

**DECISIONS OF THE ACCESS TO INFORMATION APPEALS
TRIBUNAL IN RESPECT OF THE FOLLOWING APPEALS**

1. SUSAN GOFFE - APPELLANT REPRESENTED BY MS. HILARY PHILLIPS, Q C.
V.
OFFICE OF THE PRIME MINISTER - RESPONDENT
REPRESENTED BY: MS. KATHERINE FRANCIS
MS. KATHERINE DENBOW
- APPEAL NO. ATI\OPM\2004\1

2. SUSAN GOFFE – APPELLANT REPRESENTED BY DR. LLOYD BARNETT, Q. C.
V.
BANK OF JAMAICA – RESPONDENT –
REPRESENTED BY: MR. HUGH MUIR
MS. AVLANA JOHNSON.
- APPEAL NO. ATI/BOJ\2004\1

3. SUSAN GOFFE – APPELLANT REPRESENTED BY DR. LLOYD BARNETT, Q.C.
V.
BANK OF JAMAICA – RESPONDENT –
REPRESENTED BY: MR. HUGH MUIR
MS. AVLANA JOHNSON.
- APPEAL NO. ATI/BOJ/2004/6

The Tribunal established under Section 32 of the Access to Information Act met on October 10, 2005 and October 11, 2005 to consider the above Appeals and heard submissions from the Legal Representatives of the respective parties.

The Appellant in all three cases, Mrs. Susan Goffe, was present throughout all the proceedings.

THE LAW

The law governing these proceedings was passed by Parliament on the 24th day of July, 2002 and brought into effect by Ministerial Order in January 2004. It is to be noted at the outset that by virtue of the provisions of Section 5 of the Act, the Order made by the Minister provided that at its inception, the Act would be applicable only to the following Ministries and agencies:

- ✓ Ministry of Finance and Planning;
- ✓ Ministry of Local Government;
- ✓ Office of the Cabinet;
- ✓ Office of the Prime Minister;
- ✓ Jamaica Information Service;
- ✓ National Works Agency;
- ✓ Planning Institute of Jamaica.

Subsequently by further Orders, the range of public authorities subject to the Act was expanded and for the purposes of these Appeals, it may be noted that the Bank of Jamaica did not become subject to the provisions of the Act until the 31st day of May, 2004.

The full Title of the Act is “An Act to provide Members of the Public with a General Right of Access to Official Documents and for connected matters”. Section 2 of the Act provides *“the objects of this Act are to reinforce and give further effect to certain fundamental principles underlying the system of Constitutional Democracy...by granting to the public a general right of access to official documents held by Public Authorities, subject to exemptions which balance that right against the public interest...”*. This provision is reinforced by Section 6 subsection 1 which provides *“subject to the provisions of this Act. Every person shall have a right to obtain access to an official document other than an exempt document”*.

It will be seen from the foregoing that what is granted to the public is a right of access to documents from which information may be obtained that may be of interest or value to the particular applicant. It does not, however, give the sort of right to obtain information that a Member of Parliament for example has through the privilege of asking questions of a Minister. The right of access to documents includes not only the right to see the document but to obtain copies of it.

Public authorities not only have the obligation to grant such access, but also if requested to assist the applicant in identifying the particular document that the applicant wishes to see. In addition, where the statutory authority does not have the particular document in its possession, but knows that the document is in the possession of another public authority it has the obligation to transfer the request to that authority within fourteen days of receiving the application and then to advise the applicant that it has done so.

Attention must also be drawn to Sections 14 - 23 of the Act, which deals with exemptions to the obligation to disclose documents to the public. This qualification to the general right of access has two dimensions; the first is that certain documents, for example Cabinet Submissions, are excluded from the operations of the Act altogether. Secondly, a document which is not in itself exempt, may contain material which for one reason or another is exempt from disclosure. In such a case, the public authority has the right when called upon to provide a member of the public with the document, to expunge from the document those sections which contain the exempted matter.

Rules have also been promulgated under the Act which make provision for the procedures to be followed by applicants and by public authorities to ensure the smooth and timely operation of the Law. The Tribunal would like to take this opportunity to urge all persons wishing to take advantage of the rights granted by this Act to familiarize themselves with the provisions of these Rules and as far as possible to act within the time limits prescribed. The Tribunal does, of course, have the discretion to waive strict compliance with formal procedures and to extend the time limits set out in the Rules provided, this can be done without detriment to other parties. While we will always be prepared to exercise this discretion in appropriate cases, particularly as this Law is still new in our general experience, we would nevertheless hope that the necessity to make use of this power will arise very infrequently.

