

ICO Hearing 25–00812
Decision

Port Authority of the Cayman Islands

Jennifer Dilbert, MBE, JP
Information Commissioner for the Cayman Islands

25 October 2012

Summary:

The Port Authority of the Cayman Islands withheld various records pertaining to the termination by Government of an agreement to construct a new cruise berth in the George Town port.

The Information Commissioner upheld the decision of the Port Authority to withhold some records, ordered the disclosure of some, and found some records to be duplicates or insignificant records.

Statutes¹ Considered:

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

Exclusions and Exemptions Considered:

Section 23(1), 20(1)(b) and 20(1)(d) of the *Freedom of Information Law, 2007*

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

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A. INTRODUCTION

[1] On 29 January 2012 the Applicant made a request to the Port Authority of the Cayman Islands (PACI) as follows:

Following the withdrawal of a request made by the applicant for documentation relating to the port authority and the GLF negotiations and in the wake of Ms Dilbert's order relating to them [the Applicant] would now like to make a request for those same documents as ordered to be released by the commissioner [in Hearing Decision 019-01911]. In addition to notes or minutes we would also like to see any correspondence from or to the port authority relating to GLF.

[2] The records relating to Hearing 19-01911 consisted of five sets of PACI Board minutes which were ordered to be disclosed. The other records in that Hearing, namely a Memorandum of Understanding (MOU) between the Cayman Islands Government and China Harbour Engineering Company Ltd., a report from PACI's (then) legal counsel, and a financial analysis commissioned by PACI, were not found to be exempt by the Commissioner, but they were not ordered disclosed as they were already in the public domain after being leaked to the press.

[3] On 25 February 2012 PACI disclosed the five sets of PACI Board minutes on its website in response to the first part of the new request. On 1 March the Applicant wrote to PACI as follows:

As I have heard nothing further from you regarding the full request for documentation and correspondence etc relating to GLF to date, and given the references in the minutes I now have to other meetings plus recent revelations about the GLF payment it is apparent that there must be more documents relating to the issue since June last year.

[4] The Information Commissioner's Office (ICO) accepted an Appeal in this matter, based on the deemed refusal of records with the exception of the minutes provided on 25 February 2012, and the involvement of the Principal Officer (the Port Director) in the first part of the request, and requested the following:

- 1. a listing of any Port Authority records which are responsive to the (second part of the) above request;*
- 2. an unredacted copy of any responsive records to which access is being denied;*
- 3. a statement of the legal basis applied by the Port Authority for refusal of access, or partial refusal of access, in accordance with the exemptions or exceptions laid out by the FOI Law.*

- [5] On 3 April 2012 PACI released two letters and a redacted set of minutes of the Board meeting of 15 December 2011. PACI also indicated the existence of other “remaining records”.
- [6] From 2 March to 12 June 2012 there was a copious amount of correspondence between the ICO, PACI and their lawyers in order to identify the full extent of these “remaining records”, and to allow the ICO to view them. After these records had been identified, and the ICO was allowed to inspect the records on site, on 12 June the ICO sent an informal, non-binding opinion letter to both parties with an analysis of the claimed exemptions, as per standard procedure.
- [7] On 13 July 2012 PACI informed the ICO that it would not disclose any further information “voluntarily”, and the matter moved to a formal Hearing before the Commissioner.
- [8] As stated in the Fact Report agreed by both parties, the records in dispute consist of the partially redacted PACI Board minutes of 15 December 2011, and 244 tabs containing records relating to GLF dated between 10 June 2011 and 27 January 2012. Copies of these records were provided to the Information Commissioner in the course of the Hearing.
- [9] The Applicant accepted the ICO’s informal opinion of 12 June 2012 as to which records are exempt under sections 17(a) and/or 23(1) of the FOI Law. Therefore, these records have not been taken into consideration in this Decision.

