



27 December 2024

FOI Reference: 111803

Dear Mr. Lindsay,

By email only: alric.lindsay@gmail.com

Re: Freedom of Information Request

1. I write with reference to your application under the Freedom of Information Act (2021 Revision)(“the FOI Act”) dated 28 October 2024 and further to my letter of 27 November 2024.
2. In my letter of 27 November 2024, I provided complete responses to paragraphs 2-6 of your request.
3. In respect of paragraph 1 of your request, I provided a breakdown of the number of Caymanians and non-Caymanians contracted by the Portfolio of Legal Affairs (“the Portfolio”) to work in legal roles, but by reference to grade rather than by post as you had requested. That was pending receipt of all final responses arising from my consultation with affected third parties, pursuant to regulation 11(1) of the Freedom of Information (General) Regulations (2021 Revision)(“the FOI Regulations”). I requested an extension of a further 30 calendar days in which to complete that consultation and render a decision with respect to paragraph 1 of your request.
4. By email of 2 December 2024 you confirmed that you would still like the breakdown of Caymanians and non-Caymanians contracted by the Portfolio by post. You also asked for the following:

Please provide the record outlining why the Deputy Solicitor General's contract with the Cayman Islands Government was to be extended and why the CIG is paying this person over 100k (which presumably includes full healthcare, pensions and other benefits) to work remotely.

5. I have addressed each of your requests for records in turn below.
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Breakdown of number of Caymanians and non-Caymanians contracted by the Portfolio to work in legal roles by title of post

6. For the reasons set out comprehensively in my letter of 27 November 2024, before granting access to the record which is responsive to your request, I was obliged to consult with those third parties who would be affected (namely those whose personal information is contained within the record).
7. I ultimately received four objections from persons who expressed that they were not content for personal information consisting of their Caymanian status / non-Caymanian status to be released under the FOI Act. There were three others who did not respond either way.
8. **Having carefully considered the position, my decision is that you should be given access to the responsive record with respect to every person falling within the scope of your request who would also fall within the definition of a ‘person in public life’ for the purposes of the Standards in Public Life Act (2021 Revision)(“the SPL Act”). That will include the following senior legal posts within the Portfolio:**
 - **Attorney General**
 - **Solicitor General**
 - **Deputy Solicitor General**
 - **First Legislative Counsel**
 - **Director of Law Reform Commission**
 - **Law Revision Commissioner/Senior Legal and Policy Advisor**
9. I do not regard the proposed release of the Caymanian/non-Caymanian status of such persons as constituting an unreasonable disclosure of personal information for the purposes of section 23(1) of the FOI Act.
10. Before I am able to release the responsive records to you I am, however, obliged by regulation 12(2)(c) of the FOI Regulations to give separate written notification of my decision to the third party consultees and afford any one of those affected third parties who has not consented in writing the opportunity to appeal to the Ombudsman should they so wish. If any such person is dissatisfied with my decision to release the requested record they will have 30 calendar days from the receipt of notice of my decision to appeal.
11. **As is clear from regulation 12(2)(c)(iv) of the FOI Regulations, I am to withhold the responsive record from you until such time as the third parties’ time for appeal to the Ombudsman has expired.** Where a third party does appeal within the specified timeframe, I am precluded by regulation 12(4) of the FOI Regulations from providing access to the responsive record. The Ombudsman’s decision will ultimately replace my own (see regulation 12(2)(c)(v) of the FOI Regulations). If, on the other hand, there is no

appeal, then I am permitted to disclose the responsive record to you on the first day after the timeframe for an appeal has elapsed (see section 12(5) of the FOI Regulations).

12. I intend to issue written notification of my decision to the affected third parties today (27 December 2024). Anyone who has not previously given written consent to the release of their personal information will then have until 27 January 2025 to appeal to the Ombudsman. In accordance with regulation 12(2)(c)(iii) of the FOI Regulations, any third party who intends to appeal my decision to the Ombudsman is obliged to inform me of that fact.

