

TRINIDAD AND TOBAGO

IN THE HIGH COURT OF JUSTICE

HCA: No.2163/2002

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

AND

IN THE MATTER OF AN APPLICATION FOR LEAVE FOR JUDICIAL REVIEW AGAINST THE VIOLATION OF SECTION 15 OF THE FREEDOM OF INFORMATION ACT, 1999 WHICH SPECIFIES A MAXIMUM STATUTORY 30 DAYS LIMIT AFTER RECEIPT OF THE FREEDOM OF INFORMATION APPLICATION \UNDER SECTION 13 OF THE SAID ACT FOR DOCUMENTARY INFORMATION FROM A PUBLIC AUTHORITY, SUCH AS THE RESPONDENT, TO EITHER GRANT OR REFUSE THE REQUEST DATED THE 20TH OF MAY, 2002.

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 NATIONAL SECURITY.

BETWEEN

CARIBBEAN INFORMATION ACCESS LIMITED

Applicant

AND

THE HONOURABLE MINISTER OF NATIONAL SECURITY

Respondent

BEFORE THE HONOURABLE MR. JUSTICE PETER A. RAJKUMAR

APPEARANCES:

Mr. Kulraj Kamta for the Applicant
Mr. Byam for the Respondent

Judgment

The Applicant's Claim

The Applicant seeks a declaration that the Commissioner of Police and/or the Minister of National Security have violated Section 15 of the Freedom for Information Act in failing to provide a written response which would either refuse or grant the Applicant's written application for access to documentary information within thirty days after receipt of the Freedom for Information request that was dated and received 20th May 2002. It seeks an order of mandamus directing the Respondent to provide so much of the information requested that is not proven to be exempt under the Freedom for Information Act, 1999.

Disposition

I order that the Respondent do within 28 days provide to the Applicant the information requested under Request number 4 of its request dated May 20th 2000.

In view of my findings that:

- (1) Most of the material requested could not have been provided, being exempted by Section 28, and
- (1) As at 22nd October 2002 albeit after the Action and judicial review had been filed, a response was issued, which I have upheld save for request number 4,
- (2) The majority of the requests for information thereunder would have been sufficiently addressed at that point and would have become academic;
- (4) The majority of the costs associated with this application would have been incurred in defending those Section 28 exemptions, which prima facie applied to all but one of the requests,

I make no order as to costs.

Non Disclosure

The Applicant contends that it received no response within 30 days. The Respondent contends that it did in fact issue a response dated 11th June 2002 which was within the 30-day period, that although that response did not provide the information, it was an acknowledgement of receipt of the request, and advice that the matter was receiving attention. This document was not disclosed by the Applicant. The Respondent claims that there has been non-disclosure sufficient to set aside the grant of leave.

I find that there is no evidence that this letter was received by the Applicant and, in those circumstances, I decline to set aside the leave on the ground of non-disclosure.

The Request

On 22nd October 2002, a letter was issued to the Applicant by one Sandra Lynch on behalf of the Permanent Secretary. It is necessary to set out that letter as it contains the information requested and the response of the Respondent. It is set out in the form of the request followed by the Respondent's response:

“(1) The summary of investigations on the death of Mr. Harrinarine Ramjattan of Lot No. 78, St. John's Street, Chaguanas, whose body was found on 22nd March 2001 at Wallerfield, Arima.

[RESPONSE]

Section 28(1)(a) of the Freedom for Information Act, 1999 states that:

‘A document is an exempt document if its disclosure under this Act would or would be reasonably likely to prejudice the investigation of a breach or a possible breach of the law or prejudice the enforcement or proper administration of the law in a particular instance.’”

It continues:

“The Assistant Commissioner of Police has informed that investigations being conducted into the death of Mr. Harrinarine Ramjattan are yet to be concluded by the Bureau of Homicide. I am therefore unable to provide such information since to do so may result in prejudice to the said investigation or to the eventual enforcement of the law.”

I find that this is a sufficiently detailed response and does not simply parrot the Freedom for Information Act claiming exemption. It shows that enquiries were in fact conducted before it was sought to invoke the Section and, as at 2002, it is not inconceivable that the investigation into the death of Mr. Ramjattan might have not been concluded.

