Hearing 90-202000861/862

Decision

Ministry of Health and Wellness

Sharon Roulstone
Ombudsman
April 19, 2022

Summary

An applicant requested information under the Freedom of Information Act (2021 Revision) (the FOI Act) on the withdrawal and reinstatement of a licence for his business, a healthcare facility, by the Health Practice Commission (HPC). The Ministry of Health and Wellness (the Ministry) coordinated the response to the request.

The Ministry answered some of the questions and provided access to some records, but gave only partial access to two email chains, and withheld educational certificates belonging to a medical practitioner who was a member of the HPC, relying on the exemption relating to personal information.

A separate complaint was made, investigated and decided in relation to the same issues under the Complaints (Maladministration) Act (2018 Revision).

The Ombudsman made the following findings:

- the Ministry initially failed, but after significant delays succeeded in conducting a reasonable search;
- the Ministry failed to make a record of its search efforts;
- the Ministry conducted adequate interviews with the applicant to ensure that appropriate records were located;
- the redacted email addresses and information on the whereabouts of some of the Board members in appendices 1 and 3 were not exempt; and,
- the educational certificates of a medical practitioner who was a Board member were exempt from disclosure.

The Ombudsman also found that the decisions of the HPC in relation to the applicant's business were insufficiently documented and no reasons were given, in contravention of the FOI Act. As well, the Ministry failed to transfer the requests and did not conduct internal reviews when asked to do so.

The Ombudsman required the full disclosure of the appendices containing the email chains, including the email addresses and information on the whereabouts of some Board members.

Since some of the email chains contain sensitive information relating to the applicant and his business, the disclosure of the appendices is to the applicant only, not to the world at large.

Statutes[1] considered

Freedom of Information Law (2021 Revision) (FOI Act)
Freedom of Information (General) Regulation (2021 Revision) (FOI Regulations)

Contents

A. INTRODUCTION

[1] On 26 July 2020 the applicant made a request to the Ministry of Health under the FOI Act (which eventually became our appeal 202000861) for information relating to the HPC's decision to withdraw the applicant's healthcare business license on 30 June 2020 and the subsequent reversal of that decision on 1 September 2020. The request was for the following:

> 1. Information to confirm that the decision to prohibit Pensum's stem cell operation, per the Health Practice Commission (HPC) Letter dated 30 June 2020 was taken at a properly constituted board meeting. (N.B. minutes of HPC board meeting);
>
> 2. Any documents disclosing HPC members and any other persons who attended or provided background support to meetings or any ancillary discussions giving rise to the Prohibition Notice;
>
> 3. In respect of all medical practitioners who were HPC Members on or around 30 June 2020, copies of their professional certification and any other information under which they are licensed to practice medicine in the Cayman Islands;

[1] In this decision, all references to sections are to sections of the Freedom of Information Act (2021 Revision), and all references to regulations are to the Freedom of Information (General) Regulations (2021 Revision), unless otherwise specified.

4. Copies of all information related to the application and grant of Pensum's Health Facility Licence in 2019 and 2020, including all information on file, the Inspector's report and information in any way connected to the Inspector;

5. A copy of the Register of Beneficial Interests and any associated information to include each HPC Member on 30 June 2020 and each current member.

[2] On 17 August 2020 the applicant made another request (which eventually became appeal 202000862) for the policies and procedures surrounding the handling of official complaints. A number of additional questions (under the heading "Addendum 1 to Information Requests") were also included in the second request.

[3] Further requests were made on 3 September and 10 October 2020, respectively for related information on an HPC meeting, and an application for a medical license, however, these requests do not form part of this current appeal.

[4] In September 2020 the applicant asked for internal reviews under section 33. That section states that a failure to provide a decision is considered a refusal to do so. However, no internal reviews were conducted, and in October 2020 the applicant made an appeal to the Office of the Ombudsman. We opened an appeal file on 2 November 2020.

[5] A number of the questions raised in (and outside) the requests fell beyond the scope of the FOI Act as they did not involve access to records, i.e., recorded information in any format. A number of questions related to alleged instances of maladministration. These questions were handled separately by the Maladministration Team at the Office of the Ombudsman. They conducted an investigation under the Complaints (Maladministration) Act (2018 Revision), which resulted in a number of recommendations to the Ministry and the HPC, including a recommendation to answer the outstanding questions relating to the HPC's decisions.

