TRINIDAD AND TOBAGO

IN THE HIGH COURT OF JUSTICE

H.C.A. No. 2579 of 2002

IN THE MATTER OF THE WRITTEN REQUEST OR APPLICATION DATED THE 2ND MAY, 2002 MADE UNDER SECTION 13 OF THE FREEDOM OF INFORMATION ACT 1999, FOR ACCESS TO DOCUMENTARY INFORMATION FROM A PUBLIC AUTHORITY BY VIRTUE OF THE STATUTORY RIGHT UNDER SECTION 11 OF THE SAID ACT FOR ACCESS TO SUCH INFORMATION HELD BY A PUBLIC AUTHORITY

AND

IN THE MATTER OF AN APPLICATION FOR LEAVE AND FOR JUDICIAL REVIEW BASED ON THE VIOLATION BY A PUBLIC AUTHORITY, OF SECTION 15 OF THE FREEDOM OF INFORMATION ACT, 1999 WHICH SPECIFIES A MINIMUM STATUTORY PERIOD OF NOT MORE
THAN 30 DAYS AFTER THE RECEIPT OF THE FREEDOM OF INFORMATION REQUEST REFERRED TO ABOVE BY A PUBLIC AUTHORITY, THAT IS SAY THE TRINIDAD AND TOBAGO POSTAL CORPORATION AND THE REQUIREMENT OF LAW FOR THE PUBLIC AUTHORITY IS TO
COMMUNICATE TO THE APPLICANT ITS GRANT OR REFUSAL OF THERE QUEST FOR ACCESS TO DOCUMENTARY INFORMATION WITH THE TIME SPECIFIED BY LAW

AND

IN THE MATTER OF SECTION 16 OF THE FREEDOM OF INFORMATION ACT REQUIRING THE RELEVANT PUBLIC AUTHORITY TO FORTHWITH PROVIDE ACCESS TO THE DOCUMENTARY INFORMATION REQUESTED BY THE APPLICANT WHERE THE APPLICATION HAS BEEN APPROVED BY THE RESPONDENTS OR EITHER OF THEM OR FOUND
BY THIS HONOURABLE COURT NOT TO BE EXEMPTED FROM PUBLIC DISCLOSURE UNDER SECTIONS 24 TO 34 INCLUSIVE OF PART IV OF THE FREEDOM OF INFORMATION ACT.

AND

IN THE MATTER OF SECTION 35 OF THE FREEDOM OF INFORMATION ACT WHERE THE REQUESTED DOCUMENTARY INFORMATION IS

EXEMPT FROM PUBLIC DISCLOSURE BUT THIS HONOURABLE COURT IS OF THE VIEW THAT ACCESS TO THE SAID EXEMPTED DOCUMENTARY INFORMATION SHOULD BE DISCLOSED IN THE PUBLIC INTEREST

AND

IN THE MATTER OF SECTION 22 OF THE FREEDOM OF INFORMATION ACT, 1999 DEEMING AS THE DECISION MAKER, IN RESPECT OF THE AFORESAID APPLICATION FOR DOCUMENTARY INFORMATION THE HONOURABLE MINISTER OF PUBLIC UTILITIES AND THE INTERPRETATION OF SECTION 4 OF THE FREEDOM OF INFORMATION ACT, 1999

AND

IN THE MATTER OF AN APPLICATION UNDER SECTION 6 OF THE JUDICIAL REVIEW ACT BY THE APPLICANT FOR LEAVE TO FILE AN APPLICATION AND THEREAFTER FOR JUDICIAL REVIEW TO A JUDGE IN CHAMBERS PURSUANT TO SECTION 39(2) OF THE FREEDOM OF INFORMATION ACT, 1999

BETWEEN

CARIB INFO ACCESS LIMITED

Applicant

AND

THE HONOURABLE MINISTER OF PUBLIC UTILITIES

First Respondent

THE TRINIDAD AND TOBAGO POSTAL CORPORATION

Second Respondent

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JUDGMENT

Before the Honourable Mr. Justice R. Narine

Appearances:

Mr. K. Kamta for the Plaintiff
Ms. Thurab for the First Respondent
Mr. T. Bharat for the Second Respondent

The basic facts of this matter are not in dispute. The Applicant made a written request dated 2nd May, 2002 to the second Respondent under the Freedom of Information Act for the following:

1. A copy of all written contracts awarded within the last two years for the provision of goods and services.
2. In all cases where professional services were rendered, the brief particulars of services, persons or firms or organizations that provided services indicating the fees and disbursements paid during the last two years.

By letter dated 24th May, 2002 the Communications Manager of the Second Respondent advised the Applicant that the Second Respondent is a Public Authority within the meaning of section 4 of the Act, and that this request should be directed to the responsible Minister, in this case, the Minister of Public Utilities.

