

**DECISION OF THE ACCESS TO INFORMATION APPEAL TRIBUNAL
IN RESPECT OF THE FOLLOWING APPEAL**

RICARDO PERALTO

V.

INLAND REVENUE DEPARTMENT

Appeal No. AT/IRD/2010/1

THE APPELLANT WAS REPRESENTED BY ZAVIA MAYNE, ATTORNEY-AT-LAW

THE RESPONDENT WAS REPRESENTED BY LUCIANA RAMSAY AND TRISHA SMITH, TAX ADMINISTRATION DEPARTMENT, LEGAL REPRESENTATIVE FOR THE INLAND REVENUE DEPARTMENT. ALSO APPEARING WAS KAREEN WAUGH, ACTING DEPUTY COMMISSIONER, OPERATIONS, ON BEHALF OF THE INLAND REVENUE DEPARTMENT

The Tribunal established under section 32 of the Access to Information Act (2002) met on May 31, 2010 to consider the above Appeal and heard submissions from the representatives of both parties.

BACKGROUND

The Appellant Mr. Ricardo Peralto became the legal owner of a 2004 Honda Civic motor car chassis no. 2HGES26784H506680 when he purchased the said car from Mr Carl Rhoden on or about January 9, 2008. Eighteen months later on or about July 24, 2009 First Caribbean Bank Jamaica Limited, seized, detained and kept possession of the motor car contending that it is the holder of a Bill of Sale duly registered and recorded at the Island Records Office and as such any sale and transfer of the motor car to the Appellant was contrary to the Bank's interest in the said motor car.

The bank's interest in the 2004 Honda Civic motor car chassis 2HGES26784H506680 was discharged pursuant to a discharge of lien that was duly executed and submitted to the Defendant institution at a time prior to the transfer of the motor car to the Appellant.

The Grounds of the Appeal are:

- a) The documents requested do not fall in the exempt category of the Access to Information Act.

- b) The title requested belonged to the Appellant since ownership would have passed to the Appellant at the time of purchase of the motor car.
- c) The Respondent is in possession of a discharge of lien as was indicated in its letter dated September 7, 2009.
- d) Section 17H of the Revenue Administration Act is of no relevance to these proceedings.

SUBMISSIONS

THE APPELLANT'S ARGUMENTS

Section 32(5) of the Access to Information Act imposes a burden on the Respondent to show that its earlier decision to refuse access was justified. The section states "*on hearing of an appeal, the onus of proving that that relevant decision was justified or that a decision adverse to the appellant should be made by the Appeal Tribunal, shall lie in the public authority which made the relevant decision.*" It is submitted that there is no justification for the respondent to deny the Appellant access to the information requested and ask that this Tribunal reverse such a decision since it was based on wrong findings of fact and/or conclusions of law.

APPELLANT'S SUBMISSIONS

1. **The documents do not fall within the exempt category of the Access to Information Act 2002.**

Part 3 of the Access to Information Act deals with the exemption category, that is, documents that do fall within the scope of the Access to Information legislation. The effect of this part of the legislation is that when an application is made for information, the information requested will be released provided it does not fall into any of the nine categories of exempt documents under the act. Exempt documents are those which:

- Affect security, defense or international relations
- Related to law enforcement
- Are subject to legal privilege
- Affect national security
- Reveal government's deliberative processes
- Relate to business affairs
- Relate to heritage sites
- Affect personal privacy
- Are cabinet documents

2. From the categories listed above it is apparent that these documents requested in the instant case do not fall into any of the categories so listed. The closest it would get would be documents affecting personal privacy.

