

ICO Hearing 35 – 01213 and 01313  
**Decision (Part 2)**

Ministry of Education, Employment & Gender Affairs

Jan Liebaers  
Acting Information Commissioner for the Cayman Islands

14 March 2014

**Summary:**

In October 2012 an Applicant made a request under the *Freedom of Information Law, 2007* (the “FOI Law”), to amend/annotate his personal information contained in a report created by the Human Rights Committee (“HRC”) in 2007 (“the HRC Report”). The HRC was superseded by the current Human Rights Commission, and was at the time funded through the Ministry of Education, Training, Youth, Sports and Culture, the predecessor of the present-day Ministry of Education, Employment and Gender Affairs (“the Ministry”). The HRC Report is available on a Cayman Islands Government website.

Despite a series of communications and meetings between the Applicant and the Ministry, the Ministry did not amend the record, and in February 2013, at the suggestion of the Ministry, the Applicant applied for access to the related HRC records which informed the writing of the HRC Report. In response to this second request, no records were found. Both the request for amendment/annotation of the HRC Report and the request for access to related records were appealed to the Information Commissioner’s Office (“ICO”).

In the first part of this Decision, issued on 5 December 2013, the Acting Information Commissioner decided that a reasonable search had not been conducted, and referred the matter back to the Ministry for a more thorough search.

The appeal relating to the amendment/annotation was deferred, pending the outcome of the new search. This new search has now been completed, and, again, no records were found. Therefore, this second part of the Hearing Decision is considering the request for amendment/annotation as well as the aftermath of the new search for records and related matters.

The Acting Commissioner found that the Ministry was not obligated to amend the HRC Report as requested by the Applicant, but he ordered the Ministry to annotate the HRC Report in accordance with sections 29 and 31 of the FOI Law, and regulation 19 of the *Freedom of Information (General) Regulations, 2008*. The Acting Commissioner provided

details as to the parts of the report that need to be annotated in accordance with these provisions.

In relation to the search, the Acting Information Commissioner was satisfied that a reasonable search had now been completed, but found that the Ministry's security provisions in relation to the transfer, shipment and or storage of records are insufficient, and required that the Ministry address these shortfalls in the ongoing development and review of its records management tools and policies in conjunction with the Cayman Islands National Archive ("CINA").

The Acting Commissioner also recommended that CINA develop or review Government-wide policies and procedures relating to the security and physical movement of records, and review its internal policies and procedures relating to the physical transfer of records to CINA so as to avoid a repeat of the miscommunication that appears to have occurred in this case.

**Statutes<sup>1</sup> Considered:**

*Freedom of Information Law, 2007*  
*Freedom of Information (General) Regulations, 2008*  
*National Archive and Public Records Law, 2010 revision*

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**A. INTRODUCTION**

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[1] For a chronology and background to the requests and appeals relevant to this Hearing I refer to paragraphs 1 to 12 of the first part of the Decision, issued on 5 December 2013. For my discussion and findings in relation to the Ministry's preliminary points on jurisdiction, I refer to paragraphs 13-26 of that same Decision.

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<sup>1</sup> 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.

## B. PROCEDURAL MATTERS

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### THE NEW SEARCH CONDUCTED BY THE MINISTRY

[2] On page 12 of the earlier Decision I decided the following, amongst other things:

*I require the Ministry of Education, Employment & Gender Affairs to make reasonable efforts to locate the records of the Human Rights Committee requested by the Applicant, and inform the Applicant and the ICO within 30 calendar days from the date of this Decision whether or not any further records have been located. Such efforts are to bear in mind the suggestions and conclusions in paragraphs 56-64 above.*

*Whether or not responsive records are located, I require the Ministry to provide me within the same time period with an affidavit listing the efforts made to locate the records. The affidavit must include, but not be limited to, a listing of the names of the individuals and bodies contacted, the reasons why they are contacted, the dates of attempts at making contact, whether such attempts were successful or not, the responses of contacted individuals and bodies, and other details depending on the circumstances.*

[3] Under section 47 of the FOI law, the Ministry had 45 days to apply for an appeal to the Grand Court by way of a judicial review.