B. BACKGROUND

Decision: Hearing 19 - 01011 Port Authority of the Cayman Islands, 13 December 2011

- [10] An Applicant was refused access by the Port Authority to “...a copy of all notes and or minutes of meetings between the Government and the Port Authority (as well as any other governmental body) that touches and or concerns the [GLF] project ... from December 2010 to date.”
- [11] On 13 December 2011, I overturned the decision of the Port Authority to withhold the responsive records, and required that it disclose the responsive records that had been provided to me in the course of the appeal. The deadline for the release of the responsive records was 27 December 2011.
- [12] In an unusual turn of events, on 7 January 2012, several days after the Decision had been issued, the Applicant advised the Commissioner that they no longer required the records. However, given that another applicant had in the meantime requested the same responsive records, and that I had found the records not to be exempt under the FOI Law, I required the Port Authority to comply with my Decision and disclose the records. The Port Authority objected and questioned the validity of the Commissioner applying the original Decision to a new applicant. On 7 February, after expiry of the statutory period allowed for appeal to the courts, I advised the Chief Justice of the Port Authority’s failure to comply with the order, as I am allowed to do under section 48.
- [13] Subsequently I decided that for the courts to determine whether the records should be

released by the enforcement of the Decision would most likely involve a long legal battle. It seemed to me that a better way forward would be for the new applicant to make a new request and go through the normal process as set out in the FOI Law. I therefore withdrew my letter to the Chief Justice.

- [14] This present Hearing (25-00812) follows from this new request by the new applicant who also requested additional records, as set out above.

C. PROCEDURAL MATTERS

- [15] The procedural issues that arose during this appeal are unprecedented, both in number and complexity. The Port Authority repeatedly failed to meet deadlines and cooperate fully with the ICO in dealing with the appeal, and in my opinion showed a total disregard for the policies and procedures of the ICO, and the FOI Law. This resulted in delays and much additional work on the part of the ICO to bring the appeal to this point. These procedural matters will be addressed separately by means of an investigation under section 44, as they raise some very important issues with respect to compliance with the FOI Law. However, amongst other issues I note the following apparent shortfalls:

- PACI stated repeatedly that another public authority held significant responsive records, but the request was not transferred as required in section 8;
- After not responding to the second part of the request within the statutory period of 30 calendar days, PACI delayed its response for an additional month after the appeal had already commenced;
- After indicating the existence of unspecified “remaining records” in its letter of 3 April 2012, PACI delayed for approximately an additional month, any explanation of what these records were;
- After providing the Applicant with a very limited disclosure consisting of two letters and a redacted set of Board minutes on 3 April, PACI seemingly sought to consider the matter closed, all the while indicating the existence of further “remaining records”;
- The apparent confusion between “disclosure” and “providing records to the ICO” on the part of PACI – which caused further delays;
- PACI’s delay, for more than a month, in responding to the opinion letter, and the disappointing final response, in which PACI indicated that it would not disclose information “voluntarily”, which in my opinion goes against the intent of the FOI Law which precisely grants a general right to access government records and places a requirement to publish as much as possible proactively.

- [16] I wish to address one point in particular here, namely the matter of the provision of the responsive records to the ICO. As noted above, PACI seems to have consistently confused the disclosure of records to an applicant, on the one hand, with the provision of copies of records to the ICO for the purposes of determining an appeal under the FOI Law, on the other hand.

- [17] In this regard, I utterly reject the argument of PACI that “PACI is unable to disclose any privileged documents in the absence of compulsion as to do so would result in waiver of privilege over these records”.