Documents affecting personal privacy

3. Section 22(1) of the Act reads "*subject to the provisions of this section, a public authority shall not grant access to an official document if it would involve the unreasonable disclosure of information relating to the personal affairs of any person, whether living or dead.*"
4. Section 22(2) further reads, "*subsection (1) shall not apply in any case where the application for access is made by the person to whose affairs the document relates*".
5. It is submitted that the application for access to these documents is made by a person to whose affairs the documents relate and as such the provisions of section 22(1) does not apply. The appellant purchased in good faith the 2004 Honda Civic motor car from Mr. Carl Rhoden at which time he was given possession of the motor car along with its title. The Appellant was the one who submitted his title to the Respondent in an effort to have the motor car duly registered in his name and the Appellant's name is endorsed as on this title as the transferee.
6. In addition the said motor car was subsequently detained by the bank who is contending that it has an interest pursuant to a Bill of Sale. Any lien in favour of the bank would have touched and concerned the car to which the Appellant is now claiming ownership and he therefore seeks a copy of the discharge of lien in possession of the Respondent, as he demonstrates to the bank that he was a bonafide purchaser without notice of any interest that bank might have in the said car.
7. The Appellant therefore contends that the granting of access to these documents would not be an unreasonable disclosure and that he is a person to whose affairs the documents relate.

The title requested belonged to the Appellant since ownership would have passed to the Appellant at the time of the purchase of the motor car.

8. The Appellant maintains that the title which he has requested is a document to which he is lawfully entitled since he became the owner of that document at the time of purchase of the motor car. The effect of purchasing a motor car is that the purchaser is entitled to physical possession of the car along with its title. It is for this reason a purchaser has two

options as it relates to the transfer of a motor car he purchased. The purchaser can either transfer the motor car to himself or he may transfer the motor car to a third party.

9. It is therefore submitted that the title is a document to which the Appellant ought to be granted access and refusal by the Respondent was unjustified since section 22 of the Act does not apply.

The Respondent is in possession of a discharge of lien as was indicated in its letter dated September 7, 2009

10. A discharge of lien advice is a document which serves as notice of a lender's release of interest in a property subsequent to the payment of a debt. This document not only concerns the individuals who were parties to the original contract but it touches and concerns the property which was the subject of the contract.
11. The Appellant is a bonafide purchaser for value of a 2004 Honda Civic motor car from Mr. Carl Rhoden. This motor car was duly transferred in his name and a title issued as proof of his ownership.
12. The Appellant has subsequently lost possession of his 2004 motor car as a result of its detention and seizure by First Caribbean Bank who is contending that it has an interest in the motor car pursuant to a Bill of Sale given to it by Mr Carl Rhoden. A Bill of Sale is a document by which a person transfers ownership of goods or chattel to another and the goods are usually transferred as security for a debt. The bank's claim is that the motor car was transferred to it as security for a loan/debt it had given to Carl Rhoden and a lien was duly registered against the 2004 Honda Civic motor car. The bank further contended his loan has not been repaid and that it is therefore entitled to possession of the motor car pursuant to the terms of the bill of sale.
13. The Appellant submits that the discharge of lien touches and concerns the motor car to which he now claims ownership and is entitled to access to this document since section 22(1) of the Act will not apply.

Section 17H of the Revenue Administration Act is of no relevance to these proceedings

14. Section 17H (1) reads "every person having an official duty or being employed in administration of this act shall-

- a) regard and deal with as secret and confidential all documents, information and records obtained pursuant to section 17F or 17G relating to the income or items of any person; and*
- b) make and subscribe a declaration to that effect before a Justice of the Peace.*
15. Section 17F and 17G falls under part VI (c) of the Revenue Act which deals with enforcement of tax collection.
 16. Section 17F speaks to the disclosure of information between revenue departments. The sections deal with the obligation of a Commissioner or an Officer (duly authorised) to disclose documents to another Commissioner or officer of another department for the purpose of assisting the Commissioner or Officer in the performance of his duties under the act. The section further speaks to the manner in which the information shall be disclosed.
 17. Section 17G deals with production and inspection orders. The section deals with instances in which a Commissioner can petition the court for an order in relation to persons suspected of having possession or control of information, document or record which is relevant to the duties of the Commissioner.
 18. It is therefore submitted that section 17H has nothing to do with these proceedings as the section speaks to documents obtained by one department from the next and documents obtained pursuant to a court order in relation to enforcement of tax collection.