[6] The HPC forms part of the Department of Health Regulatory Services (DHRS) which has its own Information Manager (IM)[2]. The applicant sent the request to the Ministry, and since it was not transferred to the DHRS within the statutory period allowed for that purpose, the Ministry continued to handle it. A number of significant delays occurred, as the Ministry's IM sought answers from the HPC which were forwarded to the applicant and the Office of the Ombudsman. Understandably, these delays caused further dissatisfaction on the part of the applicant.

[7] In January 2021 the Ministry provided a response to the applicant as far as their own records were concerned. The applicant was informed that the DHRS was in the process of determining their responsive records, but that it needed additional time. Not until 28 May 2021 (about 10

[2] For clarity, unless otherwise stated in this hearing decision references to "the IM" are to the Information Manager of the Ministry of Health and Wellness.

months after the initial request was made) did the applicant receive a substantial response that included the HPC. At that time, some records were wholly or partially disclosed, and answers to some of the additional questions were provided. Other records - e.g., concerning reasons for the decisions made - were claimed not to exist.

[8] The records that were disclosed consisted of board minutes (in response to points 1 and 2 of the initial request) and a variety of other records (in response to points 4 and the additional request of 17 August 2020), which were partially redacted. No records were claimed to be held in response to point 5. The Ministry claimed that the exemption relating to personal information (section 23) applied to the records requested under point 3 (professional certificates of medical practitioners on the HPC Board).

[9] For the sake of expediency and effectiveness, both appeals are being dealt with in a single hearing decision.

B. CONSIDERATION OF ISSUES

a) Did the Ministry make reasonable efforts to locate records that are subject to an application for access, and did it make a record of search efforts?

[10] I will consider these questions in tandem, as both relate to regulation 6, which states:

> ***Reasonable search***
> *6. (1) An information manager shall make reasonable efforts to locate a record that is the subject of an application for access.*
>
> *(2) Where an information manager has been unable to locate the record referred to in paragraph (1), the information manager shall make a record of the efforts that information manager made.*

[11] The question whether a search effort was reasonable under the UK's Freedom of Information Act, 2000 (FOIA) was addressed in the appeal to the Information Tribunal in *Bromley v Information Commissioner* in which the Tribunal concluded that,

> *… the standard of proof to be applied… is the normal civil standard, namely, the balance of probabilities…. [since] there can seldom be absolute certainty that the information relevant to a request does not remain undiscovered somewhere within the public authority's records…*

[12] Furthermore, the Information Tribunal confirmed that a number of factors are relevant to this test, namely:

- the quality of the public authority's initial analysis of the request;
- the scope of the search that it decided to make on the basis of that analysis; and
- the rigour and efficiency with which the search was then conducted…[3]

[13] Given the extensive similarities between the UK and Cayman Islands FOI Acts, I am applying the same standard and factors.

[14] Although the reasonableness of the search and the compilation of a record of search efforts were listed as two of the issues for consideration in this hearing, the Ministry's submissions did not address these points. The Ministry should have explained its position, especially in light of the applicant's persistent questions on the existence of relevant records. I find this unsatisfactory on the part of the Ministry, especially since section 43(2) puts the burden of proof on the Ministry:

> *(2) 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 Act.*

[15] Regarding the search efforts that were made, the IM clarified in a communication to our office in December 2021 that she spent several hours with the Deputy Director/Registrar of the DHRS discussing the request. It is not clear when this meeting took place, but the IM specifically asked about the existence of the requested records. The Deputy /Registrar intimately knows the processes and record keeping practices of the DHRS. The IM stated:

> *[the Deputy Director/Registrar] is fully aware of all types of records kept by the department for the performance of its various functions. She was therefore able to confirm what records exist and what records do not, as most of the applicant's requests are for records that the department was able to say immediately that they do not even create. Therefore, it was less a matter of searching for whether records exist and more a matter of knowing that they do not create those types of records at all. She searched her emails for some records, while others were obtained from their paper and electronic files in their office [at the Government Administration Building] (where all their records are).*

