Ombudsman Appeal Lindsay 202400728
Hearing 106 - 20240728
Submissions By Alric Jeremy Lindsay (the "Applicant")
28 May 2025

IN THE MATTER OF ACCESS TO RECORDS UNDER THE FREEDOM OF INFORMATION ACT (2021 REVISION)

BETWEEN: ALRIC JEREMY LINDSAY

APPLICANT

AND: THE DIRECTOR OF PUBLIC PROSECUTIONS

RESPONDENT

THE APPLICANT'S REPLY SUBMISSIONS

Table of Contents

I. Definitions 1
II. DPP's Initial Submission 2
III. Statutory Interpretation 3
IV. Submissions 6
V. Conclusion 14

Definitions

6. In this Reply Submission of the Applicant, all undefined terms have the same meaning as set out in the definitions section of the Initial Submissions of the Applicant dated May 20, 2025.

7. The Applicant repeats the relevant background, and the constitutional basis and statutory framework outlined in the Initial Submissions dated May 20, 2025.

DPP's Initial Submission

8. This is the Reply of the Applicant, Mr. Alric Lindsay, to the Initial Submission of the DPP (dated 28 January 2025, but presumably intended to be dated 20 May 2025) (hereinafter the "**DPP's Initial Submission**").

9. In the DPP's Initial Submission, the DPP (under the heading "FOI Application") stated:

"As you are aware the FOI applicant, Mr. Alric Lindsay submitted an FOI request to the ODPP on the 4th of November 2024, wherein he requested the following information:

- Number of matters that the ODPP decided not to prosecute from 2017 to 2024
- Nature of the allegations in 1 above.
- Reasons for each allegation in 1 above." (emphasis underlined)

10. In the DPP's Initial Submission, the DPP (under the heading "Freedom of Information Act (2021 Revision) S 9(C)") stated:

"On the 26th of November [2024], I responded to Mr. Lindsay's request and advised that pursuant to s 9(c) of the Freedom of Information Act (2021 Revision) to provide the requested information would unreasonably divert the department's resources for the following reasons:

- The ODPP receives 2,500 annually to rule on.
- A proportion of those cases will be on decisions not to proceed because of insufficient **evidence** or for **public interest** reasons: these would include decisions not to prosecute.
- Cases which go to court are subject to continuous review and some may be withdrawn before getting to a judge/jury for determination: these also involve decisions not to prosecute.
- Indictment charges sheets will include numerous offences and decisions may be made to accept alternative charges: these also include decisions not to prosecute.
- To compile a list from 2017 to 2024 is too wide even if we started the process, resources would take weeks.

On 27th of November 2024 Mr. Lindsay sent another request for the same information contained in his application dated the 4th of November 2024 but he **reduced the time period from 2017 to 2024 to 2022 to 2024**.

On the same date the Director of Public Prosecution[s] sent the following response to Mr. Lindsay.

I have been included in your correspondence.

Reducing the time period from 2017 to 2024 to 2022 to 2024 **would limit the amount of time and resources**.

However, this would **still** be a **mammoth job** and, for the same reasons as set out by my colleague Ms. McCarthy, we are unable to assist with this request." (emphasis underlined)

11. In the DPP's Initial Submission, the DPP (under the heading "Freedom of Information (General) Regulations (2021 Revision) s.10(3)(B)") further stated:

"In determining whether it would be feasible to provide Mr. Lindsay with the requested information, consideration was given to s.10(3)(b) of the above captioned legislation as follows:

- As previously stated herein the ODPP receives 2,500 files annually to rule on.
- The number of charges per annum could exceed 4,000 as one defendant could be charged from anywhere between one to six charges or even more when fraud and/or sexual offences are charged.
- A defendant faced with a 15 count indictment may offer pleas of guilty to 8 of those charges; The ODPP may accept those pleas as sufficient to reflect the defendant's overall criminality and may take a view that to prosecute the defendant further would not affect the ultimate sentence which may be imposed. Further, there may be situations where a defendant is already serving a sentence of imprisonment and, similarly, there may be no cause to proceed on some or all of the charges.
- Due to the **volume of cases** which are dealt with by the ODPP, records of each and every charge which has to be discontinued would be **very difficult to identify**.
- The ODPP has confirmed that position set out above with Ms Darice Pinedo, senior software developer, with the CIG Computer Service Department. Ms Daredo has been **responsible for** assisting the office with **implementation** of a **more refined case management system**. From her perspective as someone versed in the capacity of the case management system, Ms Pinedo has confirmed that "**it would take a few weeks to pull that information even if the data is available**"." (emphasis underlined)