“(2) *The names and addresses of persons interviewed on file so far.*

[RESPONSE]

Section 31 of the Act states that:

‘A document is an exempt document if its disclosure under this Act would involve the unreasonable disclosure of personal information of any individual including a deceased individual.’

Section 4 defines personal information to include inter alia

(d) the addresses ... of the individual; ...

(h) the individual’s name where it appears with other personal information relating to the individual or where the disclosure of the information would reveal other personal information about the individual.’”

A document would also be exempt if it discloses or enables a person to ascertain the identity of a confidential source of information in relation to the enforcement or administration of the law.

Section 28(1)(e) classifies as an exempt document one which will:

“endanger the lives or physical safety of persons engaged in or in connection with law enforcement or persons who have provided confidential information in relation to the enforcement or administration of the law.”

“Providing you access with these confidential documents would therefore contravene the above quoted statutory provisions, as a consequence of which I regret I am unable to assist.”

It suggests that there are confidential documents that exist in relation to the names and addresses of persons interviewed on file so far. I find Sections 28(1)(c) and 28(1)(e) are prima facie applicable.

“(3) *Names of organisations if any contacted for help and copies of names of such contact persons.*”

The answer to this is a little less helpful.

“To reveal the names of any organisation which was contacted for help in the ongoing investigation may contravene Section 28(1)(a) of the Act discussed above with respect to document no. (1). Further to provide access to any document containing the names of contact persons will also contravene Sections 28(1)(e) and 31 as discussed above in relation to document no. (2).

I find Section 28(1)(a) prima facie applicable and 28(1)(e) also prima facie applicable. Section 31 is less obvious in its applicability.

“(4) The list of unsolved murders for the past 15 years and also the names and addresses of the deceased persons and date of death.

[RESPONSE]

Providing you with access to the above information will contravene those Sections of the Freedom for Information Act as identified above, as a result of which I am unable to assist.”

I find this response utterly unhelpful. Not only does it not specify which Sections of the Freedom for Information Act are relied upon for exemption, but none of them is applicable.

Section 28(1)(c) exempts documents which enable someone to identify a confidential source of information.

Section 28(1)(e) exempts a document which will endanger the lives or physical safety of persons engaged in law enforcement. I find these to be totally inapplicable.

Section 31 of the Act exempts a document if its disclosure would involve the unreasonable disclosure of personal information of any individual including a deceased individual. I find it cannot possibly be characterised as unreasonable disclosure of personal information to provide the list of unsolved murders for the past 15 years and the names and address of the deceased persons and the date of death.

The policy of the Act expressed both in the Act and in the cases which have considered this matter is in favour of disclosure unless an exemption can be demonstrated to exist. The onus of proof on the applicability of an exemption is on the party claiming it, that is, the Respondent.

“(5) *The number of murders of the past 15 years in which persons were killed after large money transactions with banks.*

[RESPONSE]

The above request may be acceded to since it entails the provision of only a figure, though vague in a sense since one has to guess as to what may constitute ‘a large money transaction’ and also as to how soon after this transaction will have taken place was the person killed, as to days, months or a year. You may therefore wish to clarify.”

I find this response reasonable and helpful. The Applicant never availed himself of the request to clarify the information requested. I find nothing turns therefore upon the failure to provide a response to such a non-specific request.

“(6) *Documents secured.*

[RESPONSE]

Section 13(2) of the Act states:

‘A request to identify the official document or provide support information to enable the designated officer of the public authority or an employee of the public authority who is familiar with the relevant documents to identify the document with reasonable effort.’

The description of document no. (6) is very vague and though it is difficult to discern with certainty what is being requested in accordance with Section 14(2) of the Act, access to the document as stated in the application cannot be refused without first giving the Applicant a reasonable opportunity of consultation with the public authority with a view to making a request in a form in accordance with Section 13(2). You are therefore kindly requested to provide additional information with a view to clarifying this request.”