On 5th August, 2002 the Applicant brought this application for judicial review. On 26th September, 2002 the Applicant was granted leave to apply for judicial review only in respect of information requested in the first part of the request, that is, in respect of copies of all written contracts for the provision of goods and services for the previous two (2) years.

The main issues raised by the parties in their written submission are:

1. Whether the request should have been made to the responsible Minister.
2. Whether the Applicant has an alternative remedy.

FIRST ISSUE:

There is no dispute that the second Respondent is a body corporate as defined by section 4 (k) of the Act.

Section 13 (5) of the Act provides that that an application for access to an official document held by a public authority shall be made to the responsible Minister.

Section 22 of the Act provides:

> *(1). A decision in respect of a request made to a public authority may be made, on behalf of the public authority, by the Responsible Minister, a Permanent Secretary, a Head of Department, a Chief Executive Officer or a designated officer of the public authority or by an officer of the public authority acting within the scope of authority exercisable by him in accordance with arrangements approved by the Responsible Minister, a Permanent Secretary, a Head of Department or a Chief Executive Officer.*
>
> *(2). Where a request is made to a public authority for a document, and no arrangements in respect of documents of that type have been made and published under the regulations, a decision on that request shall, for the purpose of enabling an application for judicial review to be made, be deemed to have been made by the responsible Minister of the public authority.*

Section 22 (1) clearly sets out the persons who may make the decisions in respect of a request made to a public authority.

Section 22 (2) applies where no arrangements have been made or published under section 7 of the Act in respect of a document requested. In such a case, for the purpose of enabling an application for judicial review to be made, the decision is deemed to have been made by the responsible Minister.

In my view the deeming provision does not override the express words of section 13(5) which makes it clear that an application for access to an official document held by a public authority shall be made to the responsible Minister. The language is clearly mandatory in its terms.

In my view, section 22 (2) is intended to apply to a situation where an applicant for judicial review is unable to identify the actual decision maker in a public authority. In such a case the responsible Minister is deemed to have made the decision for the purpose of bringing the application.

Having regard to the relevant provisions of the Act I hold that the request should have been made to the responsible Minister, and not to the Public Authority itself. In coming to this conclusion, I expressly agree with the decision of Best J. in the *Sanatan Maha Sabha of Trinidad and Tobago vs The Honourable Minister of Finance* (urep.) H.C.A. No. 438 of 2004, and the decision of Jamadar J. in *Chandresh Sharma vs The Integrity Commission* H.C.A No. S 2005 of 2004.

It is not in dispute in this case that the request was made to the public authority. No request was made to the responsible Minister in spite of the letter dated 24th May 2002 from the Second Respondent advising the Applicant to so direct his request.

It follows that the Second Respondent is not a proper party to this action, and the application against it must be dismissed. It also follows that the application for judicial review against the First Respondent is premature, since no request has been made of him. Accordingly, the application against the First Respondent is dismissed as well.

SECOND ISSUE:

Section 9 of the Judicial Review Act provides that the Court shall not grant leave to apply for judicial review, where any other written law provides an alternative procedure to question, review or appeal that decision, save in exceptional circumstances.

Section 38 A(1) of the Freedom of Information Act provides that a person aggrieved by the refusal of a public authority to grant access to an official document may within 21 days of receiving notice of refusal under section 23(1), complain in writing to the Ombudsman, who shall, after examining the document if it exists, make such recommendation with respect to granting access to the document as he sees fit, within 30 days or as soon as practicable thereafter.

In this case however, there was no refusal of the public authority to provide access. There was simply an advice to direct the request to the appropriate party. Nor, of course, was there any notice of refusal under section 23(1) of the Act.

Accordingly, in my view, in this case the preconditions for a review by the Ombudsman under s. 38 A(1) of the Act, did not exist.

In his written submissions, counsel for the First Respondent raised two additional points which in my view contain some merit. It seems to me that the work involved in

processing the request of the Applicant would substantially and unreasonably divert the resources of the public authority. In such a case the authority may refuse to grant access to the documents.

The Freedom of Information Act was intended to provide a vehicle for the dissemination of information to the public in order to promote transparency in public affairs. The purpose of the Act is clearly to provide an efficient mechanism for members of the public to exercise their right to access information from public authorities carrying out public functions and spending public funds.

The underlying philosophy appears to be the citizen's right to participate in "open government" and to acquire information in respect of decisions made by public officers which affect the rights of the citizen.

While the Court will be slow to impose restrictions on public access to information, it seems to me that the intention of the legislature would hardly have been to facilitate the collection of information for sale to third parties as a commercial enterprise. If this practice is encouraged, it may well impose unforeseen administrative and financial burdens on public authorities to accede to voluminous requests, as in this case, and may actually frustrate the provision of information to ordinary citizens, who make legitimate requests for information required to vindicate their rights.

ORDER:

1. The application is dismissed.
2. The Applicant will pay the costs of the First and Second Respondent certified fit for Advocate Attorney.

Dated this 8th day of December 2006.

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Rajendra Narine
Judge.