

Hearing 64 - 201800207

Decision

Governor's Office

Sandy Hermiston
Ombudsman

10 April 2019

Summary:

An applicant made a request under the Freedom of Information Law to the Governor's Office for a report submitted to the Governor by the Attorney General in 1998, concerning a parcel of land. The Governor's Office conducted a search but did not locate the report. The Applicant was not satisfied with this and appealed the matter to the Ombudsman.

The Information Manager listed the Governor's Office's search efforts, which included a search of records held in the Governor's Office, records stored in the Records Centre at the Cayman Islands National Archive, and records of the Lands & Surveys Department, the Department of Planning, the Facilities Management Department and the Legal Department.

The Ombudsman found that the Governor's Office conducted a reasonable search.

Statutes¹ Considered:

Freedom of Information Law (2018 Revision)
Freedom of Information (General) Regulations 2008

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¹ In this decision all references to sections are to sections of *the Freedom of Information Law (2018 Revision)*, and all references to regulations are to the *Freedom of Information (General) Regulations 2008*, unless otherwise specified.

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A. INTRODUCTION

- [1] On 7 February 2018 the Applicant made a request to the Governor’s Office (GO) under the Freedom of Information Law (FOI Law) for a report from Attorney General Richard Coles to Governor Owen dated 1998 (“the report”). The Applicant also requested correspondence between the Cayman Islands, Belize and the Foreign and Commonwealth Office (FCO) dated 1998-2000. The report and the correspondence relate to a decision by the Executive Council (EXCO) regarding a specific parcel of land. The Applicant made a number of records available to the GO to assist in the consideration for access.
- [2] The same Applicant also requested a report on the same subject, which was composed by Dr. Frank McField and forwarded to the FCO in 1998. With the help of GO’s Information Manager (IM) both requests were redirected to the FCO for consideration under the UK’s Freedom of Information Act, 2000 (FOIA).
- [3] After conducting a search, the IM informed the Applicant on 20 March 2018 that the record in question was not being held by the GO, and that, to the best of the IM’s knowledge, the record was not being held by any other public authority. The IM also informed the Applicant that she continued the search in at least one additional location. The internal review by the GO’s Head of Office confirmed this decision.
- [4] The Office of the Ombudsman accepted the appeal on 29 May 2018. We investigated the search efforts and the arrangements for the disposal of records during the period of interest. The GO detailed their search efforts including the seeking of records stored in the Cayman Islands National Archive (CINA) and requests to a number of other government departments for assistance. The Applicant remained unsatisfied and requested that the matter be heard by the Ombudsman.

B. ISSUES

- [5] **Whether the GO made reasonable efforts to locate a record that is the subject of the application for access.**

C. CONSIDERATION OF ISSUES UNDER REVIEW

- [6] The Applicant provided a letter dated 19 May 1998, from Governor Owen to the Minister of Agriculture, Environment, Communications and Works, John McLean. In it the Governor indicated that he had received a report from the Attorney General, Richard Coles, regarding a review of the procedures followed by the Executive Council in approving a Crown Grant of the land in question. The letter describes the report’s general conclusions. The existence of the report is also confirmed by other sources, including the Legislative Assembly’s Hansard.

[7] Regulation 6 requires that a reasonable search be conducted, as follows:

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), he shall make a record of the efforts he made.

[8] The IM's search efforts in this case consisted of the following:

(a) The IM asked former GO staff members for advice on the potential location of the report. The GO holds no records older than 2009. Some records were destroyed in Hurricane Ivan in 2004. All other records were disposed of (as further described below) or sent to CINA for storage in the Records Centre.

(b) The records of the GO are subject to the record keeping legislation of either the Cayman Islands or the UK, and are managed differently depending on the functional area they document.

The IM explained that no local disposal schedule existed at the time the report was received by Governor Owen. Prior to 1999 the applicable FCO disposal schedule required that records be reviewed after two years, after which the majority were destroyed. Correspondence was scheduled to be destroyed after 6 or 10 years, depending on its nature. They were unable to locate any records testifying to the scheduled or unscheduled destruction of GO records.

(c) The IM asked CINA to conduct a search of the records stored in the Records Centre on behalf of the GO. There were no files entitled "Richard Cole" or "Belize". There was one file named "land disputes", but close examination did not find anything relevant to the Applicant's request. CINA also searched its historical holdings for potentially relevant records but did not find any that were relevant to the Applicant's request.

(d) The IM contacted the IMs of the Planning Department and the Lands & Survey Department, asking if they might have a copy of the report. Both IMs made inquiries but found nothing relevant in regard to the report or the parcel of land.

(e) The IM also checked with the Facilities Management Department since it assisted in the physical move of records belonging the GO from the old to the new Government Administration Building, but nothing relevant was found.

(f) The IM also contacted the Legal Department for assistance since the report was produced by the Attorney General. However, the IM was told that the report was not held.

[9] The IM also put the Applicant in touch with the FCO so that he could make a request for the Coles and McField reports under the UK's FOIA.

[10] The question of reasonableness of a search under the UK's 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...

[11] Furthermore, the 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...²

[12] Given the extensive similarities between the UK and Cayman Islands FOI laws, I will apply the same standard and factors.

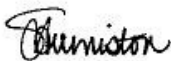
[13] In my opinion the IM has demonstrated a good understanding of the request, and the quality of her analysis was satisfactory, especially keeping in mind the historical nature of the requested records.

[14] It also is clear to me that the IM undertook a search with an appropriately wide scope, looking for responsive records in a wide range of potential locations including CINA and a number of other public authorities.

[15] The search was carried out rigorously and efficiently until the IM had no other places to look.

D. FINDINGS AND DECISION

[16] Under section 43(1) of the *Freedom of Information Law (2018 Revision)*, I find that the Governor's Office has conducted a reasonable search for the requested records. No further action is required.



Sandy Hermiston
Ombudsman

² *Bromley v Information Commissioner and Environment Agency* (EA/2006/0072) [2011] 1 Info LR 1273 paras 12-13