These general principles above set out provide the basis on which we have arrived at the decisions in the individual cases before us.

SUSAN GOFFE (APPELLANT)

VS. OFFICE OF THE PRIME MINISTER (RESPONDENT)

-APPEAL NO. AT\OPM\2004\1

FACTS

The sequence of events leading up to this Appeal is as follows:

On January 6, 2004, the Applicant wrote to the Ministry of Finance under the Access to Information Act requesting the Accounts of the final cost for the Government delegation to the Non-Aligned Conference held in Malaysia held in 2003. The Applicant was advised that her request was transferred to the Office of the Prime Minister which the Ministry of Finance, opined, was the appropriate place for obtaining this information.

The Prime Minister's Office advised the Applicant that compliance with that request required extensive research from other Ministries, in particular the Ministry of Foreign Affairs and Foreign Trade and the Ministry of National Security. Eventually, the applicant received a letter from the Office of the Prime Minister stating that the request could not be completed because the other Ministries involved had not yet been brought under the Act.

SUBMISSIONS

Before us it was contended by the Applicant that the Office of the Prime Minister had a duty not only to provide the applicant with such documents that were relevant to the request and that were in its possession, but also to obtain from the other Ministries such documents as were in their possession and make them available to the applicant. The Respondent Ministry on the other hand contended that since there was no document in its possession that contained the totality of the information requested, it had fulfilled its duty under the Act by notifying the Applicant of that fact

and directing her attention to the other Ministries from which the relevant information could be obtained.

The Tribunal has very carefully considered these submissions which were very cogently presented by counsel on both sides and we have come to the conclusion that while there is some merit in each contention neither is completely correct.

In our view the duty which the applicant seeks to place on the Ministry is not supported by Law. Miss Phillips cited and relied upon an Australian case which we had an opportunity to consider but it is our opinion it does not go far enough to support her contention. In that case, the Court held that while the information sought was not to be found in any one document in the possession of the Ministry, it could be obtained from the totality of a number of documents that were in that Ministry's possession. It was therefore the duty of that Ministry to make that collection of documents available to the Applicant and it could not rely on the technical argument that there was no one document - as the Applicant appeared to believe - that contained all the information which was sought. In the instant case, however, the information sought required a compilation involving documents from several Ministries. In our opinion, there was no obligation and indeed no legal power in the Prime Minister's Office to extract that document from the other Ministries and to ensure that they were complete and correct so as to pass unto the Applicant the information that she required. We do not believe that the Law can be construed to impose any such burden on public authority even when that authority happens to be the Prime Minister's Office.

On the other hand, we do not accept that what was actually done by that Office was an adequate discharge of the legal obligations that it did have. In the first place, the Ministry did have documents that contained some of the facts covered by the enquiry and those documents should have been sent to the Applicant. Secondly, even though the other Ministries had not yet been brought under the Act, there was a duty on the Prime Minister's Office which was governed by the Act to do more than

merely advise the Applicant that other Ministries were involved. The Applicant's request should have been passed on to the other Ministries in order to give them the opportunity to comply voluntarily if they were so minded. This, in our opinion, is the effect of Section 8(i) of the Act.

In the course of their respective submissions, both Attorneys made useful concessions. The Applicant's Attorney agreed that having been told which other authority had some of the relevant documents, there was nothing to prevent her applying to each of them once they had been brought under the Act as was intended. The Attorney for the Respondent for her part, agreed at the close of the submissions to transmit to the Applicant such relevant documentation as was in the possession of the Prime Minister's Office and to transfer the request to the other authorities who were now subject to the requirements of the Act. We appreciate the way in which this Appeal has been conducted on both sides and the assistance that has been given to the Tribunal.

DECISIONS

We therefore propose to treat this matter as having been settled on the understanding that the Respondent will provide access to such documentary information as it has in its possession and will transmit the request to the other entities possessing relevant information and now subject to the Act. We have every confidence that they will, in the light of what has been said, now provide access to such information as they have.

