

**INFORMATION COMMISSIONER'S OFFICE
CAYMAN ISLANDS**



AMENDED

NOTICE OF WRITTEN HEARING

**16 February 2010
ICO - 02209**

Freedom of Information Law (2007)

**IN THE MATTER OF A REFUSAL UNDER
THE FREEDOM OF INFORMATION LAW ("FOI LAW")**

BY

DEPARTMENT OF AGRICULTURE ("DOA")

To: The Applicant
To: Public Authority: (Department of Agriculture)
To: Third Party: (Alliance of Marine Mammal Parks and Aquariums)

This is notice to you that, under section 43 of the Cayman Islands Freedom of Information Law ("FOI Law") the Information Commissioner ("Commissioner") will hold a written hearing respecting the appeal filed by the applicant dated August 6, 2009.

This appeal involves the refusal by DOA to grant access to the Alliance of Marine Mammal Parks and Aquarium Standards and Guidelines under section 17(b)(i) of the FOI Law. Section 17(b)(i) states that an Official Record is exempt from disclosure if the disclosure thereof would constitute an actionable breach of confidence.

The Information Commissioner decided on 16 February 2010, after an application by the Third Party to this Hearing, to allow sections 21(a)(ii) and 21(b) as grounds for exemption. The section 21 exemption relates to records that contain commercially sensitive information.

A Fact Report outlining the chronology of this case is attached, as are the relevant sections of the FOI Law and guidelines for written submissions.

1. ISSUE UNDER REVIEW REQUIRING A RESPONSE BY THE APPLICANT, THE PUBLIC AUTHORITY AND THE THIRD PARTY

At the hearing, the Commissioner will consider whether the record is exempt from disclosure under sections; 17(b)(i); 21(a)(ii) and 21(b) of the FOI Law.

2. BURDEN OF PROOF

Section 43(2) of the FOI Law states that in any appeal, the burden of proof shall be on the Public Authority to show that it acted in accordance with its obligations under this Law.

3. RECORDS IN DISPUTE

The Public Authority must provide a copy of the records in dispute to the Commissioner, including all the records provided to the applicant in the response to the request, if applicable.

The Commissioner directs the parties [and any applicable Intervener(s)] to provide submissions in accordance with the schedules outlined below. These demands are made under the powers accorded to the Commissioner under section 45 of the FOI law, which gives the Commissioner the power to conduct a full investigation, including by issuing orders requiring the production of evidence, compelling witnesses to testify and inspecting any exempt record.

5. SCHEDULE FOR SUBMISSIONS

Initial Submissions

Each party must submit an initial written submission telling the Commissioner why a finding should be in their favour, and addressing the issue set out above.

Initial submissions are due on 1 March 2010 no later than 12:00 noon

Exchange of submissions and reply

On 1 March 2009, initial submissions will be exchanged between the parties. The Applicant and the Public Authority will have ten calendar days from that date to file their final reply submissions.

Final reply submissions are due on 11 March 2010 no later than 12:00 noon

6. IN CAMERA SUBMISSIONS

Any *In Camera* material may be submitted, and the Commissioner reserves the right to question whether the material has been appropriately submitted.

7. WHERE TO SEND SUBMISSIONS

Submissions may be sent via fax, courier, mail or by hand to:

Information Commissioner's Office
Attention: **Registrar of Hearing**

Physical Address: Elizabethan Square
2nd Floor, Building C
George Town, Grand Cayman

Mailing Address: PO Box 1375
Grand Cayman KY1-1108
CAYMAN ISLANDS

Fax: 345-949-2026
Phone: 345-747-5402

Please ensure if you are mailing your submission that you mail it early enough to reach the ICO on or before the due date.

8. CLOSE OF HEARING

Under section 43, once the Commissioner has given both parties an opportunity to provide their views on all matters and questions under review, a decision must be rendered within 30 calendar days.

The hearing closes on **31 March 2010**. The Commissioner will render a decision on or before 30 April 2010. The Commissioner may extend this time for a further 30 calendar days, if the Commissioner notifies the parties in writing of this fact before or on 30 April 2010.