12. In the DPP's Initial Submission, the DPP (under the heading "Conclusion") lastly stated:

"Accordingly, the ODPP maintains the stance upon which it has always relied, namely, that to seek to accommodate the request of Mr. Lindsay would divert office resources unreasonably." (emphasis underlined)

Statutory Interpretation

13. Moreover, when considering principles of statutory interpretation, the following are relevant:

13.1 "Every local law of the Cayman Islands shall be carried out and applied according to the plain reading, and not according to any private construction, and any private construction influencing a decision in any case shall be deemed a sufficient cause for appeal or new trial or counter prosecution": s.3(2) *Interpretation Act (1995 Revision)*.

13.2 In *The Companies Act (2021 Revision) and Padma Fund L.P.* (unreported 08.10.2021: Cause No. FSD of 2021 (RPJ)) *per* Grand Court, Parker J stated (at §17):

'The principles of statutory interpretation are well established and were succinctly summarised by the Privy Council in *Shanda v Maso Capital*[1] where Lady Arden said at §[27]:

> "the court has to ascertain the intention of the legislature from the words its used in their context, and also in light of any material which demonstrates the mischief that it was concerned to redress by the statutory provision."'

13.3 "The modern approach to statutory interpretation requires the courts to ascertain the meaning of the words in the statute in light of their context and purpose": *Kostal UK Ltd v Dunkley* [2021] UKSC 47 (at §107) *per* Lady Arden and Lord Burrows (UK Supreme Court).

13.4 "There is no one cannon of construction that trumps all others; in keeping with the modern approach, the Court has to construe the Act as a whole, taking into account the wider context": *Premier Assurance Group SPC Ltd (in official liquidation) v Providence Insurance Company I.I (for and on behalf of Premier Assurance Segregated Portfolio Puerto Rico) et al* (unreported 17.05.2023: FSD 229 of 2021) at §166 *per* Hon. Justice Sir Anthony Smellie KC (Grand Court).

14. The following primary legislative and subsidiary provisions are, *inter alia*, relevant to this matter:

14.1 The DPP relies on the two following primary and subsidiary provisions:

(a) **Primary Legislation—Unreasonable Diversion of Resources**: "A public authority is not required to comply with a request where…compliance with the request would unreasonably divert resources": s.9(c) *FOI Act*. (emphasis underlined)

(b) **Subsidiary Legislation—Factors to Determine Unreasonable Diversion of Resources**: "The information manager shall make a determination of "unreasonable diversion of resources" on a case by case basis and for this purpose—…the types of factors which shall be considered to determine whether the diversion of resources would be unreasonable include—(i) the nature and size of the public authority; (ii) the number, type and volume of records falling within the request; and (iii) the work time involved in fully processing the request": r.10(3)(b) *FOIGR*. (emphasis underlined)

14.2 The context and purpose of the *FOI Act* (as expressly set out in its objects) is to reinforce and give effect to certain fundamental principles underlying a constitutional democracy (namely, governmental accountability, transparency and public participation in national decision making) by granting access to the public a general right to access to records (*i.e.*, to give effect to a qualified right to freedom of information), "subject to exemptions which balance that right against the public interest in exempting from disclosure governmental, commercial or personal information" (pursuant to the objects in s.4 *FOI Act* taken together in conjunction with ss.6(1), 6(5), 9(c), 26 thereof as well as with r.10(1), r.10(3) and the definition of "public interest" under s.2 *FOIGR*).

[1] The precise reference is *Shanda Games Ltd v Maso Capital Investments Ltd* [2020] UKPC 2 (at §27) *per* Lady Arden (Privy Council).

14.3 The purpose and context of the *FOI Act*, as underpinned by the statutory scheme, are informed by the constitutional obligation, pursuant to s.122 *Constitution*, which provides:

> "A law enacted by the Legislature shall provide for a right to access to information held by public authorities, conditions for the exercise of that right, and for restrictions and exceptions to that right in the interests of the security of the Cayman Islands or the United Kingdom, public safety, public order, public morality or the rights and interests of individuals." (emphasis underlined)

Whilst it is a constitutional obligation (*i.e.*, "**shall** provide") to provide for the right to access information, pursuant to s.122 *Constitution*, subject to constitutional "restrictions" and "exceptions" (specifically relating to "interests of security" of the Cayman Islands and United Kingdom, "public safety", "public order", "public morality" or "rights or interests of individuals"), these constitutional exceptions (under s.122 *Constitution*) are disproportionately of much higher importance to upholding the rule of law rather than "unreasonable diversion of resources" (s.9(c) *FOI Act*; r.10(3)(b) *FOIGR*), which appears to be exploited here in lieu of the having to fulfill statutory (and constitutional) obligations.