We accordingly so order with liberty to the Applicant to refer the matter back to us if she is not fully provided with all the relevant documents.

SUSAN GOFFE VS. BANK OF JAMAICA-AT\BOJ\2004\3

FACTS

The facts from which this Appeal arises are as follows:

On January 6, 2004, the Applicant sought to obtain from the Ministry of Finance “the contracts relating to renovation of Government House on Bracknell Avenue, purchased as residence for the Governor of the Bank of Jamaica”. The Ministry of Finance did not have these contracts in its possession and accordingly, sent the request to the Bank of Jamaica in compliance with Section 8 of the Access to Information Act. This was received by the Bank on February 10, 2004. The Bank was not on that date subject to the provisions of the Act and did not deal with the request or communicate with the Applicant.

The Bank, however, became subject to the Act on May 21, 2004 but did not thereafter take any action with regard to the Applicant’s request.

On July 5, 2004, the Applicant wrote to the Governor of the Bank of Jamaica setting out the above facts and stating “As you know the Bank of Jamaica came under the Access to Information Act on May 31, 2004. The thirty-day period has expired for you to respond to my request. Therefore, I am asking for an internal review under Section 30 of the Access to Information Act” The Governor replied to this letter on July 14, 2004 and stated, inter alia, as follows: “On April 22, 2004, we received a copy of a letter written to you by the Financial Secretary forwarding a copy of the Report that was prepared by Pricewaterhouse Coopers in connection with the Bank’s Bracknell Avenue property... .. The Pricewaterhouse Cooper’s Report that accompanied that letter specifically satisfied the second item of your request for information from the Ministry. With regard to your request for information on the contracts entered into for the renovation and refurbishing of the Bracknell Avenue property, it was our view that the Pricewaterhouse Cooper’s Report that was sent to you also contained the salient details of those contracts. Consequently, the Bank of

Jamaica was of the view that the Report would have provided all the required information and that your request had been satisfied”,

The Applicant has treated this letter as an unlawful refusal to accede to her request for documents and appealed to the Tribunal for an Order that the Bank be required to do so.

SUBMISSIONS

The Bank did not, before us, seek to justify the view expressed in the letter of July 14, 2004 that the information contained in Pricewaterhouse Cooper’s letter was a sufficient compliance with its obligation under the Act. The Bank relies primarily on the contention that the only request made by the Applicant is that contained in her document of January 6, 2004 received by the Bank on February 10, 2004. At that time, the Bank was not subject to the Act and hence could not be held liable for not complying with it. The Applicant’s contention, on the other hand, is that the moment the Bank was brought under the Act, it immediately became obliged to comply with the request which it knew had been made previously and therefore was liable to be held in breach of its obligations and the Appeal should be allowed.

DECISIONS

We are of the opinion that the Bank’s contention is well founded. The whole purpose of the phasing in of eligible companies and authorities was to allow time for each entity to familiarise itself with its obligations and make the necessary internal staffing adjustments and give appropriate instructions to its staff that would enable it to respond promptly to applications made in the future. The objective is clearly inconsistent with any intention to make institutions retroactively liable for the non-fulfillment of obligations arising prior to their being brought under the Act.

The proper course for the Applicant to pursue, once it was realized that the Bank, which had possession of the documents, had been subsequently brought under the Act on May 21, 2004 was to make a new Application directly to the Bank. We

understand from Counsel for the Bank that if such an application is now made, it will be complied with since the documents in question are not exempt.

While we feel, therefore, that we are obliged to dismiss the Appeal for the reasons above stated, we are satisfied in view of the statement made by Counsel for the Bank that the Applicant will be able to obtain the document sought.

**SUSAN GOFFE – APPELANT
AND BANK OF JAMAICA – RESPONDENT
APPEAL NO. AT\BOJ\2004\6**

FACTS

On July 19, 2004, the Applicant requested from the Bank of Jamaica “Minutes of Meeting of the Board of Directors of the Bank of Jamaica at which decision was taken to purchase house at 15 Bracknell Avenue”. She received a reply dated August 17, 2004 signed by the ATI Officer of the Bank of Jamaica enclosing what was described in the said letter as “Sections of the BOJ Board Minutes of July 15, 1998”.

