

**INFORMATION COMMISSIONER'S OFFICE
CAYMAN ISLANDS**



**INFORMATION MANAGERS NETWORK MEETING
MARCH 4, 2009**

REMARKS BY INFORMATION COMMISSIONER

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GOOD MORNING. I SHOULD LIKE TO THANK THE FOI UNIT FOR AFFORDING ME THE OPPORTUNITY TO BE HERE AND SPEAK WITH YOU THIS MORNING, AND THANK YOU CAROLE FOR YOUR WELCOME AND INTRODUCTION.

FIRST, SOME GENERAL REMARKS. THE INFORMATION COMMISSIONER'S OFFICE, WHICH I WILL REFER TO AS ICO, IS IN THE PROCESS OF BEING ESTABLISHED. IDEALLY, THIS OFFICE SHOULD HAVE BEEN UP AND RUNNING PRIOR TO THE LAW COMING INTO EFFECT, BUT AS WE ALL APPRECIATE, WE ARE NOT LIVING IN A PERFECT WORLD. I AM STILL LOCATED IN A TEMPORARY OFFICE, AS I INDICATED TO YOU IN MY MEMO TO YOU OF JANUARY 16, BUT WE ARE HOPING TO MOVE INTO OUR OWN OFFICES IN A FEW DAYS, WHICH WILL BE LOCATED IN BLOCK C, 2ND FLOOR OF ELIZABETHAN SQUARE.

AND I SAY "WE", AS TODAY I AM VERY HAPPY TO INTRODUCE TO YOU THE FIRST PERSON TO JOIN MY TEAM, CHRISTINA SMITH. CHRISTINA HAS BEEN APPOINTED OFFICE MANAGER. SHE WILL BE NO STRANGER TO YOU AS SHE WAS PREVIOUSLY IN THE FOI UNIT.

I ALSO WOULD LIKE YOU TO MEET MARY CARLSON. MS CARLSON IS THE EXECUTIVE DIRECTOR OF THE OFFICE OF THE INFORMATION AND PRIVACY COMMISSIONER OF BRITISH COLOMBIA AND SHE WILL BE SECONDED TO ME FROM THAT OFFICE TO ADVISE ME ON THE IMPLEMENTATION OF THE ICO. SHE IS VISITING THIS WEEK, BUT WILL RETURN IN APRIL FOR A THREE MONTH PERIOD. WE WILL CONTINUE TO BUILD UP THE STAFF OF THE ICO OVER TIME AND AS NEEDED. I EXPECT TO BRING ON BOARD A DEPUTY INFORMATION COMMISSIONER, AN INVESTIGATIVE ANALYST AND FRONT OFFICE PERSONNEL OVER THE SHORT TO MEDIUM TERM.

SECOND, THANK YOU ALL FOR BEING HERE AND FOR TAKING ON THE IMPORTANT ROLE OF INFORMATION MANAGER IN THE VITAL UNDERTAKING TO BRING FREEDOM OF INFORMATION TO THE CAYMAN ISLANDS. WE HAVE A HUGE TASK AHEAD OF US, BUT I AM SURE THAT TOGETHER WE CAN DO IT. THE FOI UNIT HAS LAID A GOOD FOUNDATION FOR US TO WORK ON, AND MRS EXCELLE AND HER TEAM CONTINUE TO OFFER THEIR GUIDANCE AND SUPPORT.

THIRD, LET ME TELL YOU A BIT ABOUT MY MAIN DUTIES, AND THOSE OF MY OFFICE. I HAVE BEEN KEEPING A FAIRLY LOW PROFILE, A CHANGE FOR THOSE OF YOU WHO KNOW ME, BUT YOU WILL BE HEARING MORE FROM ME AS I CARVE OUT AN IDENTITY FOR THE ICO. VERY IMPORTANTLY, IT MUST BE UNDERSTOOD THAT WHILE WE WILL BE WORKING CLOSELY WITH THE FOI UNIT IN SOME AREAS, SUCH AS REPORTING AND PUBLIC EDUCATION, THE INDEPENDENCE OF THE ICO IS FUNDAMENTAL. OUR INTEGRITY AND REPUTATION ARE PARAMOUNT. WE REPORT TO THE LEGISLATIVE ASSEMBLY, AND TAKE SERIOUSLY, AND VALUE THIS ACCOUNTABILITY.