13. **In respect of those contracted to work in legal roles within the Portfolio who would not fall within the definition of a ‘person in public life’ for the purposes of the SPL Act, my decision is to withhold from you responsive records which would, or could, reveal the Caymanian / non-Caymanian status of those persons who have not consented to that information being disclosed. I have set out my reasons in detail below.**

14. Section 23(1) of the FOI Act provides as follows:

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 individual, whether living or dead.

15. “Personal information” is defined in regulation 2 of the FOI Regulations to mean 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 (emphasis added).¹

16. As outlined in my first response to you of 27 November 2024, whilst you have not asked for the identity of individual post holders, in the case of posts for which there is only one post holder, if we were to release the requested records it would be possible to establish the Caymanian/ non-Caymanian status of the individuals whose identity could reasonably be ascertained by reviewing the records alongside other information which may already be in the public domain (such as LinkedIn profiles or published articles). Even for positions where there is more than one post-holder, such as ‘Crown Counsel’, in circumstances where all the persons in that particular role are Caymanian or, conversely, non-Caymanian, it will inevitably be possible to discern the status of individuals occupying these roles.

¹ Paragraph 2 of Schedule 1 to the Regulations makes clear that where an individual occupies, or has occupied, a position in a public authority, certain information relating to them (such as the general terms on which they are employed) would not fall within the scope of “personal information”, whether a person in a position in a public authority is Caymanian/non-Caymanian would not be excluded from the scope of “personal information” for the purposes of the Regulations and the Act.

17. In coming to a decision on your request, I have considered section 3(7) of the FOI Act, which states: *“Nothing in this Act shall be read as abrogating the provisions of any other Law that restricts access to records”* and section 23(5) of the FOI Act, which makes clear that where the Data Protection Act (2021 Revision)(“the DPA”) does not permit disclosure or publication of a record, or part of a record, that record or part of the record shall be exempt from disclosure under subsection (1).
18. The DPA requires that all processing of personal data comply with the data protection principles and other provisions of that Act. “Processing” includes disclosure to a third party under the Act. The data protection principles are explained online in the Ombudsman’s guide to the DPA for the general public here: ombudsman.ky/data-protection/public.
19. Before any third party personal data can be disclosed to you under the FOI Act, I have to first determine that this disclosure would be fair and lawful under the DPA (in accordance with the first data protection principle) and, in particular, that one of the conditions for fair processing in Schedule 2 to the DPA is made out. If I am not satisfied that the disclosure would be fair and lawful under the DPA then the relevant record will be exempt under the FOI Act.
20. Having considered all the conditions for fair processing in Schedule 2 to the DPA, in respect of those persons who have been asked for, but who have not provided, their written consent to disclosure, we note that the only condition which may be of application in the context of your request is the legitimate interests condition set out in paragraph 6. Paragraph 6 provides a basis for the processing of personal data where:

The processing is necessary for the purposes of legitimate interests pursued by the data controller or by the third party or parties to whom the data are disclosed, except if the processing is unwarranted in any particular case by reason of prejudice to the rights and freedoms or legitimate interests of the data subject. (emphasis added)

21. As set out in the [Ombudsman’s guidance for data controllers in relation to the legitimate interests condition](#) this can be broken down in to a three-part test:

Purpose test: are you pursuing a legitimate interest?

Necessity test: is the processing necessary for that purpose?

Balancing test: do the individual’s interests override the legitimate interest?

Is the interest pursued by the third party a legitimate interest?

22. It is clear from relevant decisions of the UK Information Commissioner in relation to the equivalent provision of the UK Freedom of Information Act 2000 which exempts

personal information² (and which are of persuasive value to the interpretation of our own FOI Act) that the legitimate interest in disclosure cannot simply be a private interest of the requestor and must be reflective of a wider public interest. That is because when information is disclosed under the Act, it is effectively disclosed to the world at large, and not only to the requestor.