[16] **Since significant delays were encountered before the records were disclosed, the quality of the IM's initial analysis, and the scope, rigour and efficiency of the initial search were inadequate. To that extent, the Ministry failed to conduct an appropriate search in compliance with regulation 6(1). I accept that the difficulties in communications with the DHRS were in large part to blame for this.**

[17] **However, since records were ultimately disclosed (albeit after numerous and unreasonable delays), and the IM consulted the person who was best suited to know the record keeping**

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[3] *Bromley v Information Commissioner and Environment Agency* (EA/2006/0072) [2011] 1 Info LR 1273 paras 12-13

practices of the DHRS/HPC who confirmed that no further records were held in response to the request, I am satisfied that an appropriate search was ultimately undertaken.

[18] **In these circumstances and given that an explanation of the search efforts was not provided until more than a year after the appeal was launched, I conclude that no record of the search efforts was made and the Ministry failed to apply regulation 6(2) correctly.**

b) Did the Ministry conduct an interview with the applicant to ensure that the appropriate records were located, as required by regulation 21(b)?

[19] The Ministry's submission did not address this question either, although it was identified as a matter for consideration in this hearing and the Ministry bears the burden of proof.

[20] Good communications between an IM and an applicant are vital for the success of the Act. The FOI Regulations require that the IM interviews the applicant to seek clarification of the request where it is required, and to identify appropriate responsive records. Regulation 21(b) states:

> ***Functions of information managers***
> *21. An information manager shall —*
> *…*
> *(b) conduct interviews with applicants to ensure that the appropriate records are located;*
> *…*

[21] The applicant's understandable frustration with the HPC's decisions to shut down and then reinstate his business was aggravated by the serious delays and apparent lack of documentation on the part of the HPC. The applicant sent numerous emails with clarifications and further questions to the IM, sometimes reverting to hypotheticals. While the IM tried to ensure ongoing communications, it seems that direct communications with the applicant gradually became increasingly difficult. Nonetheless, communications did take place and I do not find that no interviews were conducted.

[22] The fact that the Ministry IM was coordinating matters on behalf of the Ministry and the DHRS is not an excuse for the delays and deteriorating communications. A similar approach is often successfully used when a request involves two or more public authorities. However, given the problems and delays in this case, consideration should have been given to splitting the request between the two entities and transferring it, at least in part to the DHRS, about which is addressed further below.

[23] **For these reasons I find that the IMs conducted interviews with the applicant to ensure that appropriate records were located, as required in regulation 21(b).**

c) Are the records exempt under section 23(1) because their disclosure would involve the unreasonable disclosure of personal information of any individual, whether living or dead?

[24] Section 23 states:

> ***Records relating to personal information***
> *23. (1) Subject to the remaining provisions of this section, a record is exempt if its disclosure would involve the unreasonable disclosure of personal information of any natural person, whether living or dead.*
> *...*
> *(3) Records relating to personal information shall be exempt without limitation as to time."*
> *…*
> *(5) In determining whether the disclosure of third-party personal information would be reasonable, consideration shall be given as to whether the disclosure would be permitted under the Data Protection Law, 2017.*

[25] "Personal information" is defined in regulation 2 as:

> *... information (including information forming part of a database) or an opinion, whether true or not, about an individual, whether living or dead, whose identity is apparent, or can reasonably be ascertained, from the information or opinion, and includes the particulars set out in Schedule 1.*

[26] Schedule 1 of the FOI Regulations provides examples of various types of personal information, including the following:

> *(g) information about the individual's educational background;*
> *…*
> *(j) information about an individual gathered in the course of assessments related to the individual's skills, aptitudes and capabilities, including psychometric testing conducted for employment purposes;*

[27] Paragraph 2 of schedule 1 of the FOI Regulations also excludes certain types of information relating to individuals who occupy or occupied a position in a public authority, as follows:

> *2. The scope of "personal information", as defined in regulation 2, does not include —*
> *(a) where the individual occupies or has occupied a position in a public authority —*
> *(i) the name and official contact details of the individual;*
> *(ii) information relating to the position, or its functions;*
> *(iii) the general terms upon, and subject to which, the individual would occupy that position; or*

