



INFORMATION
FREEDOM

**Freedom of Information Unit
Report on Implementation
May 2009**

Prepared in accordance with the
Cayman Islands Government
FOI Implementation Plan
July 2007 – January 2010

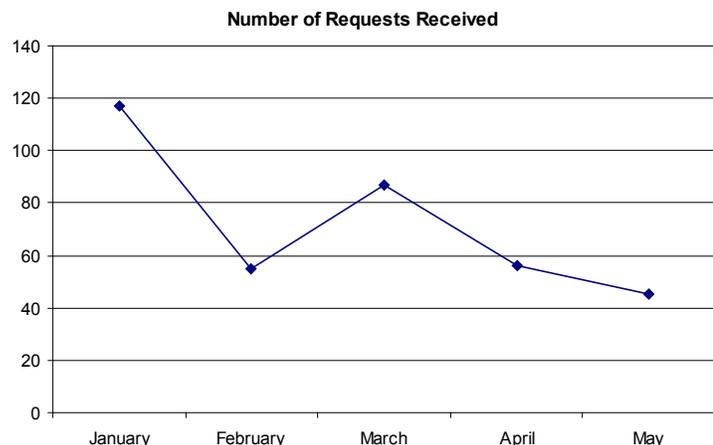
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1 Introduction

The Freedom of Information (FOI) Law 2007 was brought into effect on January 5th 2009. This is the fifth monthly statistical report issued by the FOI Unit summarising the number of requests received by public authorities and decisions made during that month. Public authorities generally have a maximum of thirty calendar days to respond to requests, and therefore this reporting period will not reflect decisions on all requests submitted during the month, or only on those submitted in May. In compiling these reports, the FOI Unit relies entirely on self-reported statistics and progress from each Information Manager, which is inputted into a computer tracking and monitoring system entitled JADE.

The number of freedom of information requests submitted to public authorities has been levelling off since January, and the Freedom of Information Unit would like to remind the public how easy it is to submit an application for access to government records under the FOI Law.

Anyone, anywhere, anytime can make a request for *any record* held by *any public authority*. These “public authorities” include all government ministries, portfolios, departments, statutory authorities and government-owned companies. There are 88 separate public authorities; a list is available on the FOI website that includes all of the contact information



for each authority and the name of the Information Manager responsible for handling requests.

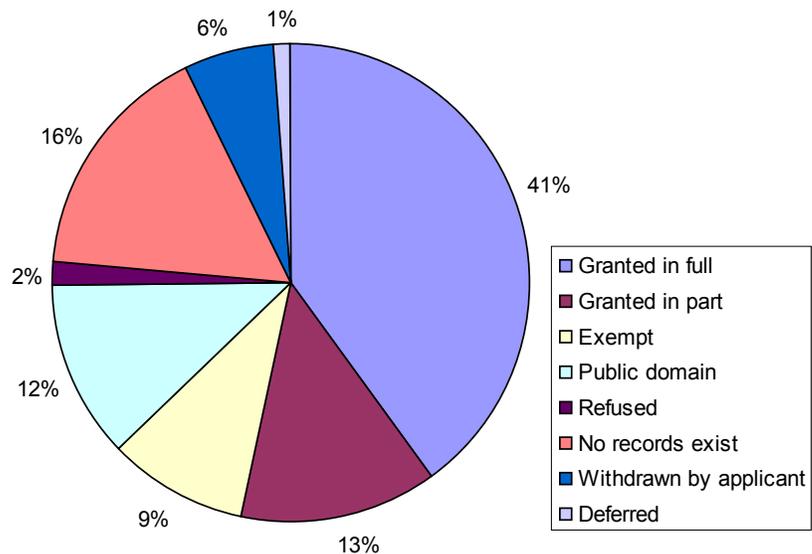
Requests must be submitted to a public authority in writing, but they can be sent by email, by post, by fax or by hand. A generic application form is available on the FOI website or from any public authority, and the public can use this standard form or write their own request. All you need to include is a name (it doesn't have to be your real name!), an address that you can be contacted at (email or postal), what information you want and how you want to receive it (electronically, photocopies, etc). Once you have submitted your FOI request, the Information Manager has to acknowledge that it has been received within 10 calendar days and respond within 30 calendar days, except in limited circumstances where legal extensions must be taken to follow proper procedure.