I find this to be a reasonable response and note that there is no evidence that the Applicant ever complied with the request to provide additional information. I note, however, the response was fairly mechanical in that it would have been obvious that documents secured would have referred to the documents secured in connection with the investigations into the death of Mr. Ramjattan.

“(7) *Banks accounts revealed in the name of the deceased and in the names of H. Ramjattan School of Accounting, RSA Company Limited.*

[RESPONSE]

As indicated before, the investigations into the death of Mr. Harrinarine Ramjattan are yet to be concluded. Therefore to grant access to the above document, if in fact such document is in the possession of this Ministry, will contravene Section 28(1)(a) of the Act.”

Section 28 (1) (a) was prima facie applicable, but it is clear that the Respondent had not been successful in its enquiries as to whether or not such documents were in the possession of the Ministry and was relying on a general understanding of the Act.

Section 28(1)(a) exempts a document if this disclosure was likely to:

“(a) prejudice the investigation of a breach or possible breach of the law or prejudice enforcement or proper administration of the law in a particular instance.”

I note Section 28(1)(d) also which exempts a document, disclosure of which would disclose methods or procedures for presenting, detecting, investigating or dealing with matters arising out of breaches or evasions of the law the disclosure of which would or would be reasonably likely to prejudice the effectiveness of those methods or procedures. That Section was not invoked.

“(8) Insurance policies of the deceased revealed apart from those already researched by Dexter Ramjattan.”

[RESPONSE]

Again as with respect to document no. (7), the investigations are ongoing and to allow access to this document, if in fact it exists, would breach Section 28(1)(a) of the Act.”

I make the same observations as with respect to the above request, no.7, which are equally applicable. The request itself is also vague insofar as it does not establish what were the policies that were already researched by Dexter Ramjattan.

“(9) What formal normal group or pretext interviews were done. Provide documents in support.”

[RESPONSE]

Access to this document should be denied as it would be classified as exempt in accordance with Section 28(1)(a) of the Act.”

“(10) Was physical evidence secured [sic] and, if so, what.”

[RESPONSE]

Access to any document pertaining to the above information should be denied as such document would be classified as exempt in accordance with Section 28(1)(a) of the Act”.

“(11) *Who were the officers assigned to this investigation and their respective experiences in homicide investigation.*

[RESPONSE]

To allow access to this information would contravene Section 28(1)(a).”

I find that this Section is prima facie applicable to requests 9, 10 and 11.

“(12) *What theory of the murder are the Trinidad and Tobago Police working on.*

[RESPONSE]

To allow access to this document would in accordance with Section 28(1)(d) ‘disclose methods or procedures of presenting, detecting, investigating, etc.’ This document is therefore classified as an exempt document and access to same cannot be allowed.”

I find this Section is prima facie applicable.

It concluded:

“In conclusion therefore I am unable to provide you with the information requested at numbers (1), (2), (3), (4), (7), (8), (9), (10), (11) and (12). With respect to document no. (5), I await your clarification on the points of this issue raised at (6) above.”

Law

The approach to the Freedom for Information Act generally is set out comprehensively in the decision of the Honourable Justice Moosai in *Ashford Sankar v Public Service Commission Claim No. CV2006-00037*, delivered April 2 2007. This decision was not cited to this Court. The following observations from that judgment are pertinent.

At page 12:

“Clearly therefore the Freedom of Information Act must be construed in a way that promotes the policy and object of the Act. That would ensure that the Act

is construed in such a manner as to 'further rather than hinder free access to information.'”

Page 14, “Onus of proof”:

“The party who is relying on an exemption bears the burden of proof of establishing same.”

Page 17, “Public interest override”, Section 35 provides:

“Notwithstanding any law to the contrary, a public authority shall give access to an exempt document where there is reasonable evidence that significant (a) abuse of authority or neglect of performance or official duty or (b) injustice to an individual, has or is likely to have occurred or in the circumstances of giving access of the document is justified in the public interest having regard both to any benefit and to any damage that may arise from doing so.”

The word “or” was introduced by amendment to replace the word “and” to give the Act greater flexibility.

Review mechanism

The Respondent itself had the power to override its own decision by the application of the Section 35 criteria and override exemption in the public interest. It did not do so.