14.4 **Narrowing Request**: Pursuant to r.10(1)-(2) *FOIGR* (headed "Unreasonable diversion of resources") provides:

> "(1) **Before** a public authority makes a decision to refuse access under section 9(c) of the principal Act (on the basis that the request would unreasonably divert its resources) the information manager **shall** send written communication to the applicant—
>
> (a) explaining how the request is likely to unreasonably divert resources; and
>
> (b) inviting consultation with a view to **narrowing the request**.
>
> (2) Written communication sent under paragraph (1) automatically suspends the thirty-day period referred to in section 7(4) of the principal Act (for responding to the application) until the date when the applicant **agrees to narrow the request** to such extent as may be agreed by the public authority." (emphasis **bolded** and underlined)

15. Section 10(4) of the *FOIGR* provides:

> "(4) In this regulation, a reference to the time spent by a public authority in searching for, locating or collating a record within a public authority's filing system or otherwise spent in processing the application does not include —
>
> (a) where the record is not found in the place in which, according to the filing system of the public authority (referred to in this regulation as the "relevant filing system") it ought to be located, any time other than such time as would have been spent by the public authority in searching for or retrieving the record if the record had been found in that place; or
>
> (b) where the relevant filing system ought reasonably to have indicated, but does not indicate, the place in which the record is located, any time other than such time as would have been spent by the public authority in searching for or

retrieving the record if the relevant filing system had indicated the place in which the record is located and the record had been found in that place."

Submissions

16. **Unreasonable Diversion of Resources and Narrowing the Request**: The Applicant repeats all of the submissions made in the Initial Submissions dated May 20, 2025, including a request in the alternative that the DPP provide the information from 2022 to present date for cases, where there was a decision not to prosecute, with respect to cases concerning charges relating to **ganja (or cannabis-related charges, including for cannabinol derivatives) and firearms (or firearm-related charges)** – this is both reasonable and proportionate, therefore, should not be an unreasonable diversion of resources (s.9(c) *FOI Act*; r.10(3)(b) *FOIGR*) – remembering that all matters (from 2017 to 2024) would only be (as estimated by the DPP initially) taking a couple of weeks.

17. Whilst it is appreciated that the DPP, in its Initial Submission, submitted that it is not required to comply with the Applicant's request, because compliance with the request would unreasonably divert resources (s.9(c) *FOI Act*), the Applicant further submits that, in light of the Applicant's subsequent twice-over narrowing of request to be more specifically focused (pursuant to r.10(1) *FOIGR*), these arguments are, at this time point, academic and now longer are reasonably to stand up as a proportionate and reasonable statutory exemption to refusing disclosure.). In particular, it appears that the DPP, in support of its information manager's contention that the Applicant's request for disclosure would be an "unreasonable diversion of resources", the factors that the DPP seek to justify this determination include, *inter alia*, "the number, type and volume of records falling within the request" (pursuant to r.10(3)(b)(ii) *FOIGR*) and "the work time involved in fully processing the request" (pursuant to r.10(3)(b)(iii) *FOIGR*), but the Applicant submits that these are no longer relevant and the DPP should now reconsider its decision not to disclose and, in light of the Applicant's further narrowed specific request pertaining to ganja offences (and cannabis-related offences) and firearms offences (including firearms-related offences), the DPP is now obligated to disclose.[2]

18. Moreover, before the DPP can refuse the Applicant's request (on the basis that it is an unreasonable diversion of resources under s.9(c) *FOI Act*), the DPP is under a statutory duty/obligation to send written communication explaining how that is so (r.10(1)(a) *FOIGR*) and "invite consultation with a view to narrowing the request" (r.10(1)(b) *FOIGR*). The Applicant submits that, with respect to a good faith effort being made with a view to narrowing the request, the Applicant has now made the following efforts towards achieving this as follows:

    18.1 First, the Applicant initially narrowed his disclosure request from between 2017 to 2024, which was shortened by over 50% of that original time period, to now between 2022 to 2024.