(iv) anything written or recorded in any form by the individual, in the course of and for the purpose of, the performance of the functions of the position; …

[28] The responsive records consisted of three email chains, named "Appendix 1", "Appendix 2", and "Appendix 3", as well as copies of certificates regarding degrees and qualifications of a member of the HPC Board ("the certificates"). Appendices 1 and 3 were partially redacted, and the certificates were withheld in their entirety. Appendix 2 contained no redactions. The following redactions were made:

- Appendix 1:
    - private email addresses of three HPC members;
    - a partial quote from an email message about an HPC member's whereabouts;
    - an email message about an HPC member's whereabouts;
- Appendix 2: no redactions;
- Appendix 3:
    - Private email addresses of the same HPC members;
    - One paragraph of an email message about an HPC member's whereabouts;
- The certificates of a medical practitioner who was a member of the HPC were withheld in their entirety.

Appendices 1-3 - email addresses

[29] Apart from the redactions listed above, the contents of the email chains in appendices 1, 2 and 3 were disclosed in their entirety, including the names and personal particulars of HPC Board members, such as phone numbers and email addresses.

[30] Paragraph 2 of schedule 1 of the FOI Regulations states that some types of information relating to individuals who occupy or occupied a position in a public authority do not constitute "personal information". This includes "the name and the official contact details" of such individuals.

[31] The redacted email addresses were non-governmental, personal email accounts. However, in the context of the responsive records, the email accounts were used to communicate with other members about the official business of the HPC. The other people on these email chains used government-issued emails, and those addresses were disclosed.

[32] When dealing with HPC business, such as the email exchanges in the redacted records, the members of the HPC Board acted in their official capacity as public officers. While these email addresses were not generated by the government, to the extent that they were used in pursuit of the official business of the HPC or any other public authority, they constituted an official means of communication. For clarity, this rationale would not apply to any messages of a private nature that may have been made using the same email accounts (of which none were included in the email chains).

[33] Therefore, since the redacted email addresses are part of the "contact details of the individuals", and these individuals were acting in an official capacity, I regard the addresses as falling outside the definition of "personal information". Consequently, the email addresses are not capable of being exempted as personal information under section 23, in so far as they are used in official communications.

[34] In considering the impact of the Data Protection Act (2021 Revision) (DPA), as required under section 23(5), the disclosure can rely on the sixth legal basis in schedule 2 of the DPA, the "legitimate interest" condition for processing, because the processing of the official contact information (in the form of disclosure) is necessary for the purposes of the legitimate interests pursued by the Ministry/HPC (the data controller) in applying the provisions of the FOI Act, and the processing is not unwarranted by reason of prejudice to the rights and freedoms of the individuals concerned, who in their capacity as board members were acting as public officers.

[35] Even if the redacted email addresses of the three HPC members were considered personal information under the FOI Act (which I do not believe to be the case for the above reasons), I would not find disclosure unreasonable, and the email addresses are therefore not exempted under section 23. Since the three members were using these email addresses for official communications, the individuals can have no reasonable expectation of privacy in regard to the contact details.

[36] As I have found that the exemption in section 23 does not apply, I am not required to conduct a public interest test under section 26.

[37] **For these reasons, I find that the redacted email addresses in appendices 1 and 3 are not exempt under section 23.**

[38] I note that the email chains with the redacted email addresses contain details of the applicant's business application with personal information of a number of additional individuals, including copies of three drivers' licenses (of the applicant, his wife and a third individual) and various sensitive information relating to the business. That information was not redacted, presumably because it was thought that the applicant already had access to it as it relates to him. These records were initially submitted to the HPC by the applicant, and now form part of the HPC's files.

[39] In this regard, the Ministry should have considered that disclosure under the FOI Act is normally not limited to a specific applicant, but is to the world at large, which would not be appropriate in this instance.