Page 29:

“It would therefore be necessary to consider each case on a case-by-case basis. The fundamental question to be answered is whether in all the circumstances disclosure would be contrary to the public interest.”

Page 31:

“To merely parrot the material part of [Section 37(1)] as the basis for refusing disclosure without considering all the relevant circumstances would have the effect of converting the exemption into an absolute exemption.”

Page 59:

“Partial access to information can be ordered.”

WHAT INFERENCES CAN BE DRAWN

Note @ page 32 of the *Sankar* case:

“Notwithstanding that the respondent relied on the bare fact that the minutes were internal working documents and therefore exempt under Section 27 of the Freedom for Information Act, I am of the view that in the circumstances of this case where one is dealing with the issue of promotion to one of the highest positions in the public service and where there are constitutional provisions to provide some guidance as to the criteria to be used in appointments and promotions and where I have examined the very documents, it is open to the Court to draw certain inferences. The Court can do so in exceptional cases. It must clearly be understood that Parliament’s intention was for reasons including public interest considerations on which the decision was based, to be provided.”

I agree that it is in exceptional cases that the Court can draw inferences. I agree that a fact of considerable significance would be whether the Court has examined the relevant documents. In this case, I have not examined any documents. I accept that Parliament’s intention was for reasons to be provided. The instant case, however, deals with a Section 28 exception. This is a matter that does not directly affect the Applicant although, of course, it is not essential for an Applicant to establish any particular motive. [See page 39 of the *Sankar* case.] I consider that the wide-ranging nature of the request is a factor that is relevant as well as the fact that most of the material requested relates to what was at the time an ongoing criminal investigation. I therefore consider that it is reasonable for me to infer that matters which comprise a police investigation potentially are matters that prima facie qualify for Section 28 exemption.

I entertain a suspicion, in fact a strong suspicion, that the Respondent did not itself manage to get access to the documents for which information was requested and that its response was a cover to disguise this fact. No offer was made to supply the Court with the documents in question. This confirms my suspicion that they were not disclosed either to Miss Lynch or to Attorney at Law for the Respondent. I am not convinced therefore that, and neither does Miss Lynch appear to be, that they even exist. If they do exist, however, by their very nature they would fall within the

category of exempt documents with the sole exception being Request No.4 –“the list of unsolved murders for the past 15 years and all the names and addresses of the deceased persons and date of death”.

I note Section 28(2) specifically provides that this Section (the exemption provision):

“does not apply to any document that is a report on the degree of success achieved on any programme adopted by a public authority for investigating breaches of or enforcing or administering the law;

I find that Section 28(1) does not apply to request No. 4 and that further or in the alternative Section 35 is applicable. This provides that:

“... or in the circumstances giving access to the document is justified in the public interest having regard both to any benefit and to any damage that may arise from doing so.”

I find that it is unlikely that any damage would arise from providing this information that it is in the public interest to have that information and that, insofar as the response fails to acknowledge this, it erred.

I therefore order that the Respondent do within 28 days provide to the Applicant the information requested under Request number 4 of its request dated May 20th 2000.

I am prepared to infer in the context of these specific requests that the remainder of the requests are subject to Section 28 exemption which prima facie applies. This decision turns upon its own peculiar facts and the nature of the requests that have been made. It is certainly not intended to convey that invocation of the Section 28 exception without more, in relation to a specific request, would automatically prevent an application for disclosure. This cannot be so and I do not so find here.

Disposition

I order that the Respondent do within 28 days provide to the Applicant the information requested under Request number 4 of its request dated May 20th 2000.

In view of my findings that:

- (1) Most of the material requested could not have been provided, being exempted by Section 28, and
- (2) As at 22nd October 2002 albeit after the Action and judicial review had been filed, a response was issued, which I have upheld save for request number 4,

- (3) The majority of the requests for information thereunder would have been sufficiently addressed at that point and would have become academic;
- (4) The majority of the costs associated with this application would have been incurred in defending those Section 28 exemptions which prima facie applied to all but one of the requests,

I make no order as to costs.

Dated the 30th day of June 2008

Peter A. Rajkumar

Judge