

Hearing 58-00717  
**Decision**

Royal Cayman Islands Police Service

Sandy Hermiston  
Ombudsman

29 January 2018

**Summary:**

An Applicant requested a cold case review report from the Royal Cayman Islands Police Service. The request was denied on the basis that its disclosure would constitute a contempt of court since the record in question is subject to a Court Order which prohibits dissemination. The Ombudsman confirmed that the record is subject to the Court Order, and therefore concluded that it is exempted from disclosure under section 17(b)(ii).

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

*Freedom of Information Law (2015 Revision)*  
*Freedom of Information (Amendment) Law, 2017*  
*Freedom of Information (General) Regulations, 2008*  
*Grand Court Law (2015 Revision)*  
*Ombudsman Law, 2017*

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<sup>1</sup> In this decision all references to sections are to sections under *the Freedom of Information Law (2015 Revision)* as amended, and all references to regulations are to the *Freedom of Information (General) Regulations 2008*, unless otherwise specified. Where several laws are discussed in the same passages, the relevant legislation is indicated.

## A. INTRODUCTION

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- [1] On 10 March 2016 the Applicant made a request to the Royal Cayman Islands Police Service (“RCIPS”) for “any reports or other documentation pertaining to the initial inquest and subsequent second inquest into the death of [the Deceased]”, in particular the relevant cold case review report (“the Report” or “the responsive record”).
- [2] On 17 November 2016 RCIPS responded, indicating that the record was exempted by reason of section 23(1) which relates to personal information.
- [3] The Applicant contacted the Information Commissioner’s Office (ICO) in order to open an appeal. However, the ICO did not have jurisdiction until an internal review under section 33 had been conducted. The Applicant requested an internal review from the RCIPS.
- [4] On 9 December 2016, the Commissioner of Police upheld the IM’s decision withholding the Report, indicating that it could not be disclosed without a written court order directing its release.
- [5] The Applicant appealed the RCIPS’s decision to the ICO on 4 April 2017 under section 42. Since the appeal had been filed after the statutory period of 30 calendar days, the ICO’s late appeal procedures were triggered, pursuant to section 42(3).
- [6] The RCIPS did not object to the appeal going forward, and the Acting Information Commissioner agreed to proceed with the appeal. The appeal was formally accepted on 28 April 2017.
- [7] During the ICO’s attempt at informal resolution of the dispute, the RCIPS clarified that a Consent Order (the “Order”) had been issued by Acting Justice Seymour Panton in regard to the responsive record. Therefore, the RCIPS added the exemption in section 17(b)(ii) relating to contempt of court. The Applicant was provided with a copy of the Order.
- [8] The Applicant requested that the matter be formally decided by the Information Commissioner/Ombudsman.

## B. ISSUES

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[9] The issues under review in this Hearing are:

**Whether the responsive records are exempt from disclosure under section 17 (b)(ii) or 23(1) of the FOI Law; and, if so, whether access shall nonetheless be granted in the public interest under section 26 of the Law.**

## C. CONSIDERATION OF ISSUES

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### SECTION 17(b)(ii) – CONTEMPT OF COURT

[10] The RCIPS argues that disclosure of the Report would be in contempt of court, and would engage the exemption in section 17(b)(ii) since a Court Order was issued by the Grand Court in regard to the responsive record, prohibiting its dissemination.

[11] The Applicant has not made submissions in this hearing.

[12] A copy of the Order was provided to me. It was issued on 21 November 2014 by Acting Justice Seymour Panton, and provides that the Report “shall be sealed in the Court file”, and “shall not be disseminated further, other than by order of the Grand Court of the Cayman Islands

[13] The Solicitor General has confirmed that the Order currently remains in force.

[14] I am therefore satisfied that the RCIPS is subject to a Court Order which requires it not to disclose the cold case review report which was requested by the Applicant and is under consideration in this decision.

[15] Section 17(b)(ii) of the FOI Law exempts official records from disclosure if:

*(b) the disclosure thereof would –*

*(ii) be in contempt of court...*

[16] Section 27 of the *Grand Court Law (2015 Revision)* describes the Court’s summary powers in regard to contempt of court. Subsection (2) specifies the following:

*(2) For the purposes of this section, contempt of court shall include any action or inaction amounting to interference with or obstruction of, or having a tendency to interfere with or to obstruct, the due administration of justice.*

[17] *Osborn's Concise Law Dictionary* defines "civil contempt" as:

... a failure to comply with a judgment or order of a court or a breach of an undertaking to the court. <sup>2</sup>

[18] **Consequently, I agree with the RCIPS that disclosure of the responsive record would constitute a contempt of court, and that the exemption in section 17(b)(ii) is therefore engaged.**

[19] The exemption in section 17(b)(ii) is not subject to a public interest test.

#### **D. FINDINGS AND DECISION**

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

1. The cold case review report which was requested by the Applicant from the RCIPS is exempted from disclosure by reason of section 17(b)(ii).
2. No further action is required from the RCIPS in this regard.



Sandy Hermiston  
Ombudsman

29 January 2018

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<sup>2</sup> Woodley, Mick (Ed.) *Osborn's Concise Law Dictionary* 10<sup>th</sup> Edition London, Sweet & Maxwell 2005, pp109-110