[4] On 20 January 2014 the Ministry sent me an affidavit with attached documents detailing most of the required information on the new search undertaken. The following points arise from the Ministry's affidavit and response:

[5] I note that the Ministry has done a great deal of work to try and locate the relevant records of the HRC. However, in the end, this still has not resulted in any records being found.

[6] Although I made it quite clear that I required the Ministry to contact the person who at the time of the Report was the Chairman of the HRC, in order to verify whether he may hold any records, the Ministry again neglected to do so until being prompted by the ICO on several occasions. This is disappointing and violates the requirement stated in the Decision of 5 December 2013 in which I made it quite clear that this specific omission was a major reason for my finding that the Ministry's search efforts at that time had been insufficient.<sup>2</sup> In paragraph 63 of that Decision I wrote:

*More importantly still, the, then, Chairman does not appear to have been contacted to see if he may hold any relevant records. This seems to me to be a serious flaw as he would be a person who might reasonably be expected to hold records of the Committee's activities. Incidentally, the Applicant himself asked the Ministry to contact the, then, Chairman, but apparently the Ministry did not act on this suggestion. It is reasonable to expect that a thorough and careful search would include contacting the former Chairman of the Committee whose records are being looked for.*

[7] The Ministry did not contact the, then, Chairman until 30 January 2014 and it was only on 20 February that I received confirmation that the, then, Chairman does not hold any

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<sup>2</sup> See para 63 of *Decision 35-01213 and 01313*, 5 December 2013

records relevant to this matter. I have no reason to suspect that this response is not truthful.

- [8] According to evidence provided by some of the sources contacted by the Ministry, the whereabouts of the HRC records were known until May 2011, when they appear to have been slated for transfer to CINA from their location at the Royal Plaza offices of the Ministry of Education. This transfer was planned in the context of a larger move to the new Government Administration Building.
- [9] While a general request was made to transfer the records to CINA in the form of a signed transfer form, the actual physical delivery/collection of the records was to be arranged in a subsequent email to CINA staff. According to a statement from the CINA Director, a member of the HRC clarified that the final arrangements for delivery/pickup of the records at the time were to be made by the current Information Manager (“IM”) of the Ministry. However, the communication that would trigger the pickup appears never to have taken place, and the records were therefore never placed in the custody of CINA. This was recently also confirmed in a physical search for the HRC records in the CINA building.
- [10] I am surprised that CINA did not follow up when no pickup request was received, since CINA had in principle agreed to accept the records in their collections, and should logically have had some concerns about their wellbeing.
- [11] The HRC Member’s email quoted by the CINA Director has not been made available to me, and nor has the Ministry’s IM noted or adequately explained her role in these events. This may be a simple oversight, but I am surprised that the IM has not done so, given her personal role in these matters at the time they were unfolding. What is certain, according to these sources, is that records did exist at one time, but have since disappeared.
- [12] The Manager of the Commissions Secretariat explains in her statement that, in a separate, previous transfer of HRC files, she personally took two boxes containing HRC case files to a named Ministry staff member at the Ministry’s Cayman Financial Centre offices. This appears to have been done during or after the summer of 2010.
- [13] The IM highlights in her affidavit that “during the period in question, there was no employee with that name who was working in the Ministry of Education”. It is not exactly clear what conclusions are being drawn from this fact, but it seems that this is seen as evidence that the transfer could not have taken place at all. I find this logic unconvincing. In any event, it again appears that HRC records that were in the hands of the Ministry at one time, have since disappeared without any explanation.
- [14] As frustrating as this state of affairs is, I want to clarify that I have no reason to believe that the disappearance of the HRC records, either in 2010 or 2011, was intentional.
- [15] **Given the evidence provided to me I am satisfied that the Ministry has met its legal obligations to make reasonable efforts to locate the requested records.**

## RECORD KEEPING ISSUES

- [16] In paragraph 36 of the Decision of 5 December 2013 I made the following statement about record keeping of Government committee records:

*The management of records of Government committees is particularly troublesome, as such committees generally work without secretarial support, and it is often unclear who is responsible for creating a record of discussions and decisions, and who holds and maintains the “official record”. These uncertainties are multiplied when the committee ceases to exist, effectively increasing the risk that records disappear from view and cannot be accessed when needed, under FOI or otherwise.*

- [17] The narrative that has come to light in the affidavit provided, and attached documentation shows yet another aspect of the “troublesome” nature of Government record keeping as it pertains to committees, and also more generally demonstrates the serious security risks that exist when offices move and records are physically transferred from one location to another.
- [18] None of the individuals who provided evidence in this matter dispute the highly confidential nature of at least some of the records of the HRC. That such records would nonetheless – as is clearly demonstrated in this instance - appear to have been denied the protection and care they deserve, and could simply disappear without anyone even noticing, is neglectful and irresponsible. That these records were earmarked for transfer to CINA makes their disappearance all the more disappointing.
- [19] I sincerely hope that this is an isolated incident, but I fear it may not be, and I believe it shows a cavalier attitude among some public authorities towards the records and information that are entrusted to them as vitally important, but too often poorly managed, assets of the Government.
- [20] I have already, in the Decision of 5 December 2013, required that the Ministry commence or continue collaborating with CINA on the development of operational record keeping tools, including tools relating to committees reporting to the Ministry, and report back to me within 3 months from that date on progress made. The Ministry has done so, as confirmed by the CINA Director, and I am satisfied that the Ministry has met my requirement in this regard.

## **C. ISSUES UNDER REVIEW IN THIS HEARING**

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- [21] Of the two issues that were appealed by the Applicant, the first issue, the reasonableness of the search conducted by the Ministry, has been dealt with in the Decision of 5 December 2013 and above.
- [22] The second issue, the request for amendment/annotation remains outstanding, and is the question under review here.

## D. CONSIDERATION OF ISSUE UNDER REVIEW, THE REQUEST FOR AMENDMENT/ANNOTATION

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- [23] In order to determine whether the Ministry has met its obligations relating to amendment/annotation under the Law, the following questions need to be answered in relation to the specific request made by the Applicant:
- I. Was the request an application for amendment or annotation?
  - II. Has the Applicant met the legal requirements relating to making an application for amendment and/or annotation?
  - III. If so, did the public authority meet its legal obligations in respect of either amendment or annotation?
  - IV. What steps, if any, must now be taken by the public authority?

### I. WAS THE REQUEST AN APPLICATION FOR AMENDMENT OR FOR ANNOTATION?

- [24] The FOI Law makes different provisions in relation to a request for amendment and a request for annotation. As such, it is important to know what the Applicant has actually requested.
- [25] From the Applicant's written request and subsequent communications, it is clear that he has not chosen either amendment or annotation, but has consistently indicated desiring both, for instance in the original application which requested the Ministry "**to amend, to put an annotation** in the [HRC report] [Applicant's emphasis]". This same phrase, or a phrase with a similar dual meaning, was consistently used in subsequent correspondence.
- [26] I take this to mean that the Applicant wants an amendment of the Report, or, alternatively, if that cannot be agreed to, an annotation. This is a reasonable interpretation, in that an amendment would amount to a re-writing of certain parts of the Report, which is what I believe the Applicant wants most, while an annotation is a more limited statement of an alternative view which accompanies the original record but leaves it intact, which would be his second choice.
- [27] **Therefore, the request was for both amendment and for annotation.**

### II. HAS THE APPLICANT MET THE REQUIREMENTS RELATING TO MAKING AN APPLICATION FOR AMENDMENT AND/OR ANNOTATION?

- [28] Section 28 requires that a number of conditions need to be met before a person is entitled to make an application for amendment or annotation. It states:

*28. (1) Where a person seeks or has been granted access to a record but claims that the record relating to his application contains personal information about himself that-*