- [18] It is self-evident that I cannot meaningfully decide an appeal under the FOI Law without having access to the responsive records in each case. As repeatedly clarified to PACI, this is why section 45(1) provides that in coming to a decision on an appeal the Information Commissioner shall have the power to “call for and inspect an exempt record”. The same section also requires that such a record be inspected only by relevant members of staff of the Commissioner.
- [19] In addition, section 45(2) states that the Commissioner may *“examine any record to which this Law applies, and no such record may be withheld from the commissioner on any grounds unless the Governor, under his hand, certifies that the examination of such record would not be in the public interest”*.
- [20] It is clear from these provisions that a formal order is not necessary, and indeed it has not proven necessary in the past, as the Commissioner and her staff have consistently obtained access to exempt records in past appeals and hearings, including where legal professional privilege was being claimed.
- [21] Furthermore, any order made by the Information Commissioner is subject to judicial review, and the public or private body has 45 days in which to comply, or seek judicial review. Should the Information Commissioner be forced to issue a formal order for any exempt record in the course of each appeal, the appeals process as anticipated by the Law would be fundamentally undermined and would not be able to take place within a reasonable time frame. Remembering that the FOI process is usually time sensitive, and that deadlines for responses to applicants and the issuing of decisions are clearly set out in the Law, it cannot be the intention of the Law that an order be required every time the Commissioner has to have sight of a responsive record whether legally privileged or otherwise exempt.
- [22] Following a month of negotiation, unacceptable delays, and non-cooperative and obstreperous responses on the part of PACI, ICO staff was finally able to inspect the responsive records at the offices of PACI’s lawyers. The ICO was challenged at each step of the way, and while to expedite matters the ICO agreed to inspect records at the offices of the lawyers, it placed significant and unnecessary logistical burdens on the staff. It was doubly frustrating, and further testifies to the obstructionist approach by PACI, when the resulting informal opinion letter was apparently not seriously considered after a further delay of over a month.
- [23] PACI also argued that “grant of access to privileged or potentially privileged records is not protected by s. 54(3) of the FOI Law”. It is clear that 54(3) applies to “the grant of access to a record”, which in the context of the FOI Law must be taken to mean grant of access to an applicant, and not the provision of the record to the Information Commissioner in the course of an appeal.

D. ISSUES UNDER REVIEW IN THIS HEARING

- [24] At Hearing, the Information Commissioner will consider and decide whether the redacted sections of the PACI Board minutes of 15 December 2011 are exempt from disclosure under sections 17(a) and/or 23(1).
- [25] The Information Commissioner will also consider and decide whether the “remaining records” are exempt from disclosure under section 17(a).
- [26] Section 17(a) states that: *“An official record is exempt from disclosure if – (a) it would be privileged from production in legal proceedings on the ground of legal professional privilege;”*
- [27] Section 23(1) states that: *“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.”*
- [28] Furthermore, section 26(1) provides that the exemption in section 23(1) is subject to a public interest test.

E. CONSIDERATION OF ISSUES UNDER REVIEW

- [29] The “remaining” responsive records provided to me consist of 244 tabs of records, some containing multiple documents. As explained above, 140 of these tabs contain records which do not have to be considered by me, as the Applicant has agreed to accept the ICO’s opinion (expressed in the opinion letter of 12 June 2012) that these records are, indeed, exempt under section 17(a) as they would be privileged from production in legal proceedings on the ground of legal professional privilege. These records will therefore not be considered in detail in this Hearing
- [30] Given the volume of records to be considered in this Hearing, I have taken the general stance that if a section of a document has been redacted or withheld, which bears no relevance to the request, I will allow its exemption. In addition, in the case of a chain of emails I will rule on the tab with the full chain of emails, noting that the subsequent tabs are duplicates and therefore do not need to be considered separately.
- [31] I have also confirmed with the Applicant that they do not require copies of mundane administrative communications such as arrangements for meetings, confirmation of receipt of emails, requests for telephone calls, and tabs consisting of “blank pages” labeled as such. I have categorized these as “not significant” in the discussion below. I should point out that throughout the entire appeals process, PACI had ample time to communicate with the Applicant and could have easily reduced the scope of the request (as I was able to do). This would have resulted in eliminating the production of masses of insignificant, often duplicated records the inclusion of which I find inexplicable, and which seems to testify further to the inadequate approach to the appeal on the part of PACI, especially after all the delays listed above.

The position of the Applicant

- [32] While it is helpful for any applicant to put forward arguments in support of their position, it is important to note that, as per section 43(2) of the FOI Law, in any appeal under section 42, the burden of proof shall be on the public authority to show that it acted in accordance with its obligations under this Law.
- [33] In this case the Applicant has declined to submit any significant arguments, simply commenting that:

... the entire thing has been ridiculous from the start. [PACI] were advised to release more documents in the mediation period and chose not to continuing their six months of obstructionism and complete disregard for the FOI Law. I have every confidence that Ms Jennifer will deal with this within the law without me having to point anything out. Even if no further documents are released the issue has become more about their deliberate recalcitrance than anything else.