FOR THOSE OF YOU WHO HAVE READ THE LAW, AND I AM SURE THAT YOU ALL HAVE, THE INFORMATION COMMISSIONER IS CHARGED WITH RESPONSIBILITY TO

- (A) HEAR, INVESTIGATE AND RULE ON APPEALS FILED UNDER THE FOI LAW;**
- (B) MONITOR AND REPORT ON THE COMPLIANCE BY PUBLIC AUTHORITIES WITH THEIR OBLIGATIONS UNDER THIS LAW;**
- (C) MAKE RECOMMENDATIONS FOR REFORM BOTH OF A GENERAL NATURE AND DIRECTED AT SPECIFIC PUBLIC BODIES;**
- (D) REFER TO THE APPROPRIATE AUTHORITIES CASES WHERE IT APPEARS THAT A CRIMINAL OFFENCE HAS BEEN COMMITTED; AND**
- (E) PUBLICISE THE REQUIREMENTS OF THIS LAW AND THE RIGHTS OF INDIVIDUALS UNDER IT.**

YOU WILL BE HEARING FROM ME IN DUE COURSE ABOUT ALL THESE AND MORE, BUT TODAY I WILL FOCUS ON JUST THE FIRST TWO OF THESE RESPONSIBILITIES. HOWEVER, I WANT TO POINT OUT THAT WE ARE DEALING WITH A NEW LAW, A NEW CONCEPT FOR CAYMAN, AND ONE THAT IS ACTUALLY NOT VERY OLD IN MANY DEVELOPED COUNTRIES AS WELL.

IT CAN BE A BIT SCARY. AS HAS BEEN THE EXPERIENCE IN OTHER COUNTRIES, WE ARE ALL LEARNING, CHANGES WILL HAVE TO BE MADE TO THE LEGISLATION AND POLICIES AND PROCEDURES, MISTAKES WILL BE MADE, OUR RULINGS WILL BE CHALLENGED AND SOMETIMES OVERTURNED. BUT WE WILL LEARN FROM THESE EXPERIENCES AND REAP THE BENEFITS OF GREATER OPENNESS AND ACCOUNTABILITY. TOGETHER, ONE OF OUR PRIMARY AIMS IS TO PROMOTE GOOD GOVERNANCE IN THE CAYMAN ISLANDS.

WITH RESPECT TO APPEALS, I HAVE HAD TWO APPLICATIONS TO DATE. THE FIRST, WHICH WAS AN APPEAL AGAINST A DEFERRAL, HAS BEEN AMICABLY SETTLED FOLLOWING SOME DISCUSSION AND CLARIFICATION. THE SECOND IS IN PROGRESS, IN THAT I AM STILL RECEIVING DOCUMENTATION AND ALLOWING BOTH PARTIES TO SUBMIT THEIR VIEWS. I WILL BE ISSUING SOME GUIDELINES AS TO THE APPEALS POLICY AND PROCEDURE IN A FEW DAYS, BUT PROCEDURE SO FAR IS TO TRY TO REACH A FRIENDLY SETTLEMENT IN THE HOPE THAT THE APPEAL MAY BE SUSPENDED OR DISCONTINUED. FOR EXAMPLE, THE APPELLANT MAY SETTLE FOR A REDACTED REPORT, FOR PARTIAL ACCESS.

IN THE APPLICATIONS FOR ACCESS THAT I HAVE SEEN THUS FAR, I WILL MAKE A FEW COMMENTS. IT IS IMPORTANT THAT YOU ENGAGE THE APPLICANT. TRY TO FOSTER A RELATIONSHIP THAT LETS THE APPLICANT KNOW THAT YOU WANT TO HELP HIM OR HER, THAT YOU ARE ON THEIR SIDE. BUT, MAKE IT CLEAR THAT YOU MUST FOLLOW THE LAW, YOU ARE RESPONSIBLE FOR PROTECTING INFORMATION WHERE NECESSARY AS WELL AS GIVING ACCESS.