*(a) is incomplete, incorrect, out of date or misleading; and*

*(b) has been used, is being used or is available for use by a public authority for administrative purposes,*

*the person may apply to the public authority for an amendment or an annotation of that record.*

*(2) An application under this section shall be in writing and shall specify, as far as practicable, the record claimed to be the personal record requiring amendment or annotation and shall-*

*(a) in the case of an application for amendment, specify-*

*(i) whether information in the record is claimed to be incomplete, incorrect, out of date or misleading and the information in respect of which that claim is made;*

*(ii) the applicant's basis for making that claim; and*

*(iii) the nature of the amendment required by the applicant;*

*(b) in the case of an application for annotation, be accompanied by a statement specifying-*

*(i) the matters referred to in paragraph (a) (i) and (ii); and*

*(ii) the information that would make the record complete, correct, up to date and not misleading.*

[29] The Ministry submits that the Applicant did not provide the necessary proof required under sections 28-29, since he

*did not state the information in respect of which the claim was being made, the basis for making the claim, the nature of the amendment... required in accordance with section 28(1)(a) or the information which should make the record complete, correct, up to date, and not misleading in accordance with section 28(2)(b)...*

[30] The Ministry asserts that it did not make a decision not to amend the HRC Report, but that the Applicant simply failed to provide the necessary evidence for it to make a determination in the matter.

Criteria listed in section 28(1):

[31] The HRC Report is undoubtedly about the Applicant. It mentions a number of personal biographical details and opinions about the Applicant, and therefore contains his personal information. However it does not solely consist of his personal information as it also includes a number of general legal arguments, findings and interpretations made by the HRC. These arguments, findings and interpretations are not the Applicant's personal information, to the extent that they are general points of Law and interpretation and are not about him. I will address this question further below.

[32] As stated in paragraph 4 of the chronology in the Decision issued on 5 December 2013 the Applicant attempted to state his case as to why he felt the report was "incomplete, incorrect, out of date or misleading":

*[4] In the course of the ensuing months, the Ministry asked for a number of clarifications relating to the requested amendment/annotation. The*

*Applicant requested, but was initially refused, a face to face meeting with the Ministry's Information Manager ("IM") to clarify his position. A meeting eventually took place on 22 January 2013, during which the Applicant provided a number of clarifications and details. However, the Ministry stated that it was not willing to amend the Report, and asked the Applicant to demonstrate irrefutably that the records should be annotated.*

- [33] Specifically, the Applicant brought a 12-page handwritten document to the meeting which contained his arguments for the requested amendment/annotation, but the Ministry stated that it needed further proof before it would be willing to annotate the Report. This led to the Applicant's request for the supporting HRC documents which, we now know, cannot be located or no longer exist.
- [34] One of the points the Applicant made was that the HRC Report is factually wrong on the question whether pension contributions were made by a previous employer. The Applicant also expressed his disagreement with the HRC's interpretation of the applicable legislation and their conclusions regarding his case. These views were further elaborated upon in his initial submission to this Hearing which has been communicated to the Ministry as per normal ICO policies and procedures.
- [35] The Applicant accessed the HRC Report on the HRC website, and stated in the original request of October 2012 that the Report contains his "incomplete, incorrect and misleading" personal information. I note that the Applicant did not claim that any information was out of date, and this is therefore not at issue.
- [36] The HRC Report, which is available on a government website, was the vehicle by which the public authority informed the Applicant and the general public of its decision. It therefore meets the criterion relating to Government's use of the HRC Report for administrative purposes.
- [37] **Therefore, the required criteria are met, and I confirm the Applicant has made a proper application for both amendment and annotation to the HRC Report under subsection 28(1).**

Criteria listed in section 28(2):

- [38] The Applicant applied in writing, and identified the relevant record, namely the HRC Report.
- [39] The Applicant also specified what information is "incomplete, incorrect and misleading". For instance he refers to paragraph 44 of the Report where he refers to his former employment and whether pension and health insurance contributions were made.
- [40] According to the HRC Report the documentation provided by the Applicant suggested that pension contributions were made, and that while the documentation did not show health insurance deductions, "this does not confirm that such payments were not made by the employer".
- [41] However, the Applicant disagreed and stated the basis for making this claim by providing evidence in the form of pay stubs and pay statements for the relevant time period showing no pension or health insurance contributions.