The position of the Port Authority and Discussion

- [34] In its submission, PACI has applied a blanket application of the legal professional privilege exemption to the entire set of “remaining” documents in this Hearing – with the exception of the single set of minutes released on 3 April, which was partially redacted, and which is considered separately below.
- [35] While a public authority can legitimately believe that all responsive records are covered by the same exemption, a blanket approach is rarely the correct approach, particularly where the responsive records are extensive. Section 12(1) requires that partial access is granted wherever possible. PACI should have considered each document separately and disclosed as much of it as is not exempted. In my consideration of each record, I consider the factors which determine if a document is privileged, as summarized in my previous Decisions and other applicable case law.
- [36] PACI submits that the “remaining” records contain communications, including attached or enclosed documents, between PACI and the Cayman Islands Government (CIG) as parties to the GLF dispute; the parties and their respective attorneys; the parties’ attorneys; the parties and/or their respective attorneys and the GLF attorneys; and the parties and/or their respective attorneys and the ICO itself with respect to the GLF appeal.
- [37] While I am willing to accept that some type of privilege may attach to communications between these various parties, many records contained in the tabs of records provided to me are records created by PACI in the normal course of their operations, such as board minutes and reports. Although they appear to have been passed to PACI’s attorneys in the course of the GLF dispute, and subsequently provided to me via PACI’s legal counsel, these records cannot be considered privileged en masse as further argued below. Were this the case, any public authority, when in receipt of an FOI request, or even prior to a request, would simply be able to pass the responsive records to their legal representatives and declare them privileged, thus making the FOI Law ineffective.

- [38] PACI states that one or more of the various categories of privilege they define are capable of jointly and/or separately attaching to each of the responsive records. These are:
- a) Litigation privilege – communications between a client or his lawyer and third parties for the purpose of litigation;
 - b) Common interest privilege – confidential communication of a privileged document to a person who has as common interest in its subject matter or in litigation in connection with which the document was brought into being, without there being any entitlement on the part of the recipient to access the document concerned;
 - c) Without prejudice privilege – communications between the parties to a dispute that are written or made with the aim of genuinely attempting to settle that dispute;
 - d) Legal advice privilege – communications between lawyer and client for the purpose of giving or receiving legal advice, in both, the litigation and the non-litigation context.
- [39] With respect to the claim of litigation privilege, while I accept that PACI did eventually have a legitimate expectation of litigation as the situation with GLF progressed, third party documents are not automatically covered unless they are created with the dominant purpose of litigation, which cannot be said to be the case in respect of records such as board minutes, reports, contracts and proposals.
- [40] On the claim of common interest purpose, while I appreciate that there was a joint legal position between PACI and the Ministry of Finance representing the Cayman Islands Government at large, and that litigation or advice privilege extends to communications between these two parties of the same side in the dispute with GLF, and their attorneys, this cannot cover routine documents brought into being in the normal course of business, well in advance of any conflict with GLF, such as board minutes or reports attached to correspondence.
- [41] The “without prejudice” claim relates to documents relating to the settlement of differences between PACI/CIG and GLF. Such communications are generally inadmissible as evidence in court, thus allowing the parties to engage in free discussions in search of a compromise. However, this privilege is not absolute, and, as above, does not apply to records created for other purposes in the normal course of business.
- [42] I have described my interpretation of legal advice privilege in previous Hearing Decisions, including Hearing 11-02410. A number of the communications under consideration here are indeed communications between legal professionals and their clients, while others clearly are not. Not all communications in the “remaining” records are between legal professionals and their clients, and not all relate to legal matters. Records such as board minutes and progress reports relating to the port expansion project clearly are not covered by this privilege.
- [43] I feel compelled to remark upon the lack of specificity in PACI’s submission. PACI has not made the effort to inform me which privilege is claimed over which specific records. Instead,

PACI has included several hundred pages of case law, without any further explanation of its meaning or application to the present case. This is disappointing as it is clearly not the case that all records under consideration are covered by all types of, or indeed any, privilege.