If you are having trouble formulating your request, Information Managers have been thoroughly trained and have good knowledge of what records their public authority holds. They have also been given the legal responsibility to help any potential applicant to formulate a request. You can go into the public authority's office and ask to meet with the Information Manager to discuss an FOI application, or you can email or call them with any preliminary questions or concerns.

If you don't know which public authority has the information you want or are unclear of exactly how to make your request, the independent Information Commissioner's Office in Elizabethan Square is open to the public from 9:30am to 4:00pm and their staff will always assist any member of the public in exercising their right to access government records under the FOI Law.

Though you are able to ask for any information, not all records will be released to the public in their entirety. Freedom of information requires a delicate balance between the public's right to know and protecting records if release would be detrimental to the government and to the public interest. The objects of the FOI Law are to promote and encourage governmental accountability, transparency and public participation in national decision-making. However, these noble aims require certain information to be withheld to protect the people of the Cayman Islands.

Statistics show that in the first five months, 56% of applicants received or will receive all records that they requested. Specifically, 41% of the total applications were granted fully, 12% were already in the public domain, and 1% were deferred (i.e. full access will be granted at a defined later date).



To give a clearer picture of how many applicants were given full access, after discounting the 16 withdrawn requests and the 44 where no records were found to exist,

68% of answered requests were or will be fully granted and a further 17% granted in part.

This report attempts to give specific details about requests received and closed in May, and also to analyse these numbers and trends. We hope that these implementation reports are useful to both the public and the government to know what is going on across all public authorities.

2 Requests Made to Each Public Authority

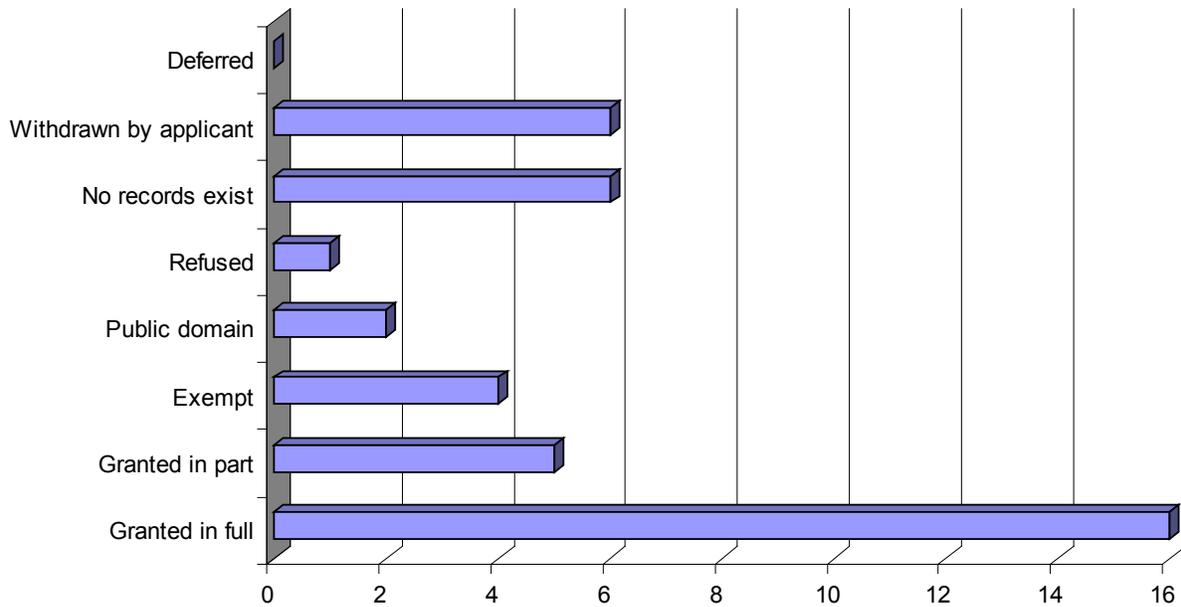
Between May 1, 2009 and May 31, 2009, nineteen of the eighty-eight public authorities received a combined total of forty-five requests for information under the FOI Law:

<i>Public Authority</i>	<i>NO.</i>
Agriculture Department	3
Cabinet Office	1
Cayman Islands Monetary Authority (CIMA)	1
Cayman Islands Stock Exchange Authority	1
Civil Service Portfolio	3
Communications Works & Infrastructure Ministry	1
Customs Department	2
District Administration Department Cayman Brac	1
District Administration, Planning, Agriculture & Housing Ministry	1
Environmental Health Department (DEH)	3
Finance and Economics Portfolio	1
Fire Services	1
Governor's Office	2
Health Services Authority (HSA)	8
Immigration Department	8
Internal and External Affairs Portfolio	2
Maritime Authority of the Cayman Islands (MACI)	1
Planning Department	3
Public Library Service	2
<i>TOTAL</i>	<i>45</i>

To date, three hundred and sixty requests for information have been submitted to Cayman Islands public authorities under the Freedom of Information Law. Thirty of the eighty-eight public authorities have not received any FOI requests since January 2009.

3 Outcome of Requests

During the month of May, decisions were made by public authorities on forty individual requests. Of these closed requests, sixteen were granted in full, five were granted in part, and four were exempt in their entirety. Two applicants requested records already available in the public domain, six requests were withdrawn by the applicant, and six other applicants asked for information but the Information Managers determined that their public authority held no records related to that request. One request was refused and no requests were deferred during the reporting period.



3.1 Timeline of Requests

Of the 40 requests closed in May, four decisions missed the deadlines allowed under the FOI Law without a legal reason. Response letters are generally due within 30 calendar days of receiving a request, barring certain circumstances which call for legal extensions. One late decision letter was sent after 31 calendar days and another was sent after 61 calendar days. The final two late responses required the Information Manager to consult with legal counsel before making a decision, and waiting on a legal opinion resulted in deadlines being missed and responses sent 60 calendar days and 91 calendar days after the requests were received.

Though two additional applicants did not receive a decision within 30 calendar days, these responses were within legal boundaries. In one case, a legitimate extension of a further 30 calendar days was taken under Section 7(4) of the FOI Law and the request was responded to within 60 calendar days. The other decision was made after 49 calendar days due to required consultation with third parties whose personal information was being released. For further information and a detailed explanation of the multiple reasons why an Information Manager may legally take more than 30 calendar days to respond to a request after it is submitted, please see the April 2009 Report on Implementation on the FOI Unit's website.

The average response time for requests that did not take a legal extension was 18 calendar days. This average time is the number of calendar days between receipt of a complete request and the date that the decision was sent to the applicant by the Information Manager.

3.2 Provisions Utilised to Exempt or Refuse Access

The following exemptions were utilised to justify the redaction of information where access to a record was granted in part, or to exempt the record in its entirety:

- ❖ Section 15(a) – disclosure would prejudice the security, defence or international relations of the Cayman Islands (Royal Cayman Islands Police Service);
- ❖ Section 16(b)(i) – records relating to law enforcement that would, or could reasonably be expected to affect the conduct of an investigation or prosecution of a breach or possible breach of the law (Royal Cayman Islands Police Service);
- ❖ Section 16(c) – records relating to law enforcement that would, or could reasonably be expected to disclose, or enable a person to ascertain, the existence or identity of a confidential source of information, in relation to law enforcement (Royal Cayman Islands Police Service);
- ❖ Section 17(b)(i) – disclosure would constitute an actionable breach of confidence (Immigration Department);
- ❖ Section 21(1)(b) – the record contains information concerning the commercial interests of any person or organisation and the disclosure of that information would prejudice those interests (Health Services Authority);
- ❖ Section 23(1) – unreasonable disclosure of personal information (Health Services Authority, Portfolio of Internal & External Affairs, Royal Cayman Islands Police Service);

Usually when requests are granted in part, sections of the records are exempt and redacted copies released to the applicant. In May, however, one request that was granted in part had the remainder refused under 9(c) of the FOI Law, as the Information Manager deemed that granting full access would constitute an unreasonable diversion of the resources of the public authority.