- [42] The Applicant also identified the nature of the amendment sought, namely a change in the text of paragraph 44 of the Report to the effect that the incorrect information be amended.
- [43] **Therefore, since the requirements specified in section 28(2)(a) (i) to (iii) have also been met, the request constitutes a proper application for amendment under subsection 28(2)(a).**

Criteria listed in section 28(2)(b)(i) and (ii):

- [44] The request also satisfies the information required to be provided by the Applicant under subsection 28(b)(i) and (ii) in relation to an application for annotation, as the paragraphs above explain.
- [45] **Therefore, the request also constitutes a proper application for annotation under subsection 28(2)(b).**
- [46] **In view of the conclusions reached above, the Applicant has met the statutory requirements for making a request both to amend and to annotate the HRC Report, and the Ministry was incorrect in its assertion that no proper request was made.**

III. DID THE PUBLIC AUTHORITY MEET ITS LEGAL OBLIGATIONS IN RESPECT OF EITHER AMENDMENT OR ANNOTATION?

- [47] Since the request was both for amendment and annotation, for clarity I will consider each of these matters consecutively.

**The request for amendment:**

Section 29 provides the following in relation to a request for amendment:

*29. (1) Where, in relation to any application under section 28, a public authority is satisfied as to the truth of the matters stated in the application, it shall, before or after first granting access, amend the record concerned in the prescribed manner.*

- [48] As already stated above, the Ministry asserts that it did not make a decision to amend or not amend the HRC Report, but that the Applicant simply failed to provide the necessary evidence for it to make a determination in the matter. Despite the passage of several months and the many interactions between the parties including the document provided by the Applicant on 22 January 2013, the Ministry in effect has not stated an opinion on the veracity of the Applicant's contentions. This is unsatisfactory as the Applicant, as well as the ICO, is entitled to receive a response one way or the other.
- [49] Section 29(1) requires that, before a public authority is required to amend a record, it must first be satisfied as to the truth of the matter. In effect, the Ministry says it has no opinion in this regard. However, given the Ministry's inaction in respect of the Applicant's request I consider it reasonable to assume that the Ministry is not satisfied that the Applicant's statements are true, and does not wish to amend the HRC Report.

Section 29 continues:

*29(2) Where a public authority decides not to amend a record it shall-*

*(a) take such steps as are reasonable to enable the applicant to provide a statement of the kind referred to in section 28 (2) (b); and*

*(b) annotate the record by adding thereto the statement referred to in paragraph (a).*

[50] The FOI Law clearly provides that, where a public authority is not satisfied as to the truth of the matters stated by the Applicant, it may refuse amending the record, but it does so, it must, by virtue of subsection 29(2)(b), enable the applicant to provide a statement specifying the requested annotation and then annotate the record with that statement. The relevant statement, in this regard, has already been provided by the Applicant on 22 January 2013, and was further clarified in the Applicant's initial submission.

[51] **In conclusion, the Ministry did not meet its obligation to provide a response to the Applicant. While the Ministry is not obligated to amend the record if it is not convinced of the veracity of the Applicant's objections, the Ministry must, in the alternative, annotate the record in the manner prescribed in the FOI Law and Regulations.**

[52] In this regard, I want to clarify the following point. The right to seek an annotation (or amendment) does not grant an individual a license to annotate those parts of a record that do not constitute his or her own personal information. Section 28(1) grants an individual the right to seek amendment and/or annotation of personal information only where:

- the personal information is contained in a record;
- the personal information relates to himself; and,
- he considers the personal information to be incomplete, incorrect, out of date or misleading.

[53] Any information that falls outside of this specific scope is not covered by a request for amendment or annotation. General information, including information relating to other individuals, legal arguments and interpretations, and any information that does not constitute the personal information of the Applicant does not fall within the application of Part IV of the FOI Law relating to amendment and annotation.