- [44] As well, it appears to me that other exemptions may apply to some of the “remaining” records. However, despite the extended time taken to respond to this request and appeal, PACI appears to have failed to inspect each record and properly apply other possible exemptions. In this regard, at the conclusion of their submission, PACI simply stated the following:

Additionally and supplementary to the submissions made above, it is PACI's submission that some of the Remaining Records may also qualify for exemption under section 20(1)(b) and (d) and section 23(1). Although these exemptions were not asserted at the time of PACI's response to the Applicant, there would appear to be no provision contained within the FOI Law which prevents PACI from claiming further exemptions from being applicable.

- [45] This approach is not acceptable. The Law clearly places the burden of proof on the public authority to show that it acted in accordance with the Law. Simply mentioning an exemption, stating that it “may” apply, and observing that there appears to be no objection to claiming late exemptions, does not constitute proof of compliance with the Law. In this case, from the onset, each record should have been examined by PACI, applicable exemptions should have been identified for each record, and reasons for their application in the particular circumstances of that record should have been noted and communicated to the Applicant and to the ICO. Despite the lengthy delays incurred by PACI in the pre-hearing stage of the appeal, none of this appears to have been done, and when my office carried out this task and presented its case in an informal opinion letter, even the most obvious conclusions and recommendations were not followed.

Responsive Record 1: Minutes of PACI Board Minutes of 15 December 2011 (230)

- [46] These minutes were partially disclosed to the Applicant on 3 April, 2012 with parts redacted under sections 23(1) and 17(a). I am satisfied that either or both exemptions apply to some of the redactions applied to these minutes. Additional redactions are made to parts of the record that have no bearing on the request, and as set out above, I will allow these redactions. However, the redaction of the titles of items 7, 8 and 10 is not supported by either exemption claimed, and should be disclosed.
- [47] **I require further information from PACI Board Minutes of 15 December 2011 to be disclosed.**

Remaining Responsive Records – application of section 17(a)

- [48] As mentioned above, many of the tabs contain chains of emails covering such insignificant and irrelevant matters as requests for phone calls, setting up of meetings or other administrative matters. It has been a waste of time and resources for me to have to plow through 244 tabs of records, peppered with such trivia. It has also no doubt been very

expensive for the Port Authority to have their lawyers receive, sort and copy all these records in the course of this appeal. Much of this could have been avoided had the Port Authority taken a sensible approach to the request, to the manner in which they communicated with the Applicant and to their level of cooperation with the ICO. Instead, the unreasonable manner in which this request was handled at every step along the way unnecessarily created additional cost, work and delays for all concerned, not least for the Applicant.

[49] My findings with respect to the application of section 17(a) are as follows:

Tab 1: Not exempt.
Tab 3: Duplicate.
Tab 5: Not exempt under section 17(a).

While I have found that the record contained in Tab 5 is not exempt under section 17(a), it is within my discretion as per section 42(4)(a) to determine that information should be otherwise protected, as I may make any decision which could have been made on the original application. Although PACI had ample time to apply other exemptions other than 17(a) to any or all of the responsive records, and despite indications via the ICO's opinion letter that all records may not be considered privileged by the Commissioner, they did not do so.

However, in the case of Tab 5 I have noted that contained in the records are the bank account details of GLF for which I consider that the exemption in section 21(1)(a)(ii) is engaged. This section states that a record is exempt from disclosure if its disclosure would reveal information "of a commercial value, which value would be, or could reasonably be expected to be, destroyed or diminished if the information were disclosed". I also find that it is not in the public interest to disclose the said information.

Tab 7: Not exempt.
Tab 8: Duplicate.
Tab 9: Not exempt.
Tab 10: Not exempt.
Tab 11: Not exempt.
Tab 14: Not exempt.
Tab 15: Duplicate.
Tab 16: Not exempt.
Tab 17: Duplicate.
Tab 19: Exempt.
Tab 21: Duplicate.
Tab 22: First email not significant, second and third emails exempt, fourth email not significant.
Tab 23: Duplicate.
Tab 24: First email not significant, remainder duplicate.
Tab 26: Not relevant.
Tab 28: Not exempt.
Tab 29: Duplicate.
Tab 30: Not exempt.
Tab 31: Emails duplicate, Agenda not exempt. Letter not responsive to the request.