[40] **For the above reasons the email chains in appendices 1, 2, and 3 should not be disclosed to the world at large, as would normally be the case, and any disclosure of the email chains is therefore to the applicant only.**

[41] I wish to add that, while the use of private email addresses by board members may appear to be convenient, it is not clear how HPC would meet its statutory obligations under the DPA after such members leave the board. For instance, how would the HPC or the DHRS, as the responsible data controller, ensure that any personal data be permanently deleted from personal email services in those circumstances? For this reason, some public authorities provide board members with a government-issued email address for official use. Such addresses remain active only as long as their owner remains on the board. This approach is preferable as it ensures that the public authority remains in control of any relevant information, including sensitive and personal information of clients, also after the composition of the board changes.

Appendices 1-3 - Information regarding members' whereabouts contained in the emails

[42] The Ministry redacted a few brief statements on the physical whereabouts of HPC members in the email chains in appendices 1 and 3. At first glance, the redacted statements appear to be innocuous and the Ministry has not explained why they would be exempt, e.g. in the event that an individual's safety was at stake. Considering that the information is about two or more years old, it is not clear that such a claim could be maintained.

[43] The redacted information matches the definition of "personal information" in regulation 2, as it is about identifiable individuals. However, it relates to the individuals' official duties as members of the HPC, not to their personal life outside of their public position. The information is relevant to the official business of the HPC, as it relates to members' ability to take part in meetings. As such, while it may seem innocuous, the redacted information forms part of the official record and is responsive to the applicant's request.

[44] Under these circumstances disclosure would not, in any way, prejudice the rights and freedoms of the individuals or be unreasonable. The DPA permits disclosure based on the sixth legal basis in schedule 2 of the DPA - the "legitimate interest" condition for processing - since the disclosure of the information is necessary for the purposes of the legitimate interests pursued by the DHRS/HPC (the data controller) in applying the provisions of the FOI Act, and the processing is not unwarranted by reason of prejudice to the rights and freedoms of the board members as public officers.

[45] **For these reasons, the disclosure of the redacted statements on the HPC members' whereabouts would not be unreasonable and the information is not exempted under section 23.**

[46] Since I have found that the exemption in section 23 does not apply, I am not required to conduct a public interest test.

Medical certificates, qualifications and degrees

[47] In response to point 3 of the request, the IM explained to us that on, or around 30 June 2020 there was only one member of the HPC Board who was a medical practitioner. The Chair (also a physician) was active until 1 June 2020 only. She was reappointed on that date but resigned the same day. The Deputy Chair (not a medical practitioner) then presided over the Committee until another Chair (again, a physician) was appointed on 14 July 2020. Therefore, the certificates in question pertain to the single physician who was a member "on, or around 30 June" as specified in the applicant's request. All of the certificates were withheld under section 23.

[48] The applicant claimed that it is reasonable and broadly in the public interest to disclose documents such as the medical certificates, since the public should be able to verify that board members are fully qualified. The exemption should not outweigh this general public interest in accountability and openness, and therefore disclosure would not be unreasonable. The applicant also pointed out that such certificates are often required to be displayed publicly to avoid misrepresentation, and there is therefore no reason to withhold the certificates.

[49] In addressing the redaction of the certificates, the Ministry conceded that "information relating to an HPC member's functions is not personal information", but it claimed that *"their professional certification and any other information under which they are licensed to practice medicine in the Cayman Islands"* is personal information.

[50] Furthermore, the Ministry claimed that,

> *… the reasonable expectations of the third parties taking into account the nature of the records and the circumstances in which the records were obtained, would be that the records would be used for the sole purpose it was given and would not be made available to the public.*

[51] In accordance with section 23(5), the Ministry considered whether the Data Protection Act (2021 Revision) (DPA) precluded disclosure of a record or part thereof. In this regard, the Ministry claimed:

> *The first data protection principle is most relevant in this instance. Therefore, disclosure of personal data must be fair, lawful and meet one of the conditions in Schedule 2 of the Data Protection Act. The balancing exercise under the Data Protection Act infers that there must be a justification basis to disclose personal information. In this instance, we are unable to find any compelling reason for the disclosure of the requested records.*

[52] In addition to the general arguments raised in relation to the email chains, above, and in response to the arguments and questions of the applicant, the Ministry also stated:

- there was no obligation for members of the HPC Board to post their qualifications publicly;
- not all HPC members are medical practitioners; and,
- "there is a distinction between being aware that someone holds a particular certification and providing the public with copies of the same", since the competent authority has already determined the suitability of each of the members.