    18.2 Second, the Applicant, in a further good faith effort with a view to narrowing the request, is now, in the alternative, seeking disclosure of information from 2022 to 2024, where there

[2] It is submitted, in addition to submissions in the Applicant's Initial Submission, that the Applicant's alternative disclosure request, which, once again, further narrowed the scope of the request being sought now gives the DPP no room to resist disclosure on the basis that compliance with the request would unreasonably divert the DPP's resources (pursuant s.9(c) *FOI Act*; r.10(3)(b) *FOIGR*): see the Applicant's Initial Submission (dated 20 May 2025) at §48 and remedy sought at §50(7) thereof.

was a decision not to prosecute, with respect to cases (or matters) concerning charges relating to ganja (or cannabis-related charges, including for cannabinol derivatives) and firearms (or firearm-related charges).

19. The Applicant submits that, in light of such significant good faith efforts having been made with a view to narrowing the request, as it stands, this is more proportionate and reasonable, therefore, gravitates towards this significantly narrowed disclosure request not being an unreasonable diversion of the DPP's resources and the DPP should now forthwith agree to undertake fulfilling its statutory obligations.

20. The Applicant further submits that, in light of the forgoing, if there is anything further outstanding that would be beneficial and helpful for fulfilling its statutory obligations, that the DPP should fulfill its obligations to invite consultation (pursuant to r.10(1)(b) *FOIGR*).

21. The Applicant submits that the DPP is now, given the Applicant's various significant good faith efforts with a view to substantially narrowing the request, under a constitutional responsibility to comply with its statutory obligations that, in relation to all its decisions and acts (including omissions to act[3]), "must be lawful, rational, proportionate and procedurally fair" (pursuant to s.19(1) *Bill of Rights*). The Applicant further submits that, in this regard, the DPP's constitutional responsibility is inextricably intertwined with the Applicant's corresponding fundamental right to lawful administrative action (pursuant to s.19(1) *BoR* (taken together in conjunction with s.1(2)(c)[4] and s.24[5] thereof); *Re Application of Permanent Residence by Hutchinson-Greene* [2015] 2 CILR 97 at 87 (§§45, 47) *per* Smellie CJ[6]).

22. Regarding the statement by the DPP that:

> "The ODPP has confirmed the position set out above with Ms Darice Pinedo, senior software developer, with the CIG Computer Services Department. Ms Daredo has been responsible for assisting the office with implementation of a more refined case management system. From her perspective as someone versed in the capacity of the case management system, Ms. Pinedo has confirmed that "it would take a few weeks to pull that information even if the data is available,"

23. The Applicant submits that:

(a) This is an admission by the DPP of a continued breach of the *NAPR Act,* which requires the DPP to keep maintain full and accurate public records (s.6(1) *NAPR Act* read together with s.6(2) thereof).

(b) This indicates that no reasonable search was completed by the DPP information manager as required by r.6(1) of the *FOIGR* and previous rulings of the Ombudsman. Therefore, the DPP information manager continues to be in breach of s.52(1) of the *FOI Act*.

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[3] See definitions of "**act**" and "**contravene**" under s.28 of the *Bill of Rights*.

[4] The "Bill of Rights, Freedoms and Responsibilities", which "is a cornerstone of democracy in the Cayman Islands" (s.1(1) *BoR*), "confirms or creates **responsibilities of** the **government** and **corresponding rights of every person** against government" (s.1(2)(b) *BoR*). (emphasis **bolded** and underlined).

[5] "It is unlawful for a public official to make a decision or to act in a way that is incompatible with the Bill of Rights" (s.24 *BoR*).

[6] See also the Applicant's Initial Submission (dated 20 May 2025) at §46.

(c) The reference to potential time for the search for records being "a few weeks to pull that information even if the data is available" cannot be relied upon by the DPP, because s.10(4) of the *FOIGR* states that "a reference to the time spent by a public authority in searching for, locating or collating a record within a public authority's filing system or otherwise spent in processing the application does not include "where the record is not found in the place in which, according to the filing system of the public authority (referred to in this regulation as the "relevant filing system") it ought to be located, any time other than such time as would have been spent by the public authority in searching for or retrieving the record if the record had been found in that place; or where the relevant filing system ought reasonably to have indicated, but does not indicate, the place in which the record is located, any time other than such time as would have been spent by the public authority in searching for or retrieving the record if the relevant filing system had indicated the place in which the record is located and the record had been found in that place."

In the circumstances, the records ought to have been properly kept on the DPP's records management system and easily located. The DPP has not met the burden of proof required under section 43(2) of the *FOI Act*.