Tab 32: Not exempt.
Tab 35: Duplicate (Tab 32).
Tab 36: Duplicate (Tab 5).
Tab 37: Duplicate (Tab 32).
Tab 38: Duplicate (Tab 32).
Tab 39: Duplicate (Tab 32).
Tab 40: Not exempt.
Tab 41: Duplicate (Tab 32).
Tab 46: Duplicate (Tab 42).
Tab 47: Some emails not significant, some duplicate, letter dated 2 December not exempt.
Tab 48: Not exempt except that name of bank in second email is to be redacted as per Tab 5 above.
Tab 50: Not exempt.
Tab 51: Duplicate.
Tab 52: Blank page, labeled as such.
Tab 53: Duplicate (various other tabs).
Tab 54: Not significant.
Tab 55: Duplicate.
Tab 57: Not exempt.
Tab 60: Duplicate.
Tab 74: Emails duplicate, letter of 22 November 2011 already held by Applicant.

This is an example of the application of the legal professional privilege being grossly misused. In this instance, privilege is being claimed on a document that was actually sent by the ICO to both PACI and the Applicant. Similarly, privilege is being claimed in relation to minutes of Board meetings of PACI which have already been disclosed.

Tab 81: Exempt.

I have taken the decision to allow the exemption of several drafts of a final document ordered released under Tab 5 above. While I have not compared every line of each of the drafts provided against the final document, some drafts do contain “track changes”. I take the view that the drafts are likely to reflect negotiations between the various parties and advice of legal counsel on these negotiations, and are therefore exempt from disclosure.

Tab 82: Duplicate or not significant.
Tab 83: Duplicate.
Tab 84: Emails duplicate, draft document exempt.
Tab 90: Emails duplicate, draft document exempt.
Tab 93: Blank page, labeled as such.
Tab 99: Blank page, labeled as such.
Tab 102: Exempt.
Tab 123: Not significant.
Tab 134: Exempt.
Tab 135: Not exempt.
Tab 141: Duplicate.
Tab 143: Not exempt.
Tab 144: Duplicate.

Tab 145: Duplicate.
Tab 146: Not significant.
Tab 149: Emails exempt, letter dated 27 October, 2011 exempt, letter dated 15 April, 2011 not exempt.
Tab 150: Emails exempt or not significant, letters duplicates (Tab 149).
Tab 155: Not exempt.

I have ordered the release of this and some other similar records so that the Applicant can see an example of the type of record that I consider not significant.

Tab 156: Duplicate.
Tab 158: Not exempt.
Tab 167: First four emails exempt, final email and board minutes not exempt.
Tab 170: Not exempt.
Tab 172/173: First and second emails exempt, remainder not exempt.
Tab 174: First and second emails exempt, final email duplicate (Tab 167), letter duplicate, board Minutes not exempt (some already disclosed).

This tab includes minutes of a number of PACI board meetings, including minutes from 1 and 9 December 2010. These minutes discuss GLF and are therefore relevant to this request. However, given their date, I note that they should also have been made available for consideration in Hearing 19-01911. The fact that this was not done appears to be a very serious omission on the part of PACI, which will be further investigated separately.

Tab 175: Not exempt.
Tab 176: Not exempt.
Tab 177: Not significant.
Tab 178: Not exempt.
Tab 179: Duplicate (Tab 178).
Tab 180: First two emails not significant, remainder duplicate (Tab 167).
Tab 191: Duplicate (Tab 167).
Tab 192: First email duplicate, remainder not exempt.

Tab 192 contains minutes dated 4 February 2011 which, it appears, should also have been considered in Hearing 19-01911 The same remark applies as in tab 174 above.

Tab 193: Not significant.

The email in this tab contains nothing more than a message from a PACI employee to an attorney with subject line "Test", and the response from the recipient: "Received". The inclusion of this record, and many more like it, among the responsive records is incomprehensible. Needless to say that this record is, of course, not covered by legal professional privilege.