#### IV. WHAT STEPS, IF ANY, MUST NOW BE TAKEN BY THE PUBLIC AUTHORITY?

[54] Having reached the above conclusions, I will now briefly consider regulation 19 and section 31. Regulation 19 prescribes the manner of annotation that is required, under the marginal title "Manner of annotating personal records". It provides the following:

*19. (1) Annotation of records shall be completed by adding a file note to the record summarizing the applicant's statement cross-indexed to the material claimed to be incomplete, incorrect, out of date or misleading.*

*(2) The annotation of the record shall be clearly displayed on the cover of all the applicant's files.*

Steps to be taken - file note:

- [55] The Applicant's statement of 22 January 2013 identified those parts of the HRC Report that he considered "incomplete, incorrect, out of date or misleading". As noted above, that statement was further clarified in the Applicant's initial submission to this Hearing. The Applicant's statement and submission contain the following references to paragraphs in the HRC Report:

HRC Report, paragraph 44:

- [56] Paragraph 44 states that the Applicant resigned from a previous job because the employer refused to make health and pension contributions. However, according to the HRC the documentation provided by the Applicant suggests that pension contributions were made, and that while the documentation did not show health insurance deductions, "this does not confirm that such payments were not made by the employer".
- [57] The Applicant takes umbrage at the HRC's interpretation, and refers to the original pay cheque stubs and pay statements, which he provided, for support. These appear to show that no deductions were made, either for pension or health insurance. He also questions why this matter was not investigated further, and alleges that he was intentionally discredited by the HRC's interpretation of the facts.
- [58] I do not need to pronounce as to the truthfulness of either version. However, for the reasons explained above, the Applicant clearly has a right to annotate those parts of the record that are his personal information and which he considers "incomplete, incorrect, out of date or misleading".
- [59] In view of the specific, limited nature of the right to amend or annotate the Applicant's own personal information, provided in section 28, the right to annotate does not grant the Applicant license to include in the annotation any statements that do not relate to his own personal information, such as questioning the actions, motivations or intentions of the HRC. Other means of complaint and redress were available to the Applicant, and I do not consider that the FOI Law is the correct means by which to investigate or redress alleged maladministration of a public authority outside of the boundaries of the FOI Law itself.
- [60] **Therefore, the Applicant has the right to annotate his personal information relating to the deductions for pension and health insurance in this paragraph, but this right does not extend questioning the motivations of the HRC, its Chairman or individual Members.**

HRC Report, paragraph 74:

- [61] In this paragraph the HRC makes a general point about the United Nations Convention on Refugees ("Convention") and the Cayman Islands Immigration Law, 2003 relating to asylum. It does not contain the Applicant's personal information, and therefore the right to annotate does not extend to it.
- [62] **I do not require that this paragraph be annotated.**

HRC Report, paragraphs 76 to 102:

- [63] These paragraphs are mostly general in nature, and discuss the general application of the Convention to the particular case of the Applicant. They also relate the experiences of the Applicant when, as a refugee, he was applying for employment.
- [64] Paragraphs 76 to 90 deal with legal provisions and the wage-earning rights of refugees, and arguably contain the Applicant's personal information. However, the Applicant does not disagree with the HRC on these specific points, and does not claim that the information is "incomplete, incorrect, out of date or misleading". Rather, the point he is conveying is that the conclusion of the HRC has subsequently not been applied correctly by potential employers, including the Health Services Authority ("HSA") and others. This clearly falls outside the scope of the right to annotate one's own personal information under the FOI Law.
- [65] Paragraph 102 is general in nature and does not contain the Applicant's personal information.
- [66] The remaining paragraphs (paras 91 to 101) discuss the Applicant's experiences when he was applying for work. In my view, the Report explains in a fair and balanced way the different points of view of both the Applicant and the employers.
- [67] These paragraphs undoubtedly contain the Applicant's personal information because they include opinions about him. The definition of personal information in regulation 2 specifically includes:

*(h) anyone else's opinions about the individual;*

- [68] **On this basis, only the following information is subject to annotation:**

**Paragraph 95** The opinion of the HSA's Human Resources Advisor on the Applicant's experience and skills, as well as the Applicant's performance in the interview process.