The document enclosed was headed “Extract from Minutes of Board Meeting held Wednesday July 15, 2005”. There was a subhead as follows “11. Administrative Matters (ii) Official Residence for Governor. Thereafter there followed an extract from the Minutes but obviously not the whole of the matters dealt with under that subhead and it ended with the words. “The Bank approved the purchase of an official residence for the Governor on the terms outlined above”.

The Applicant did not accept that this constituted a compliance with her request and accordingly, wrote to the Governor of the Bank on October 12, 2004 requesting an “internal review” under Section 30(1) of the Act on the ground that her request was for Minutes of the Meeting of the Board of Directors and not an extract therefrom.

The Governor replied by letter dated October 14, 2004 reaffirming the Bank’s position that the material sent was in compliance with the Bank’s obligations under the Act and in effect rejecting her request for any reconsideration of its decision.

SUBMISSIONS

Before us it was contended by Mr. Muir on behalf of the Bank that meetings of the Board of Directors primarily dealt with matters that were expressly exempt under the

Act. Further, the Bank's officers and Directors were subject to the Confidentiality Requirements of the Bank of Jamaica Act and hence the Bank could not be called upon to send the Minutes of the Board Meetings to members of the public generally or to individuals who were not specifically authorize to receive them. It was also urged that the Applicant expressly required information concerning the Bank's decision to purchase 15 Bracknell Avenue and had not sought information on anything else, hence, the extract sent was a sufficient compliance with the request in addition to being the only response that the Bank was lawfully entitled to make.

In reply Dr. Barnett, representing the Applicant, readily agreed that the Bank could not be required to disclose Board discussions and decisions under matters that were exempt either expressly or by necessary implication. He also accepted that the bulk of the discussions were likely to be covered by such exemptions. He maintained, however, that the Act provided a right of access to whatever documents were requested and not merely access to subjectively determined extracts from them. The Minutes of the Bank of Jamaica Board Meetings were not expressly exempt and the Law specifically set out the way in which exempted matters should be dealt with. He referred to Section 11 of the Act which provides -: "where an Application is made to a public authority for access to an official document which contains exempt matter, the authority shall grant access to a copy of the document, the exempt matter deleted therefrom". This he said, is what should have been done in the instant case. While it was true that the information with regard to the Bracknell Avenue decision was the primary interest of the Applicant, it was not for the Applicant to determine the limits of what could be considered relevant in that regard. It might for example, be of interest to the Applicant to discover if any of the regular Board members were absent from the particular meeting or left before the particular decision was made. It was therefore essential, Dr. Barnett submitted, for the exact requirements of the Law to be fulfilled.

At the conclusion of the arguments, the Tribunal indicated that it wished to avail itself of the opportunity to examine the document in question. We accordingly, visited the

Bank of Jamaica on November 7, 2005 and in the presence of Mr. Muir and other Bank officials inspected the Minutes of the relevant Meeting.

DECISIONS

The Tribunal is grateful for the assistance provided to us by the Bank's Attorneys and Dr. Barnett on behalf of the Applicant and we recognise the importance of the decision in this case as the situation that we had to deal with here is likely to arise from time to time in the future.

We fully appreciate the concern felt by the Bank of Jamaica on the need to protect the confidentiality of the proceedings of the Board of Directors. We have no hesitation in accepting that discussions on matters such as economic or monetary policies or matters that could reflect upon our financial institutions, in general, deserve the highest degree of protection and confidentiality.

We must however accept that the Law gives the public the right to see documents that are not specifically exempted and to obtain information that does not come within what the statute has declared to be exempted matter. It is significant that Section 6(3) specifically provides that "an Applicant for access to an official document shall not be required to give any reason for requesting access to that document". The fact that the Applicant's request referred to the decision of the Board in respect of Bracknell Avenue, identifies the particular document required but does not limit the Bank's obligation to one of disclosing only those portions of the document that specifically refer thereto.

In light of the above conclusion we must allow this Appeal and direct the Bank to deliver a copy of the relevant Minutes to the Applicant. The Bank is however, permitted to delete all the discussions and decisions relating to matters other than those that appear in the Section headed "11. Administrative Matters". However, no portion of that Section should be deleted. Neither should the names of the members attending and any other clearly formal information be expunged. If the Bank remains

in doubt as to what it is entitled to expunge, the Chairman will be pleased to advise and clarify any issue that may be in question.

Dated this 7th day of December, 2005