - www.INFOCOMM.ky

ACCOUNTABILITY

FAREWELL TO THE DEPUTY...

Gary Cordes, our Deputy Information Commissioner completed his last day with the ICO on 12 February 2010.



Sonji, Cory and Gary aboard the Jolly Roger for a final boy's style farewell.

During his tenure, he was critical in helping to mould the ICO team. His role included overseeing many aspects of

administration, he was instrumental in policy development and implementing the mediation process adopted by the ICO.

The Cordes family made many friends and developed strong bonds during their years on the island. They return to the UK to be with their extended families and with new career prospects.

We thank Gary for all his hard work and while we certainly miss him we wish him only the best in his future endeavors.

The ICO has a...

NEW MAILING ADDRESS

P.O. Box 1375
Grand Cayman KY1-1108
CAYMAN ISLANDS

ICO STATISTICS

January 5 - December 31, 2009

Number of Appeals Opened –26

Number of Appeals Closed - 19

Number of Hearings Conducted - 2

Number of upcoming Hearing - 2

Files Referred Back to Authority - 11



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Hours: Open to the public from 9:30 am to 4:00 pm, Monday thru Friday

Sister Islands ICO: Periodic visits to the Brac will be scheduled

For more information visit our website:

www.INFOCOMM.ky