**Paragraph 99** The evidence provided by the HSA about the greater experience of the preferred Caymanian in comparison to the Applicant.

**Paragraph 100** The Applicant's failure to meet the established criteria.

**Paragraph 101** The Applicant's failure to meet the requisite skills, as well as the statement about the infringement of Article 17(2).

HRC Report, paragraph 118:

- [69] This paragraph is about a letter from the Chair of the Medical and Dental Council on the subject of the hiring of doctors at HSA. It does not constitute the personal information of the Applicant and the right in sections 28 and 29 does not apply to it.
- [70] **I do not require that this paragraph be annotated.**

HRC Report, paragraphs 123 to 128:

- [71] These paragraphs consist of information about Cuban doctors and the Applicant's contention that his position is indistinguishable from theirs. The Applicant points out alleged inaccuracies in relation to the information on the doctors, but this is not the personal information of the Applicant and therefore sections 28 and 29 do not apply to it.
- [72] **I do not require that these paragraphs be annotated.**

HRC Report, paragraphs 141 to 147:

- [73] This section of the Report deals with the Applicant's allegation that he has been subjected to religious discrimination, which would engage Article 9, possibly in conjunction with Article 14, of the European Convention on Human Rights. The HRC concluded that there was no evidence of religious discrimination because of the inclusion of a question on religious denomination on an application form for a government job, but did advise that this inclusion be reconsidered.
- [74] The Applicant disagrees with the HRC's conclusion, and asks why such a question would be included, if not to discriminate on the basis of religion, and why the question was removed from forms after – as he says - he raised the issue.
- [75] This issue does not involve the Applicant's rights under sections 28 and 29.
- [76] **I do not require that these paragraphs be annotated.**

HRC Report, paragraph 45:

- [77] The Applicant believes that a chronology of events about him in the HRC Report is incomplete because it does not mention that he visited, or was asked to visit, a psychiatrist during his hunger strike which itself is mentioned in para 45. The ICO asked the Applicant to supply the date of the visit to the psychiatrist, and to the best of his knowledge it occurred on Monday, 13 February 2006.
- [78] The complaint that resulted in the HRC Report was made on 7 February 2006, and the HRC's Procedural Sub-Committee started gathering evidence from 10 February 2006. The Chairman himself met with the complainant on 16 February 2006.
- [79] The date of the visit to the psychiatrist was therefore after the complaint was made, but before all the facts had been gathered by the HRC or the Sub-Committee. While the date of the complaint itself could be taken as the cut-off date for a chronology, and while I understand that the HRC could not reasonably have been expected to keep adding more facts as they occurred, I am aware that the Applicant believes the visit is of importance, and I accept that it is best practice to include further relevant facts if possible. This information is also undoubtedly the Applicant's personal information and including it in the annotation has the effect of completing the HRC's chronology.
- [80] **Therefore, I require that the visit to the psychiatrist be included in the annotation.**

- [81] **In summary, the points that have to be included in the annotation relate to paragraphs 44, 45, 95, 99, 100 and 101 of the HRC Report, respectively dealing with the issues of the pension and health insurance deductions, the Applicant's visit to the psychiatrist, and the skills and experience of the Applicant in the recruitment exercises.**

Steps to be taken - display on cover of other files:

- [82] **Under regulation 19(2) I require the Ministry to display the annotation clearly on the cover of all other files it may hold in relation to the Applicant. I consider that a reference to the annotation which clearly indicates where that annotation is publicly available, suffices in this regard.**

Steps to be taken - inform Applicant and other public authorities:

- [83] **Furthermore, under section 31(b) I require that the Ministry inform the Applicant of the annotation, and take reasonable steps to inform any other public authority which it is satisfied has made prior use of the record, of the nature of the annotation.**

**The request for annotation:**

- [84] Given that I have found that the Ministry is obligated to annotate the Report as an alternative to amendment under section 29(2), I consider that this question has been dealt with and I will not separately consider the request for annotation under section 30.