I URGE YOU TO TRY TO USE THE INTERNAL REVIEW PROCESS IF THERE IS A COMPLAINT. I WANT YOU TO APPRECIATE THE SERIOUSNESS OF AN APPEAL. IT IS MUCH BETTER FOR ALL CONCERNED IF WE TRY TO HEAD OFF A FORMAL APPEAL PROCESS. IDEALLY, APPEALS SHOULD BE FEW (BUT AS I SAID EARLIER, WE DO NOT LIVE IN AN IDEAL WORLD). AN APPEAL MEANS MORE WORK FOR YOU, AND FOR YOUR PUBLIC AUTHORITY, AND TIGHTER TIME FRAMES, SO DO NOT THINK THAT IN AN APPEAL ALL THE WORK SHIFTS TO ME. TO PUT IT SIMPLY, NEGOTIATING WITH THE APPLICANT, AND AN INTERNAL REVIEW GIVES YOU MORE TIME, AND LESS NEED FOR FORMAL DOCUMENTATION THAN IN AN APPEAL. IN ADDITION, ONCE A MATTER GOES TO FORMAL APPEAL, INCLUDING A FORMAL HEARING, THERE IS LIKELY TO BE A LEVEL OF PUBLIC SCRUTINY THAT WILL BE MUCH MORE INTRUSIVE THAN WITH AN INTERNAL REVIEW. ALSO, WITH AN INTERNAL REVIEW, YOU HAVE AN ADDITIONAL 30 DAYS TO SORT THE ISSUE OUT WITHIN YOUR PUBLIC AUTHORITY. YOU MAY CORRESPOND INFORMALLY WITH THE APPLICANT, BY PHONE AND SO ON, AND RECORD KEEPING IS EASIER. YOUR HEAD OF DEPARTMENT AND CHIEF OFFICER MAY BE REQUIRED TO BE INVOLVED, THEY WILL NOT THANK YOU FOR THIS. IT IS THEREFORE MUCH BETTER TO TRY TO RESOLVE AN ISSUE BEFORE IT COMES TO APPEAL.

WHILE I AM NOT ENCOURAGING ASKING FOR AN EXTENSION OF TIME, AS PERMITTED UNDER SECTION 7(4), THIS MAY BE FOR GOOD CAUSE, BUT YOU WILL NEED TO SHOW THAT YOU ARE REALLY TRYING TO DEAL WITH THE REQUEST. THIS IS BETTER THAN MAKING A DECISION THAT THEN GOES TO INTERNAL REVIEW OR APPEAL. AGAIN, ENGAGING WITH THE APPLICANT IS THE KEY.

FREEDOM OF INFORMAITON IS A VERY EXCITING FIELD, AND IT IS AN EXCITING TIME FOR US ALL AS WE DEVELOP, TOGETHER, A CULTURE OF GREATER ACCOUNTABILITY IN THE CAYMAN ISLANDS. THIS LEGISLATION IS A KEY COMPONENT OF GOOD GOVERNANCE. I HOPE THAT YOU WILL LOOK AT YOUR JOB AS INFORMATION MANAGER IN THIS WAY.

HOWEVER, THERE ARE SOME NUTS AND BOLTS TO SORT OUT, WHICH BRINGS ME TO MY SECOND RESPONSIBILITY UNDER THE LAW, THAT OF MONITORING COMPLIANCE WITH THE LAW AND REPORTING TO THE LEGISLATIVE ASSEMBLY.

I WOULD LIKE TO TAKE SOME TIME TODAY TO DISCUSS THE REPORTING FORM THAT I REQUIRE FROM YOU AND THAT I REFERRED IN MY MEMO TO YOU IN JANUARY. PLEASE LET THE FOI UNIT KNOW IF YOU HAVE NOT RECEIVED THIS MEMO.

I AM REQUIRED, UNDER SECTION 40 OF THE FOI LAW, TO REPORT ANNUALLY TO THE LEGISLATIVE ASSEMBLY ON THE OPERATION OF THE LAW. TO DO THIS, I NEED TO GET CERTAIN INFORMATION FROM YOU, INDIVIDUALLY, FROM EACH PUBLIC AUTHORITY, ON A REGULAR BASIS. I WILL THEN BE ABLE TO COLLATE AND ANALYSE THIS INFORMATION, NOT ONLY TO REPORT TO THE LA, BUT ALSO TO GAIN AN UNDERSTANDING OF HOW THE LAW IS OPERATING.