(d) Given the arguments put forth in *Cayman Islands Urgent Care and Others v Director of Public Prosecutions (G 103 of 2022),* the Applicant submits that the Applicant has a constitutional right, pursuant to article 19(2) of the *Constitution*, to be provided reasons for the DPP's decisions not to prosecute. The DPP has breached or threatened to breach the Applicant's constitutional right by not providing reasons for decisions not to prosecute.

(e) Section 19(1) of the *Bill of Rights* provides that all decisions and acts of public officials must be *"lawful, rational, proportionate and procedurally fair."* Concerning this, the Applicant submits that the decisions and actions of the DPP are unlawful and/or irrational and/or disproportionate and/or procedurally unfair.

(f) The Applicant submits that there was a breach of natural justice in that the DPP failed to give the Applicant an opportunity to review the records himself.

(g) The Applicant submits further that it is in the interests of justice that the DPP provide the requested information.

24. Moreover, the Applicant further submits that:

24.1 The decision to prosecute (or not prosecute, as well as when to discontinue, etc.) is fundamentally important and should not be decided arbitrarily. Rather, as a convention of fundamental importance to society, prosecutors (including the DPP) are, *inter alia*, to have regard to and follow The *Code for Crown Prosecutors* ("**Code**"). In particular, "Prosecutors must only start or continue a prosecution when the case has passed both stages of the Full Code Test", except "when the Threshold Test may be applied" (*Code* at §4.1), and the "Full Code Test has two stages: (i) the evidential stage; followed by (ii) the public interest stage" (*Code* at §4.2 read together with §4.3-4.5 and taken together in conjunction with, with respect to the evidential stage, §4.6-4.8 and, with respect to the public interest stage, §4.9-4.14)—this is clearly a rigorous and continuing balancing

of exercise of fundamental importance to ensuring that the prosecution upholds the rule of law.

24.2 Conversely, the decision not to prosecute is equally important to the DPP, where such decision is made and must be treated with the utmost care (including contemporaneously documenting such decision): see, for example, the landmark judgment in Cayman law in *The King (on the application of Cayman Islands Urgent Care Ltd (trading as Doctors Express), Kaiser Day Cannaceuticals Ltd and Kaiser Day Pharmaceuticals Ltd) v Director of Public Prosecutions* (unreported 05.08.2024: Cause No. G 103 of 2022) *per* Grand Court, where (when deciding to order disclosure of advice of leading counsel, which the decision to not prosecute public officials, in judicial review proceedings challenging, *inter alia*, the decision of the DPP not to prosecute) Hon. Justice Jalil Asif KC had regard to the approach of the courts (at §65), had regard to what can only be accurately described as concerning factors (at §66 – particularly at §§66.1-66.12) and, ultimately, held that it was necessary to order such discovery against the DPP (at §§67-68).

24.3 It is, therefore, not surprising, unreasonable nor disproportionate for the Applicant (now in an alternatively and far more narrowly framed — twice (both reasonably and proportionately narrowing the request) conceded to further narrow the request (r.10(1) *FOIGR* read together with r.10(2) thereof) — to request disclosure of the DPP's decisions (between 2022 to 2024 or to present date) to not prosecute ganja offences (including cannabis-related offences, including cannabinol derivatives) and firearms offences (including firearms-related offences), which is far more proportionate and reasonable of a request and, having now been narrowed, it is not open-ended and, therefore, not an unreasonable diversion of the DPP's resources (s.9(c) *FOI Act*; r.10(3)(b) *FOIGR*).

24.4 In fact, for the DPP to provide said disclosure (now twice over and very specifically narrowed disclosure request, which the Applicant did so in a good faith effort), which is in line with the context and purpose of the objects of the *FOI Act* to reinforce and give further effect to certain fundamental principles underlying the system of constitutional democracy (namely, governmental accountability, transparency, and public participation in national decision-making) by granting to the public (here, the Applicant) a right to access to records held by the DPP concerning decisions not to prosecute two specifically narrowed requests for disclosure (pursuant to s.4 *FOI Act*).

24.5 For the DPP to comply with such twice over and specifically narrowed disclosure should be welcomed by the DPP in order to evidence that it is complying with its statutory obligation to make and maintain full and accurate public records and which records are maintained in good order (s.6(1)-(2) *NAPR Act*), as well as evidencing that the DPP's information manager is complying with her statutory obligations to make reasonable efforts to locate said records to not prosecute that are the subject of the twice over amended and specifically narrowed request in the Applicant's application for access (r.6(1) *FOIGR* taken together with r.6(2) thereof).

