

Ombudsman Appeal Lindsay 202400728
Hearing 106 - 20240728
Submissions By Alric Jeremy Lindsay (the “Appellant”)
28 May 2025

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

BETWEEN: ALRIC JEREMY LINDSAY

APPELLANT

AND: THE DIRECTOR OF PUBLIC PROSECUTIONS

RESPONDENT

REPLY SUBMISSIONS BY ALRIC JEREMY LINDSAY

Definitions

1. 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.

Relevant Background

2. The Applicant repeats the relevant background, and the constitutional basis and statutory framework outlined in the Initial Submissions dated May 20, 2025.
3. The Applicant notes that an email dated May 20, 2025, was sent to the Applicant by the Office of the Ombudsman, containing a purported reply submission from the DPP. The Applicant refers to the reply submission as “purported” because it is dated January 28, 2025, and cannot therefore be a reply to the Applicant’s initial submissions dated May 20, 2025.
4. Notwithstanding the above, assuming that the content of the Ombudsman’s May 20, 2025 email is the DPP’s reply submission, the Applicant notes the following statements by the DPP:

“In determining whether it would be feasible to provide Mr. Lindsay with the requested information, consideration was given to s10(3) (b) of the above captioned legislation...

Due to the volume of cases which are dealt with by the ODPP, records of each and every charge which has been discontinued would be very difficult to identify.

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.

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.”

FOIGR

5. In addition to the observations of the FOIGR previously made by the Applicant in the Applicant’s initial submissions, the Applicant makes the below additional observation:

Section 10(4) of the FOIGR states:

“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.

Doctors Express Case

6. In the case of *Cayman Islands Urgent Care and Others v Director of Public Prosecutions (G 103 of 2022)*, Cayman Islands Urgent Care and others made application for specific discovery of documents.

Paragraph 5 of the Introduction section stated:

“... in the present proceedings the Applicants challenge the decision by the DPP’s office not to pursue prosecutions of various persons.”

The factual background leading to the application for specific discovery stated as follows:

“Following the conclusion of the Applicants’ first judicial review claim, and in light of the terms of the judgment of McMillan J, the Applicants wrote on 10 February 2021 inviting the DPP to consider authorising criminal charges against the individuals involved. The DPP replied on 15 February 2021, indicating that any decision would be made after careful consideration of the judgment and *“a significant amount of further information”*.

On 28 February 2022 the Applicants were informed that the DPP was not intending to commence a prosecution against any of the persons involved. The Applicants sought an explanation from the DPP but, apart from stating that the potential prosecutions had failed the evidential test, the DPP refused to provide any further information at that time. The Applicants sent a short pre-action protocol letter on 14 April 2022, requesting a response by 28 April 2022.

Not having received a response, the Applicants commenced the current judicial review proceedings by an application for leave filed on 4 May 2022 challenging the decision of the DPP not to lay charges.

At paragraph 40, it states:

“Finally, Mr Bunting points out that the Cayman Islands has an

additional feature that does not arise in England & Wales, in that the Applicants have a constitutional right, pursuant to article 19(2) of the Constitution, to reasons for the DPP's decision. Article 19(1) provides that all decisions and acts of public officials must be "*lawful, rational, proportionate and procedurally fair.*" Article 19(2) adds that, "*Every person whose interests have been adversely affected by such a decision or act has the right to request and be given written reasons for that decision or act.*"

Before handing down his decision, the Hon Justice Asif KC noted the following:

6. In this case, the following factors seem to me to be important:
 - 6.1 No record of the decision-making within the DPP's office has been disclosed.
 - 6.2 The closest to a contemporaneous explanation of the decision-making that has been disclosed is the letter from the Attorney General's Chambers dated 20 May 2022, some two months after the decision in question. There appear to be errors or infelicitous use of language in the letter, particularly regarding whether the decision was made by the DPP or by the ADPP, which raise question marks over the accuracy of the letter. There may be a simple explanation, but it has not been provided to me.
 - 6.3 There is no affidavit or other evidence from the decision-maker as to how she carried out that task.
7. For these reasons, I conclude that the discovery sought by the Applicants is necessary for disposing fairly of the cause and for saving costs and should be ordered.

8. I therefore order that the Respondent shall disclose the advice of leading counsel dated 10 February 2022 and the instructions to leading counsel that led to that advice.

7. Xxxxxx]
8. Xxxxxx
9. xxxx

Submissions

10. 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 – remembering that all matters (from 2017 to 2024) would only be (as estimated by the DPP initially) taking a couple of weeks.

11. 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,”

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 proper records.
- (b) This indicates that no reasonable search was completed by the DPP information manager as required by the FOI Act and previous rulings of the Ombudsman. Therefore, the DPP information manager continues to be in breach 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 Section 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) Article 19(1) 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 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.
12. The Appellant seeks from the Office of the Ombudsman the declarations in the Applicant's initial submissions dated May 20, 2025, and declarations that:
- 1. The actions of the DPP were and continue to be unlawful and/or irrational and/or disproportionate and/or procedurally unfair.
 - 2. While the DPP has attempted to rationalize or justify its decision, the DPP has not met the burden of proof required under the FOI Act.

3. 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.
4. There was a breach of natural justice in that the DPP failed to give the Applicant an opportunity to review the records himself.
5. It is in the interests of justice that the DPP provide the requested information.