[53] Therefore. the Ministry concluded that the disclosure of the certificates would be unreasonable, and that the exemption in section 23 was engaged.

[54] Contrary to the Ministry's position, it is wrong to assume that, although a record is obtained for a particular purpose (e.g., to verify qualifications in order to issue a licence), it could not be disclosed under the FOI Act. If this were true, not a single government record would conceivably ever be disclosed under the Act.

[55] The certificates are clearly "information about the individual's educational background", as stated in paragraph 1 of schedule 1, quoted above. The individual in question is a private sector physician who is a member of the HPC.

[56] The certificates could potentially fall within the exclusion in paragraph 2(a)(ii) of schedule 1 of the FOI Regulations, which excludes certain types of information from the definition if the individual occupies a position in a public authority. Above, I have already found that the private sector individuals who sit on the HPC Board fit that profile.

[57] In regard to such individuals, paragraph 2(a)(ii) of schedule 1 excludes (amongst other things) the following information from the definition of "personal information":

> *(ii) information relating to the position, or its functions;*

[58] Under paragraph 1 of schedule 1 of the Health Practice Act (2021 Revision) - which deals with the composition of the HPC - Board members are not required to be medical practitioners. The certificates are held by the DHRS as a result of its regulatory function, not as a prerequisite for membership in the HPC. Under these circumstances, the certificates do not "relate to the position, or its functions", and they are, therefore, not excluded from the definition of "personal information" in schedule 1.

[59] A previous hearing decision under the FOI Act affirmed that certificates of private medical practitioners were "personal information", and that disclosure would be unreasonable. As a result, the certificates remained withheld. Although that decision does not set legal precedent, it does give an indication of how the exemption generally relates to certificates belonging to private sector physicians.[4]

[4] Information Commissioner's Office, Hearing Decision 53-01715 Department of Health Regulatory Services, 9 June 2016.

[60] I agree that the individual would most likely not expect their educational certificates to be published to the world at large. I am particularly concerned that some of the personal details contained in the certificates could be used malevolently, e.g., in the context of identity theft, although I want to make absolutely clear that I am not suggesting the applicant would do so. Nonetheless, the disclosure of the certificates under consideration would be to the world at large, not only to the applicant, and anyone would be able to access them. As well, in regard to the requirement in section 23(5) that the DPA be taken into consideration, there is no applicable processing condition of the data under that Act, and disclosure would consequently be unreasonable.

[61] **For these reasons, I find that the educational certificates are personal information in accordance with the definition in regulation 2 and schedule 1 of the FOI Regulations, and that it would be unreasonable to disclose the certificates. The certificates are therefore exempt from disclosure under section 23(1).**

[62] Since I have found that the exemption applied, there is no public interest test under section 26(1).

Additional issues

Timelines, records and reasons

[63] As explained above, a substantive response to the request, including the disclosure of some of the requested records, was delayed for several months. The main request was made near the end of July 2020, and while some questions were answered in January 2021, a final decision and (partial) disclosure was not communicated to the applicant until May 2021. The Ministry has not explained these delays, and only stated that records "were provided". The division of labour between the Ministry's IM and the DHRS/HPC appears to have been a contributing factor in these delays.

[64] The applicant was – understandably - deeply upset about the decisions taken by the HPC in regard to his business and fired off a steady flow of communications with intricate clarifications and addenda which at times were hypothetical, and which often blurred the lines between questions under the FOI Act and the Maladministration Act. The applicant explicitly argued that certain questions, e.g., those relating to the recusal of board members, should be considered broadly, not exclusively under the FOI Act. Given these arguments, it is worth pointing out that the present decision is made under the FOI Act, and it is supplemented by our separate decision under the Maladministration Act which addresses further questions applicable under that Act.