24.6 The Applicant submits that the DPP now comply with this twice-amended and specifically narrowed information request that is not (as is currently extant by the Applicant's continued reasonable and proportionate narrowing and concession) an

unreasonable diversion of the DPP's resources (s.9(c) *FOI Act*; and r.10(3)(b) *FOIGR* taken together with r.10(1)-(2) thereof) — for the DPP to now comply (with the narrowed request) it is compatible with the Applicant's constitutional right to freedom/access of information and the exceptionally high constitutional exceptions/exemptions (s.122 *Constitution*) and is also in compliance with the DPP's constitutional responsibility to comply with the Applicant's fundamental right to lawful administrative action (pursuant to s.19(1) *Bill of Rights* read together with s.1(2)(a)-(b) and s.19(2) thereof) for the DPP in all its decisions and acts (including omissions to act: pursuant to the definition of "act" and "contravene" in s.28 *Bill of Rights*) that "must be lawful, rational, proportionate and procedurally fair".

24.7 Moreover, given that there is a currently a public perception that Caymanians objectively appear to be receiving harsher penalization with respect to ganja (or drug) and cannabis-related charges than non-Caymanian visitors to the Cayman Islands, both with respect to the prosecutors in the DPP charging and prosecutorial functions, as well as sentencing by the judiciary where convicted, for the DPP now to provide disclosure to the Applicant (as twice-amended and specifically narrowed), if so disclosed by the DPP and, ultimately, the records disclosed gravitated towards the DPP complying with its statutory and constitutional obligations as well as negating any public sentiments, whether accurate or inaccurate, that the rule of law is being subverted and that Caymanians are being discriminated against, over and above non-Caymanians, in the Cayman Islands with respect to the decision to prosecute or to not prosecute offences as well as sentencing functions by the judicial arm of government — see, for example, the following news articles (local and, with respect to the latter, internationally reported):

(a) *Cayman Compass* (caymancompass.com) entitled "AG calls for review of drug sentences amid fears Caymanians hit harder than visitors" (by Raymond Hainey, dated 18 December 2024);

(b) *Cayman News Service* (caymannewsservice.com) entitled "AG agrees to ask CJ to review inequities of drug sentences" (dated 7 January 2025);

(c) *Blackbox Insights* (blackboxinsight.org) entitled "Three Tourists Attend Court & Get No Convictions Recorded After Cannabinol Derivatives Found In Their Possession At the Airport. DPP Now in the Spotlight For Failing to Charge Tourists with Drug Importation, But Only Possession" (by Alric Lindsay, dated November 14, 2024);

(d) *Blackbox Insights* (blackboxinsight.org) entitled "Visitor Fined $1,200 & No Conviction Recorded for Importation of Gelatinous Pills Containing THC" (by Alric Lindsay, dated January 7, 2025); and

(e) *Blackbox Insights* (blackboxinsight.org) entitled "American Citizen Walks Free for Importation of Methamphetamine, Ecstacy & Ganja into Owen Robert International Airport" (by Alric Lindsay, dated November 19, 2024), where, for example, a local Magistrate of the Summary Court was quoted, in relevant part, as follows:

"Before sentencing [the Defendant], Magistrate McFarlane told him that "there is no excuse for travelling to an overseas jurisdiction with drugs" given the consequences of high profile persons cause with drugs overseas.

Magistrate McFarlane added: "If you are traveling to a different jurisdiction, that is on you to ensure that you understand the rules and the regulations and the laws in relation to the jurisdiction."

Magistrate McFarlane continued: "**If you were from here, for example, you might be dealing with a very different sort of result**."

Magistrate McFarlane then explained that Walks Jr. would be conditionally discharged if he did not commit any further offences in the Cayman Islands for a period of 12 moths. In addition, he must pay $2,802 before he leaves the Court building today. Lastly, the drugs were ordered to be forfeited and destroyed."

(f) *Los Angeles Times* (latimes.com) entitled "Gigi Hadid celebrates freedom after Cayman Islands arrest with traps on the beach" (by Jonah Valdez, dated 18 July 2023), for example, which stated, in relevant part, that:

"After Gigi Hadid and a friend were arrested on suspicion of trying to bring marijuana into the Cayman Islands, they celebrated their release by posting thirst traps from a hotel pool and beach.