23. In this instance, I am satisfied that there *is* a legitimate public interest (reflective of a wider public interest) in understanding the broad make-up of the Portfolio in terms of Caymanian and non-Caymanian staff occupying legal roles. In several places, the Public Service Management Act (2018 Revision) and underlying Personnel Regulations make clear that, where, following an open competition in respect of a proposed appointment to the Civil Service, two or more persons rank broadly at the same level, preference is to be given to a Caymanian. To put this another way, the general thrust of the legislation is towards a Civil Service which, all other things being equal, is staffed by Caymanians.
24. I am not, however, satisfied that there is a legitimate public interest in understanding the Caymanian / non-Caymanian status of all members of staff on an individual basis. That said, I am prepared to accept that there is a legitimate interest in understanding the status of persons holding senior positions with budgetary or other significant managerial responsibilities, given the degree of accountability which goes hand in hand with those positions. Whilst there is no definition or consensus as to what is meant by a senior position within the Civil Service, I note that, for the purposes of the SPL Act, a ‘person in public life’ would include Chief Officers and Deputy Chief Officers, as well as heads of departments, sections or units and their deputies, and any other organised entity within a portfolio, section or unit. The effect of being a ‘person in public life’ is that such persons are obliged to adhere to the principles set out in Schedule 2 to the SPL Act and to make a declaration in accordance with section 11(1) of the SPL Act, including with respect to their private interests. That connotes a certain degree of seniority and responsibility within the Civil Service (which are not necessarily reflected in a person’s salary grade alone) with which come certain obligations of transparency.

Is the processing ‘necessary’ for that purpose?

25. What is ‘necessary’ implies a degree of proportionality. As the Ombudsman’s guidance makes clear, if one can reasonably achieve the same result in another, less intrusive way, the legitimate interests condition will not apply.
26. Having accepted that there is a legitimate interest (reflective of a wider public interest) in understanding the broad make-up of the Portfolio in terms of Caymanian/non-Caymanian staff occupying legal roles, I am content that that legitimate interest can be satisfied by my providing you with the breakdown of Caymanian and non-Caymanian

² See, for example, Information Commissioner’s Office (UK), Decision Notice. Pittington Parish Council, 27 March 2017, FS50624012 at paragraph 33.

staff by reference to salary grade, and explaining which legal posts come within that salary grade. You were provided with that information at paragraph 17 of my letter of 27 November 2024. Save as outlined at paragraph 27 below, it is not proportionate, and therefore not 'necessary' within the meaning of paragraph 6 of Schedule 2 to the DPA, for me to go further and provide you with the breakdown of Caymanian/non-Caymanian legal staff by reference to specific post in order to satisfy the legitimate interest you may have in understanding the broad make-up of the Portfolio.

27. On the other hand, there is no less intrusive way of satisfying the legitimate interest in understanding the status of persons holding senior positions with budgetary or other significant managerial responsibilities (which I have equated to 'persons in public life') than by providing the requested breakdown by individual post holder. That is because, at some salary grades towards the top end of the Civil Service pay ranges, there are a mix of persons who are 'persons in public life' and persons who are not.

Do the individual's interests override the legitimate interest?

28. Having determined that it is not necessary to satisfy a legitimate interest to release to you information consisting of the Caymanian/non-Caymanian status of all staff in legal roles within the Portfolio on an individual basis there is no need for me to go on to consider the third limb of the test, except in respect of those staff members who are 'persons in public life' for the purposes of the SPL Act and who have not consented to the release of their personal information. Having considered the objections, and conducted the appropriate balancing exercise, I am not satisfied that the interests of any affected individual would outweigh the legitimate interests outlined above.
29. **To summarise, in my view the DPA would not preclude or otherwise prohibit disclosure or publication of responsive records revealing the Caymanian / non-Caymanian status of persons contracted by the Portfolio to work in legal roles who are also 'persons in public life' because i) there is a legitimate interest (reflective of a wider public interest) in transparency as to the status of senior personnel with budgetary or other significant managerial responsibilities; ii) it is necessary to release the requested record (which would reveal the breakdown by individual post holder) in order to further that legitimate interest; and iii) I am satisfied there will be no particular prejudice to the rights and freedoms or legitimate interests of the data subject such as would render the proposed processing unwarranted in any particular case.**
30. **On the other hand, in my view the DPA would preclude the disclosure or publication of responsive records revealing the Caymanian / non-Caymanian status of persons occupying legal roles who are not 'persons in public life' (i.e. more junior members of staff without budgetary or other significant managerial responsibilities) because it is not necessary to disclose that information in order to satisfy the identified legitimate interest. Section 23(5) of the FOI Act makes clear that where the DPA would preclude**