[65] The FOI Act pertains to records that are held, not to records that ought to be held. It is not within the powers of the Ombudsman under the FOI Act to require that a new record be

created, or that an existing record be amended to make it more complete, e.g., by adding reasons for decisions made. Nor is it the Ombudsman's role under the FOI Act to determine what records should be created and kept, except to point out, under section 44(2), that the normal rules for record keeping must apply. In that regard, I wish to draw attention to section 6(1) of the *National Archive and Public Records Act (2015 Revision)*, which requires that "full and accurate" records have to be made and maintained:

> ***General duties as to public records***
> *6. (1) Every public agency shall make and maintain full and accurate public records of its business and affairs, and such public records shall be managed and maintained in accordance with this Law.*

To the extent that the decisions of the HPC were insufficiently documented - as they appear to have been in regard to the reasons for decisions pertaining to the applicant's business – the above provision was not applied correctly.

[66] Since the reasons for the decision to shut down and then reinstate the applicant's business were not provided (e.g., in the minutes of the HPC), the decisions of the HPC were not sufficiently documented, pursuant to section 27 of the FOI Act, which requires that reasons are given for decisions:

> ***Making of decisions and reasons public***
> *27. Public authorities shall make their best efforts to ensure that decisions and the reasons for those decisions are made public unless the information that would be disclosed thereby is exempt under this Act.*

[67] This principle is confirmed in section 19 of the schedule to the Cayman Islands Constitution Order, 2009, which requires that a person whose interests have been adversely affected by a decision of a public official "has the right to request and be given written reasons for that decision."

Transfer of the request

[68] In its response to the applicant in May 2021 the Ministry indicated that records relating to point 5 of the request (i.e., beneficial ownership information relating to each HPC Board member) "… are not held in the Department or Ministry; if they exist, they would be with the Commissions Secretariat." In these circumstances, section 8 requires that the relevant part of the request is transferred to another public authority, as follows:

> ***Transfer of requests***
> *8. (1) Where an application is made to a public authority for a record —*
>
> *(a) which is held by another public authority; or*

(b) the subject-matter of which is more closely connected with the functions of another public authority,

the first mentioned public authority shall transfer the application or such part of it as may be appropriate to that other public authority, and shall inform the applicant immediately of the transfer or in such period as may be prescribed in regulations.

(2) A transfer of an application pursuant to subsection (1) shall be made as soon as practicable but not later than ten calendar days after the date of receipt of the application.

[69] The Ministry's submissions do not mention the transfer of the request, and I have not been provided with evidence that the request was transferred to the Commissions Secretariat. It is not clear why the IM took 10 months to reach the conclusion that additional records might be held by another public authority. At that time, the case was in the appeal stage, and it was too late to transfer the request elsewhere, at least within the statutory timelines in section 8.

[70] **Therefore, the Ministry failed to transfer the request as required under section 8(1).**

Internal reviews

[71] The applicant asked for internal reviews of two decisions, on the basis that no response had been given. I have not been provided with any reasons why the Chief Officer neglected to conduct the requested internal reviews.

[72] **Therefore, the Ministry failed to carry out internal reviews as required under section 34.**

C. FINDINGS AND DECISION

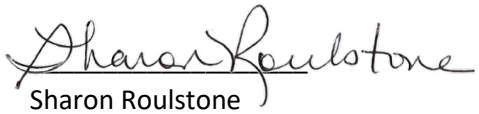
Under section 43(1) of the Freedom of Information Act, for the reasons outlined above, I make the following findings and decision:

- the Ministry/DHRS initially failed, but ultimately, after significant delays succeeded in conducting a reasonable search, as required under section 6(1);
- the Ministry/DHRS failed to make a record of its search efforts, as required under regulation 6(2);
- the Ministry/DHRS conducted adequate interviews with the applicant to ensure that appropriate records were located, as required in regulation 21(b);
- redacted email addresses and statements on the whereabouts of Board members in appendices 1 and 3 were not exempt under section 23(1);
- the medical certificates of an HPC member were exempt under section 23(1);

- the decisions of the HPC in relation to the applicant's business were insufficiently documented and no reasons were given, in contravention of section 27;
- the Ministry failed to transfer the requests under section 8(1);
- the Ministry failed to conduct internal reviews under section 34.

I require the Ministry/DHRS to disclose the email chains in appendices 1 and 3 in full to the applicant, not to the world at large.

The applicant and the public authority may, within forty-five calendar days of this order, apply to the Grand Court for leave to seek a judicial review of this decision.



Sharon Roulstone
Ombudsman