The fashion model and TV personality shared photos and video from her Caribbean vacation on Instagram, showing herself posing with swimsuit-clad friends at a beachside resort to the accompaniment of oysters…"Alls well that ends well," Hadid captioned the post without directly addressing her arrest.

…The supermodel, whose real name is Jelana Nicole McCarthy, admitted in court to illegally importing marijuana and instruments to smoke it with. But, after paying a $1,200 fine, they walked away. The same charge can carry a three-year prison sentence with hard labor and, for some, seven years and a $20,000 fine, according Cayman Islands law. And for the typical Caymanian, having such a drug charge on your record can make education, employment and travel difficult.

…

The Cayman Islands, often known as a tax haven for U.S. companies and the ultra rich, has been attempting to decriminalize marijuana in recent years.

In 2021, a group of Caymanians started collecting signatures for a voter-led referendum to decriminalize the drug. Among their aims was to allow people convicted of crimes related to using or possessing small amounts of marijuana to have their convictions expunged. The islands' Parliament also voted in 2022 to hold a referendum that would decriminalize small amounts of marijuana.

Orrie Merren IV, a civil attorney who drafted the voter-led referendum, said a major motivation behind his initiative was to relieve the

disproportionate impact such a law has on the islands' young adults, many of whom live in its lower-income communities.

"I think its an onerous burden for them to get a criminal charge and that then disallows them to obtain employment in the future, or in certain cases could hurt their ability to travel for the purpose of school, university, trade qualification," Merren said, referring to young Caymanians." He said he knew at least one person who couldn't travel to the U.S. because of a marijuana possession charge.

Though marijuana and other drugs are used in both lower- and higher-income communities, arrests for low-income residents are more common, he said."

"You're less likely to have police patrols going through a gated community than, say, if you're looking at lower-income places," which tend to have higher crime rates and greater police surveillance, Merren said."

24.8 If the DPP complies with the Applicant's twice-amended and narrowed request, this would gravitate towards evidencing that the rule of law being upheld in the Cayman Islands (s.107 Constitution read together with s.1(2)(a) *BoR*) and that fundamental rights to lawful administrative action (s.19(1) *BoR* taken together with s.19(2) and s.24 thereof) is being responsibly complied with, for example, as explained in *Re Application of Permanent Residence by Hutchinson-Greene* [2015] 2 CILR 97 at 87 ([45] and [47]) per Grand Court, where Smellie CJ (as he then was) elucidated:

> "There can, moreover, be no doubt as set out in s.19(1) of the Cayman Islands Constitution Order 2009, that the right to lawful administrative action is a fundamental right which demands, at the very least, a high level of protective oversight by the court. Section 19(1), which is headed "Lawful administrative action," provides that all decisions and acts of public officials must be lawful, rational, proportionate and procedurally fair…Not only must all decisions and acts of public officials be lawful, rational, proportionate and procedurally fair, **they must manifestly appear to be so**." (emphasis **bolded** and underlined)

24.9 The Applicant submits that, public officials in the Cayman Islands, have been under heightened anxiety not to disclose relevant information that relates transparency of the rule of law being upheld, which the DPP appears to be continuing such irrational and disproportionate fear of non-disclosure of public officials' functions, which there is clearly a public interest in the general right to disclosure. In recent times, public officials have had fears of disclosing information about AML regime deficiencies and failures (including prosecutorial failures), which appear to be a fear of failure to comply with international legal obligations relating to FATF and CFATF obligations — see, for example, the following:

(a) In *Maples Corporate Services Ltd and Maples FS Ltd v Cayman Islands Monetary Authority* (unreported 30.03.2023: Cause No. GC 20 of 2021) *per* Grand Court, where large affiliated commercial businesses with overs 40,000 clients (together

"**Maples**") and the Cayman Islands main public AML-regulator ("**CIMA**") adjudicated a judicial review action disputing "construction of various limbs of the…Anti-Money Laundering Regulations" (at §1) and it was clear that public officials were desiring not to disclose AML (including prosecutorial) failures , Kawaley J elucidated (§§3-4, 41, 49, 150, 166):

