

ICO Hearing 30 - 00113
Decision
Cayman Islands National Insurance Company (CINICO)

Jennifer Dilbert MBE, JP
Information Commissioner for the Cayman Islands

12 June 2013

Summary:

An Applicant was refused access by the Cayman Islands National Insurance Company (CINICO) to the annual financial statements of CINICO for the financial year ended 30 June 2012.

The Information Commissioner upheld the decision of CINICO that the release of the Unaudited Financial Statements, dated June 30, 2012 can be deferred under section 11(2)(b) of the *Freedom of Information Law 2007*, and did not require CINICO to disclose the record at this time.

Statutes¹ Considered:

Freedom of Information Law, 2007
Freedom of Information (General) Regulations, 2008
Public Management and Finance Law, (2010 Revision)

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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.

A. INTRODUCTION

[1] 22 October 2012: The Applicant made a request to CINICO for Financial Reports from 2009-2012. This was later narrowed down to the financial reports for 2010-11 and 2011-12.

20 November 2012: CINICO denied access to the requested records, not relying on any reasons under the FOI Law.

17 December 2012: The Applicant requested an internal review of the matter.

21 January 2013: Not having received a response to the request for an internal review within the statutory period of 30 calendar days, the Applicant appealed to the Information Commissioner's Office (ICO).

25 January 2013: On internal review, the Principal Officer of CINICO agreed with the withholding of the responsive records. He gave some reasons for withholding the records, but again did not state what exemptions were being applied under the FOI Law.

1 February 2013: The Applicant remained dissatisfied and the ICO formally accepted the appeal, and requested that CINICO send a copy of all responsive records to the ICO by 11 February 2013.

12 February - 7 March 2013: Not having received the responsive records from CINICO, the ICO sent a number of reminders. A copy of the 2010-11 Annual Report, which includes financial statements, was received on 14 February 2013 and a copy of the unaudited financial statements for 2011-12 on 7 March 2013, over one month after having been required by the ICO.

18 February 2013: The ICO communicated to CINICO that the Applicant had agreed that the records of interest are the financial statements for the years 2010-11 and 2011-12.

21 February 2013: Given the delays and non-compliance that had taken place in the course of the appeal, I, along with the Deputy Commissioner, met with the Principal Officer and senior staff at CINICO to further explain the procedural requirements of a hearing.

7 March 2013: CINICO provided reasons under the FOI Law for withholding the responsive records, relying on deferral in sections 11(2)(b) and (c), and exemptions in sections 18(2)(b), 19(1)(a), 20(1)(a) and (d), and 21(1)(a)(ii) and (b).

8 March 2013: The ICO sent an opinion letter to the Applicant and to CINICO with non-binding views on the application of the deferral and exemptions quoted, but neither party changed their decision.

15 March 2013: CINICO informed the ICO and the Applicant that the 2010-11 Annual Report, with the financial statements for that year, were tabled in the Legislative

Assembly, and that, as a result, the Report would be posted on the CINICO website. As a result, only the 2011-12 financial statements remain in dispute in this Hearing.

9 April 2013: The Notice of Hearing and Fact Report were agreed and issued by the Registrar of Hearings, requiring initial submissions from all parties to the Hearing by 25 April.

29 April 2013: Not having received CINICO's submission, despite numerous reminders from the ICO, I personally wrote advising CINICO that should I not receive submissions by 1 May, I would order the record to be disclosed. Later that day CINICO provided their submission.

B. THE CAYMAN ISLANDS NATIONAL INSURANCE COMPANY

- [2] The Cayman Islands National Insurance Company is a government-owned, "Class A" insurance company formed to provide health insurance coverage to civil servants (employees and pensioners) and other residents of the Cayman Islands who historically have had difficulty obtaining coverage through their employer or the private insurance market.
- [3] As a government company CINICO has a Board of Directors which is appointed by the Governor in Cabinet. *The Public Management and Finance Law* requires the preparation of audited financial statements, and as a Class A Insurance Licensee CINICO is also required to submit audited financial statements to the Cayman Islands Monetary Authority. CINICO is also subject to the reporting requirements of the Health Insurance Supervisor.

C. PROCEDURAL MATTERS

- [4] Over the course of this FOI request, made by the Applicant almost 8 months ago, and the subsequent investigation and hearing of this appeal by the ICO, CINICO has repeatedly contravened the provisions of the FOI Law, and the Policies and Procedures of my Office. As set out in detail above, there have been delays and non-compliance with requests and requirements of the ICO at almost every step of the process.
- [5] Most seriously, contrary to the requirements of section 7(5), both the IM and the Principal Officer failed to provide the Applicant with reasons for withholding the responsive record, and it was not until well into the appeal investigation by the ICO that these reasons were provided. Also, it is clear from the above that the time allowed by Law to conduct an internal review and advise the applicant of the decision was exceeded.
- [6] Responsive records were only provided to the ICO after many delays and repeated prompting, and a submission giving CINICO's views in writing, as required under section 43, was not provided by the date agreed in the Notice of Hearing. A

submission was forthcoming only after I personally informed them that as the burden of proof lies with the public authority to show that it acted in accordance with its obligations under the Law, I would order the record released if they did not provide same. Computer issues were cited as the reason for the delay, which was verified by their IT service providers.