Tab 194: Not exempt.
Tab 195: Duplicate of Tab 194 except that 194 was sent with Importance: High.
Tab 196: Emails exempt, letter duplicate (Tab 149).

This tab, as well, contains a reference to further records which, it appears, should have been made available for consideration in Hearing 19-01911. The same remark as in tabs 174 and 192 apply.

Tab 197: Not significant.
Tab 198: Not significant.
Tab 199: Duplicate (Tab 198).
Tab 200: Not significant and duplicate (Tab 198).
Tab 201: Second email exempt, remainder not significant.
Tab 202: Emails duplicate, letter exempt.
Tab 203: Duplicate.
Tab 204: Duplicate.

Tabs 198 – 204 contain mostly administrative emails to and from lawyers and PACI, resulting in one letter, which I agree is exempt.

Tab 214: Exempt.
Tab 219: Not exempt.
Tab 220: Duplicate.
Tab 226: First two emails not relevant, remainder exempt.
Tab 227: Not exempt.
Tab 229: Exempt.
Tab 230: Duplicate.

This tab consists of minutes of a PACI Board Meeting of 15 December 2011 which were already released to the Applicant in redacted form, and which are considered separately above. It is astounding that PACI is claiming legal professional privilege in relation to the entire document, while at the same time claiming only partial exemption.

Tab 231: Not exempt. (Minutes 4 November 2011)
Tab 232: Not exempt. (Minutes 29 September 2011)
Tab 233: Not exempt.
Tab 234: Not exempt. (Minutes 11 Aug 2011)
Tab 235: Not exempt. (Minutes 25 June, 2011 - already disclosed)
Tab 236: Not exempt. (Minutes 24 June, 2011 - already disclosed)
Tab 237: Not exempt.
Tab 238: Exempt.
Tab 239: Not significant.
Tab 240: Not exempt.
Tab 241: Not significant.
Tab 242: Duplicate.
Tab 243: Not exempt. (Minutes 15 June 2011 - already disclosed)
Tab 244: Duplicate.

F. ADDITIONAL ISSUES OF CONCERN

[50] As noted above, after my review of the records in this Hearing, it is evident to me that a number of records exist which should have been identified and provided to me as responsive records in Hearing 19-01911. Further investigation will be carried out to determine if the FOI Law was complied with in PACI's response to the initial request and appeal which resulted in Hearing 19 – 01911.

G. FINDINGS AND DECISION

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

Findings:

a) Minutes of PACI Board Minutes of 15 December 2011 (230)

These minutes were disclosed to the Applicant on 3 April, with parts of the record redacted. I find that the exemptions under 17(a) and/or 23(1) of the FOI Law apply to some of the redactions made to these minutes. Additional redactions are made to parts of the record that have no bearing on the request, and I will allow these redactions. However, the redaction of the titles of items 7, 8 and 10 is not supported by either exemption claimed, and should be disclosed.

b) Remaining Responsive Records

I find that the exemption found under 17(a) of the FOI Law does not apply to the records listed as “not exempt” in section E above.

Records in Tab 5 (and previous drafts of the same document) contain bank account information that is exempt under section 21(1)(b) in that it concerns the commercial interests of a person or organization and the disclosure of that information would prejudice those interests. I find that it is not in the public interest to disclose this information.

Decision:

I uphold the decision of the Port Authority to redact some information from Minutes of the PACI Board Minutes of 15 December 2011. I require that further information contained in this record be disclosed as directed above.

I require the Port Authority of the Cayman Islands to disclose the records listed as “not exempt” in Section E above. Bank account details should be redacted from the record contained in Tab 5.

I require the Port Authority to liaise with the ICO with respect to the provision of the responsive records to the Applicant.

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

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

If judicial review has not been sought on or before 9 December 2012 and should the Port Authority of the Cayman Islands fail to disclose the responsive records in this matter, I may certify in writing to the Grand Court the failure to comply with this Decision and the Court may consider such failure under the rules relating to contempt of court.



Jennifer P Dilbert
Information Commissioner
25 October 2012