One request was refused by the Cayman Islands Stock Exchange Authority during the reporting period, citing sections 9(d) and 6(4) of the FOI Law. Under section 9(d), a public authority is not required to comply with a request where the information is already in the public domain. Section 6(4) states that where a record is open to access by the public or available for purchase, that record shall only be obtained in accordance with the established procedures. As such, the Authority refused to release a hard copy of the offering memoranda for two funds because their policy allows access to these documents at the Stock Exchange offices by inspection only.

4 Popular Requests and General FOI Applications of Interest

During the month of May, the Health Services Authority and Immigration Department received 8 requests each, the most of any public authority during that time period. The other 17 public authorities received between 1 and 3 requests. Some requests made during the month which may be of general interest are as follows (please note that decisions have not been made on all of the following requests, and not all that have been finalised were granted full access):

- Civil Service Portfolio* – The number of applications for ‘exemptions’ to the moratorium on recruitment in the Civil Service, and the number of those which have been approved.
- Customs Department* – The names of all public utilities and other companies operating in the Cayman Islands that have been granted customs duty concessions on an on-going basis since 1 January 2005, the percentage concession granted, whether the concession is still in effect, and whether the concession has been used.
- Environmental Health Department* – The investigation report filed after the dumping of garbage at Lake Jackson in West Bay in May 2007 and any determination by the DEH that the dumping was legally sanctioned. Also, any documentation that indicates whether any action was taken by the department to investigate the dumping of such garbage.
- Environmental Health Department* – How much money the DEH received during the 2008/2009 financial year for recycling programmes, and how much of that money has been spent. Assuming money has been spent, a breakdown of areas of expenditure.
- Governor’s Office* – How much money was spent by the Cayman Islands Government on travel for the Governor, his wife, and any staff members in the Governor’s Office in 2008.
- Immigration Department* – The policy document used by the Immigration Board when applying the points system found in the second schedule to the Immigration Regulations; statistics regarding qualified Caymanians within the labour market as Domestic Helpers and Childcare Givers and statistical information regarding Jamaican nationals.
- Internal & External Affairs Portfolio* – Total number of requests made and total cost of reimbursements given for study costs and study leave relating to non-Caymanian civil servants undertaking part-time studies, excluding employees attending the Civil Service College (transferred to the Portfolio of the Civil Service).

5 Internal Reviews and Appeals to the Information Commissioner

During the reporting period there were two internal reviews requested of Chief Officers due to decisions made by the Portfolio of Internal & External Affairs and the Portfolio of Civil Service.

As of 31 May 2009, the Information Commissioner's Office (ICO) had closed four appeals through mediation and nine appeals were still open. Five appeals were sent back to the relevant public authorities for internal review, as this crucial step had been overlooked by the applicant, and all of the open appeals in the remit of the ICO were in the mediation process.

6 More Information

For more information about Freedom of Information in the Cayman Islands, the activities of the FOI Unit and procedural matters related to FOI, please visit our website at www.foi.gov.ky or pick up a user guide from our office in Elizabethan Square in George Town. We can also be contacted by telephone at (345) 244-3609 or by email at FreedomOfInformationUnit@gov.ky.

Each public authority will maintain a disclosure log that records requests which are of general public interest and the decisions made on these requests. For more information about a particular request please see the disclosure log or contact the public authority's Information Manager at the contact details provided on their website. Websites for each public authority can be found on the main Government portal www.gov.ky and the FOI Unit also maintains a list of public authorities and Information Managers on our website.

To learn more about the Information Commissioner's Office, including how to make an appeal, please contact the Office Manager at (345) 747-5402 or appeals@ico.gov.ky. The ICO has also recently launched their new website with more information at www.infocomm.ky. The website includes copies of the Policies and Procedures for Appeals, the ICO's Operational Plan for the First Quarter of 2009, Mediation Summaries and details of upcoming hearings.