**F. FINDINGS AND DECISION**

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**Findings:**

Having considered the new search conducted by the Ministry, following from the Decision issued on 5 December 2013, it is clear to me that the records requested by the Applicant cannot be located or do not exist anymore.

The Ministry's security provisions in relation to the transfer, shipment and or storage of records are insufficient.

As regards the request for amendment/annotation, in contradiction to what the Ministry concluded, the Applicant did meet the criteria required under section 28 of the *Freedom of Information Law, 2007* and made a proper request for both amendment and annotation.

The Ministry did not meet its legal obligations under section 29 of the *Freedom of Information Law, 2007* in respect of the Applicant's request for amendment/annotation.

While the Ministry is not obligated to amend the record, it is obligated under section 29(2), in the alternative, to annotate the record in the manner prescribed in section 29 and regulation 19, and take the further actions required under section 31 of the FOI Law.

Having considered the request for amendment/annotation in detail, the points that must be included in the annotation relate to paragraphs 44, 45, 95, 99, 100 and 101 of the HRC Report, as explained in paragraphs 56 to 60, 63 to 68 and 77 to 80 above, respectively dealing with the issues of the pension and health insurance deductions, the Applicant's visit to the psychiatrist, and the skills and experience of the Applicant in the recruitment exercises.

**Decision:**

I require that the Ministry of Education, Employment & Gender Affairs annotate the Report created by the Human Rights Committee in relation to the Applicant in accordance with regulation 19, and take the further actions required under section 31, as follows:

- I. Pursuant to regulation 19(1), I require that the Ministry add a file note to the HRC Report which summarizes the Applicant's statement of 22 January 2013, further clarified in the Applicant's hearing submission, following my instructions in relation to paragraphs 44, 45, 95, 99, 100 and 101 of the HRC Report, in paragraphs 56 to 60, 63 to 68 and 77 to 80 above, respectively dealing with the issues of the pension and health insurance deductions, the Applicant's visit to the psychiatrist, and the skills and experience of the Applicant in the recruitment exercises.
- II. Pursuant to regulation 19(2), I require that the Ministry display the annotation of the records clearly on the cover of any other files it may hold on the Applicant. I consider that a reference to the annotation which clearly indicates where that annotation is publicly available, suffices in this regard.
- III. Pursuant to subsection 31(a), I require that the Ministry inform the Applicant of the annotations it has made.
- IV. Under subsection 31(a), I require that the Ministry take reasonable steps to inform any other public authority which it is satisfied has made prior use of the record, of the nature of the annotation.

If required, the Ministry should seek input from the Director of Computer Services Department and/or the Ministry's own webmaster or IT staff in order to ensure that the annotation is visible and accessible to every reader of the HRC Report on the Government website where it currently resides.

If the Ministry is unclear about the meaning or wording of the annotation, it should seek further clarification from the Applicant.

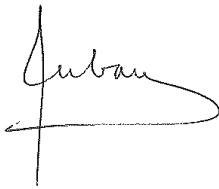
I also invite the Ministry to seek assistance and clarification from the ICO before finalizing the annotation, if needed.

Given that I have found that the Ministry's security provisions in relation to the transfer, shipment and or storage of records are insufficient, I require that the Ministry address these shortfalls in the ongoing development and review of its records management tools and policies being undertaken with the assistance of CINA.

I also recommend that CINA develop or review government policies and procedures relating to the security and physical movement of records, and review its internal policies and procedures relating to the physical transfer of records to the National Archive so as to avoid a repeat of the miscommunication that appears to have occurred in this case.

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 the Information Commissioner's Office immediately upon submission to the Court.

A handwritten signature in black ink, appearing to read 'Jan Liebaers', with a long horizontal flourish extending to the right.

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Jan Liebaers  
Acting Information Commissioner

14 March 2014