D. ISSUES UNDER REVIEW IN THIS HEARING

- [7] The issues under review in this Hearing are whether access to the requested records may be deferred under sections 11(2)(b) and (c), and whether exemptions in sections 18(1) and 18(2)(b), 19(1)(a), 20(1)(a) and (d), and 21(1)(a)(ii) and 21(b) apply.
- [8] The Law provides the following:

11(2) A public authority may defer the grant of access to a record-

(b) if the record was prepared for presentation to the Legislative Assembly or for the purpose of being made available to a particular person or body, until the expiration of a reasonable period after its preparation for it to be so presented or made available to that person or body;

(c) if the premature release of the record would be contrary to the public interest, until the occurrence of any event after which or the expiration of any period beyond which, the release of the record would not be contrary to the public interest.

18. (1) An official record of a type specified in subsection (2) is exempt from disclosure if its disclosure or, as the case may be, its premature disclosure would, or could reasonably be expected to, have a substantial adverse effect on the Caymanian economy, or the Government's ability to manage the economy.

18 (2) The types of records referred to in subsection (1) include but are not limited to records relating to-

(b) monetary policy,

19. (1) Subject to subsection (2), a record is exempt from disclosure if it contains-

(a) opinions, advice or recommendations prepared for; proceedings of the Cabinet or of a committee thereof.

20. (1) A record is exempt from disclosure if-

(a) its disclosure would, or would be likely to, prejudice the maintenance of the convention of collective responsibility of Ministers;

...; or,

(d) its disclosure would otherwise prejudice, or would be likely to prejudice, the effective conduct of public affairs.

21. (1) Subject to subsection (2), a record is exempt from disclosure if-
(a) its disclosure would reveal-

...

(ii) any other information of a commercial value, which value would be, or could reasonably be expected to be, destroyed or diminished if the information were disclosed;

(b) it contains information (other than that referred to in paragraph (a)) concerning the commercial interests of any person or organization (including a public authority) and the disclosure of that information would prejudice those interests.

E. CONSIDERATION OF ISSUES UNDER REVIEW

Section 11(2)(b) of the Freedom of Information Law

- [9] Can CINICO defer the grant of access to the record in dispute because the record was prepared for presentation to the Legislative Assembly?
- [10] Can CINICO defer the grant of access to the record in dispute because the record was prepared for the purpose of being made available to a particular person or body?
- [11] Has a reasonable period for the record to be presented or made available to the Legislative Assembly or that person or body expired?

The position of CINICO:

- [12] In respect of this deferral, CINICO states the following in its submission:

Reason: The requested Financial Statements are of draft form and have not been audited. As they have not completed the Legislative process as required by a SAGC entity; whereby the Financial Statements as prepared by Management, approved by the Board of Directors, audited by the Auditor General (or appointee), then tabled in the Legislative Assembly by the Minister responsible for the SAGC. As these documents have not been reviewed by the Board of Directors; nor have they been Audited; nor tabled in the Legislative Assembly by the Minister responsible for the SAGC; we are of the opinion they have not completed the Legislative process to be deemed a public document.

The position of the Applicant:

- [13] While it is helpful for any applicant to put forward arguments to support 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 or private body to show that it acted in accordance with its obligations under this Law. In this case, the Applicant did not make a formal submission.

Discussion:

- [14] CINICO submits that until the intended legislative process has taken place, the responsive record is not deemed a public document. This is incorrect. The responsive record exists, and clearly falls within the definition of a “record” under the FOI Law. The issue to be decided is whether the record is exempt, or whether its release can be deferred, under the FOI Law.
- [15] I agree with CINICO’s position that the responsive record has not been through the normal legislative process. I would also add that as not even a year has passed since the date of the financial statements, it could be argued that a reasonable period after their preparation for them to be presented to the Legislative Assembly has not yet expired.
- [16] On the other hand, as I have noted in previous decisions, the primary reason for the production of financial statements of a financial entity is not for presentation to the Legislative Assembly. While CINICO is required by law to prepare financial statements, have them audited, and presented to the Legislative Assembly, Stakeholders, including the regulators, shareholders (Government) and policy holders, also demand audited accounts in order for them to be able to regulate and examine the activities of CINICO.
- [17] **I therefore find that as CINICO’s financial statements are not prepared for presentation to the Legislative Assembly, the first part of 11(2)(b) does not apply to the record.**
- [18] However, 11(2)(b) also permits the disclosure of a record to be deferred if it was prepared for the purpose of being made available to a particular person or body. CINICO’s financial statements are prepared for its stakeholders, as set out above. It is fair that CINICO is allowed adequate time to have its accounts prepared and audited, and presented to the regulators and the Legislative Assembly, before being published.
- [19] **I therefore find that the disclosure of CINICO’s 2011-2012 unaudited financial statements may be deferred under section 11(2)(b) until the expiration of a reasonable period for them to be presented to CINICO’s stakeholders.**
- [20] Having found that the release of the responsive record can be deferred under sections 11(2)(b), I will not at this point consider any of the arguments put forward as to whether the record can be deferred under 11(2)(c).

The Exemptions in sections 18(1), 18(2)(b), 19(1)(a), 20(1)(a) and (d), and 21(1)(a)(ii) and 21(b):

- [21] As I have found, above, that the deferral in section 11(2)(b) applies to the record in dispute, there is no need for me to consider whether the exemptions claimed by CINICO apply.

F. FINDINGS AND DECISION

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

Findings:

Sections 11(2)(b) of the *Freedom of Information Law, 2007* applies to the Unaudited Financial Statements of CINICO dated June 30, 2012.

Decision:

I uphold the decision of CINICO that the release of the Unaudited Financial Statements of Cayman Islands National Insurance Company Ltd, dated June 30, 2012 can be deferred under section 11(2)(b) of the *Freedom of Information Law 2007*, and do not require CINICO to disclose this record at this time.

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 a 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.



Jennifer Dilbert
Information Commissioner
12 June 2013