the release of a record, it is exempt from disclosure under section 23(1) of the FOI Act and section 26(1) does not apply.

31. It is, however, worth my adding that, in practice, and in light of the responses I received to my consultation with third parties, you have already been provided with some of the information you had requested. For example, the table at paragraph 17 of my letter of 27 November 2024 already provides you with the status of both persons employed in the Crown Counsel II role. That is provided to you not on the basis that paragraph 6 of Schedule 2 to the DPA would constitute a lawful basis for disclosing that personal data to you, but on the basis of consent.

Record outlining why the Deputy Solicitor General's contract with the Cayman Islands Government was to be extended

32. The responsive records with respect to this aspect of your request can be found at **Annex E**.

33. Pursuant to regulation 11(1) of the Regulations we have consulted the third party whose personal information is contained within these records and have her written consent for the records to be released in redacted form. The redaction is to protect her age which, if released, we would consider would amount to an unreasonable disclosure of personal information pursuant to section 23(1) of the Act, there being no legitimate interest (reflective of a wider public interest) in that information being released into the public domain.

34. With respect to your observation that the Cayman Islands Government is paying the Deputy Solicitor General over CI \$100k to work remotely, that is not correct. Whilst the Deputy Solicitor General is engaged at salary band E, as is reflected in the records released at **Annex E** the Deputy Solicitor General is contracted to work on a part time basis, the effect of which is that she is paid less than CI \$100k.

35. The Portfolio does not hold any responsive records expressly setting out the reasons why approval was given for the Deputy Solicitor General to work remotely which, based on the terms of your request, we think is the information that your request is designed to elicit. As to the question of why the Cayman Islands Government is paying the Deputy Solicitor General, that is because she is working for the Portfolio under a contract of employment.

36. Please be advised that under section 33 of the Act, if you are not satisfied with the adequacy of my response to your request (as set out in this letter and in our letter of 27 November 2024) you may ask for an Internal Review of my decision. Internal Review is available with respect to a decision by a Public Authority to:

(a) refuse to grant access to the record;

- (b) grant access only to some of the records specified in an application;
- (c) defer the grant of access to the record; or
- (d) charge a fee for action taken or as to the amount of the fee,

(where the decision was taken by a person other than the responsible Minister, Chief Officer or Principal Officer of the Public Authority).

37. You have 30 days from the date of receipt of this Notice to request an Internal Review by writing to the Portfolio. Please include:
- (a) your name, address and telephone number;
 - (b) a copy of your Application and/or the Reference Number assigned to your Application;
 - (c) a copy of this letter (and my earlier letter of 27 November 2024) and the Annexes; and
 - (d) if so inclined, the basis on which you are requesting a Review of the decision indicated.

38. If, upon Internal Review, this public authority's decision is still not favourable to you, you may have the right under section 42 of the Act to appeal to the Ombudsman within 30 days of:
- the date of notification of the decision taken at Internal Review; or
 - the date on which you should have been notified of the decision taken at Interview Review if you receive no notification.

You can find information on how to appeal to the Ombudsman at ombudsman.ky/foi. To contact the Ombudsman, please email info@ombudsman.ky or call +1 345-946-6283

39. Should you have any queries in relation to this letter, please contact me, quoting the reference number cited above.

Yours sincerely,



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