I THEREFORE REQUIRE EACH PUBLIC AUTHORITY TO REPORT TO ME ON A QUARTERLY BASIS, USING A FORM WHICH WILL BE, FOR THE MOST PART, GENERATED BY JADE. THIS FORM MUST BE COMPLETED, SIGNED OFF AND SENT TO THE ICO BY NO LATER THAN THE END OF THE MONTH FOLLOWING THE REPORTING PERIOD. FOR EXAMPLE, FOR THE PERIOD JANUARY 5 TO MARCH 31, THE INFORMATION COMMISSIONER'S OFFICE MUST RECEIVE YOUR COMPLETED FORMS NO LATER THAN APRIL 30.

WHILE MOST OF THE INFORMATION REQUIRED WILL BE GENERATED BY JADE, IT IS IMPERATIVE THAT YOU LOOK AT THE FORM, THINK ABOUT IT, COMPLETE THE BITS THAT ARE NOT ALREADY FILLED IN, AND CONFIRM THAT THE INFORMATION IS CORRECT. FOR EXAMPLE, IF YOU KNOW THAT YOU HAVE HAD (AND LOGGED) A REQUEST WITHIN THE REPORTING PERIOD, BUT IT IS NOT ON JADE, THEN CALL THE FOI AND SORT IT OUT. I WILL NOT ACCEPT THE EXCUSE THAT JADE IS DOWN OR IT IS NOT ON JADE. YOU HAVE ONE MONTH TO MAKE SURE THAT IT IS IN ORDER.

ALSO, PLEASE SUBMIT NIL RETURNS – AGAIN, THINK ABOUT IT. IF JADE IS SAYING THERE ARE NO REQUESTS, AND YOU KNOW THAT ONE WAS RECEIVED, SOMETHING IS WRONG.

JUST ON NOTE BEFORE WE LOOK AT THE FORM. THE INFORMATION BEING REQUESTED IS NOT A TEST FOR YOU. IT IS NEEDED IN ORDER FOR ME TO SEE WHETHER PUBLIC AUTHORITIES ARE MANAGING TO COMPLY WITH THE LAW. IT WILL GIVE ME INTELLIGENCE AS TO AREAS OF WEAKNESS OVERALL, AS WELL AS IN YOUR OWN PUBLIC AUTHORITIES. IN THIS WAY I WILL BE ABLE TO HELP RESOLVE ANY PROBLEMS. FOR EXAMPLE, I WILL BE ABLE TO SEE HOW MANY REQUESTS ANY PUBLIC AUTHORITY IS RECEIVING. IF YOUR RECORDS SHOW THAT YOU ARE CONSISTENTLY LATE IN RESPONDING OR DEALING WITH REQUESTS, OR THAT YOU ARE FALLING BEHIND, IT COULD BE THAT AS INFORMATION MANAGER YOU JUST HAVE TOO MUCH ON YOUR PLATE AND NEED HELP. I WILL BE ABLE TO SUPPORT YOU IN GETTING HELP.

PLEASE LIAISE WITH THE FOI UNIT IF YOU HAVE ANY QUESTIONS ABOUT WHEN TO ENTER A PARTICULAR CASE AND SO ON, OR IF YOU EXPERIENCE ANY PROBLEMS FILLING IN THE FORM. THIS IS LIKELY TO BE A WORK IN PROCESS, WE MAY HAVE TO FURTHER DEVELOP OR CHANGE THE FORM – WE HAVE UNTIL THE END OF THE YEAR TO GET IT RIGHT, BUT NOT UNTIL THE END OF THE YEAR TO START REPORTING AND WORKING ON THE FINAL LEGISLATIVE ASSEMBLY REPORT. THIS IS WHY WE NEED TO START NOW AND IRON OUT ANY PROBLEMS.

I THANK YOU IN ADVANCE FOR YOUR COOPERATION IN THIS MATTER. MY OFFICE WILL WRITE TO YOU IN APRIL TO REMIND YOU TO SUBMIT THE FORM.

AS I SAID EARLIER, THERE IS MUCH MORE THAT I WANT TO SAY TO YOU IN RESPECT TO THE IMPLEMENTATION OF THE LAW AND OUR RESPECTIVE DUTIES UNDER IT. HOWEVER THIS CAN WAIT FOR ANOTHER TIME, AS I AM KEEN TO STOP TALKING TO YOU BEFORE YOU STOP LISTENING TO ME.

AGAIN THANK YOU AND GOOD LUCK IN YOUR DUTIES.

JENNIFER DILBERT