> "And **looming in the background was the spectre of the Cayman Islands having been placed on the Financial Action Task Force ("FATF")'s 'grey list', reportedly because the number of prosecutions and convictions do not match this jurisdiction's risk profile**. The international policy imperative in my judgment has no bearing on the question of statutory construction but is potentially a significant explanation…for CIMA adopting a rigorous stance in its approach to its supervisory functions and the present proceedings…[T]here were skirmishes around public interest immunity privilege…I posted publication of two interlocutory judgments so as not to prejudice the ultimately unsuccessful settlement efforts…[T]he Mutual Evaluation Review "MER") conducted by the Caribbean Financial Action Task Force ("CFATF") in 2019 is a reference to an important background factor which is most obviously relevant to explain the rigorous way CIMA has approached its regulatory functions in the present case…In the course of argument I wondered aloud how much scope there was for such [*Proceeds of Crime Act*] offences to be committed in the Cayman Islands in relation to entities with assets and principal agents located overseas…[Maples]'s AML systems are clearly robust but not flawless, just as the regulatory actions of the Authority are robust and not flawless in truly trying regulatory times**…[I]n the Cayman Islands where, based in part on the evidence adduced in this case, my instinctive sense (as I observed in the course of the hearing) is that most substantive elements of any money laundering offence involving Caymanian international entities are likely to take place abroad where most assets are likely sited**. However, the Authority's evidence and its counsel' submissions also suggest that the need to detect and prevent more elusive facilitation of wrongdoing elsewhere on the part of entities based here has rightly been identified by the Authority as a significant practical concern. **This concern to my mind potentially explains why the Authority adopted what I have found to be, in effect, an 'envelope-pushing' approach to the construction to the controversial provisions…of the AMLRs**, as they apply in the limited context of registered office service providers." (emphasis **bolded** underlined)

(b) Clearly public officials, such as with CIMA (a statutory authority) taking an envelope-pushing approach to its AML legislation obligations, which were overly focused more heavily on domestic AML non-compliance and offences, but overlooking more realistic threats of money laundering offences by Cayman international corporate entities abroad – that is, Cayman Islands public officials were "majoring on minors" with its domestic AML focus, but ignoring the international focus which is where the most significant risk was (or should have

been) focused. However, after CIMA lost to Maples, CIMA's overblown fear of not complying with disclosure obligations by Cayman Islands public officials' (which appears to be similar to the DPP's current-consistent) disproportionate and irrational propensity towards non-disclosure information that relates to AML (including potential prosecutorial) failures for fear of international scrutiny, even when disclosure is in line with upholding the rule of law. In *Maples Corporate Services Ltd and Maples FS Ltd and Cayman Islands Monetary* Authority [2023] 1 CILR 467 at 469 *per* Grand Court (held 31.03.2023), when refusing to embargo publication of the judgment that CIMA sought, Kawaley J stated (at §§3-6)

> "3…Concern is expressed that harm will be caused to the financial services industry in the Cayman Islands if the judgment is published before the Authority has had an opportunity to inform and consult additional authorities about its contents.
>
> 4. The nature of harm that will flow is understandably not particularized but I hopefully do not do the complaint an injustice by summarizing them as follows. The Cayman Islands is presently in a very delicate international regulatory position because of being placed on a grey list. And it is said that the fact that the Grand Court had decided a judicial review application. In favour of two service providers, by adopting the construction of reg. 12 of the Anti-Money Laundering Regulations that the service providers contend for, will in some way damage the regulation of these Islands.
>
> 5. From the time that the embargo issue was first canvassed in response to a draft of the judgment, the plaintiffs have heavily relied on open justice principles and I myself have been deeply concerned about the implication of this application. For open justice. It has to be said that the notion of stifling the publication of a judgment in relation to proceedings that have taken place in open court reviewing documents that have only a very to a very limited extent been redacted finds no precedent.
>
> 6. The applicant, the Authority, has not been able to identify any judicial authority which comes close to supporting the idea that it is legally possible to contend that a judgment of that nature should not be published for even a short time after having been delivered because some unparticularized harm may flow from the fact of publication." (emphasis underlined)

Conclusion

24.10 The Applicant seeks from the Office of the Ombudsman the declarations in the Applicant's initial submissions dated May 20, 2025, and declarations that:

(a) The actions of the DPP were and continue to be unlawful and/or irrational and/or disproportionate and/or procedurally unfair (pursuant to s.19(1) *Bill of Rights*).

(b) While the DPP has attempted to rationalize or justify its decision, the DPP has not met the burden of proof required under s.43(2) of the *FOI Act*.

(c) The reference to potential time for the search for records being "a few weeks to pull that information even if the data is available" cannot be relied upon by the DPP, because of the stipulations set out in Section 10(4) of the *FOIGR*.

(d) There was a breach of natural justice in that the DPP failed to give the Applicant an opportunity to review the records himself.

(e) It is in the interests of justice that the DPP provide the requested information.