RESPONDENTS SUBMISSIONS

The Existence of Lien

1. The Inland Revenue Department is of the position there was in fact a lien noted on the title that Mr. Peralto would have signed, when Mr. Rhoden transferred the vehicle to Mr. Peralto. This would have necessitated a lien discharge to say that the lien had been removed.

Application is Frivolous

2. The Respondent is of the view that the application is frivolous. They indicated to Mr. Mayne that they would be willing to, pursuant to a court order, go before the court and give evidence on behalf of this client since the documents that he speaks of he would want to tender them into evidence and in order to do so he would need a written

document from the Inland Revenue Department to lay the foundation to tender these documents on behalf of his client.

3. In addition, Ms. Waugh spoke with Mr. Mayne in August 2009 and told him that the Inland Revenue Department would be willing to go to court on behalf of his client and Mr. Mayne persisted in writing.

Exempt Document

4. The Inland Revenue Department contends that the document is exempt under the Access to Information Act 2002, Section 22(1):

'Subject to the provisions of this section, a public shall not grant access to an official document if it would involve the unreasonable disclosure of information relating to the personal affairs of any person, whether living or dead.'

5. The two documents that the Appellant has requested are the Title that was used to transfer the vehicle and the Discharge of Lien. These two documents would reveal information about a person, so the Respondent would not be at liberty to reveal such information. That section is also supported by the Revenue Administration Act Section 17H. It would be unreasonable insofar as Mr. Peralto already has the title that he claiming, shows that he is the real owner for the motor vehicle in question.
6. In relation to the discharge of lien, the Respondent is of the view that if that document were to be disclosed to anyone, it would be the bank, under such a request, as it is the bank that the respondent would be protecting under the Revenue Administration Act as well.

Revenue Administration Act

7. The Respondent maintains that is also bound by the Revenue Administration Act, to not disclose certain documents to members of the public.

Section 17H (1) of the Act reads

"every person having an official duty or being employed in administration of this act shall-

- a) *regard and deal with as secret and confidential all documents, information and records obtained pursuant to section 17F or 17G relating to the income or items of any person; and*
- b) *make and subscribe a declaration to that effect before a Justice of the Peace.*

It also states that:

'Every person referred to in subsection (1) having possession of or control over any documents, information or records, who at any time communicates or attempts to communicate such information or anything contained in such documents or records to and persons-

(a) Other than a Commissioner or an officer of a revenue department or any other person to whom he is authorised by the Minister to communicate it pursuant to any other law; or

(b) Otherwise than for the purposes of this Act,

is guilty of an offence under this Act and liable on summary conviction in a Resident Magistrate's Court to a fine not exceeding one hundred thousand dollars or to imprisonment for a term not exceeding nine months or both such fine and imprisonment.²

Official Secrets Act

8. The Respondent also maintains that there are provisions under Section 35 of the Access to Information Act which prohibits disclosure.

Section 35(2) of the Access to Information Act states:

'Subject to subsection (3), nothing in this Act shall affect the provisions of any other Act other than the Official Secrets Act, relating to the non-disclosure of information.

(3) 'For the avoidance of any doubt, it is hereby declared that the Official Secrets Act shall apply in relation to the grant of access to an official document in contravention of this Act.

9. The offices of the Inland Revenue Department are signatories to the Official Secrets Act and therefore subject to and guided by the provisions of, not only the Revenue Administration Act, but the Official Secrets Act as well.

TRIBUNAL'S FINDINGS

1. No formal effort was made to contact the bank.
2. Section 22 (1) of the ATI Act states: Subject to the provisions of this section, a public authority shall not grant access to an official document if it would involve the

unreasonable disclosure of information relating to the personal affairs of any person, whether living or dead.

3. The Tribunal is not at liberty to rule on or decide on the authenticity of any such document.
4. The Tribunal acknowledges potential conflicts with regard to non-disclosure provisions in the ATI Act and the Revenue Administration Act.
5. The Tribunal has viewed the said document submitted by the Inland Revenue Department, under confidential cover.
6. The only potential matters of fact which the Tribunal should consider is whether the document contains any such exempt information and if any such information can or should be redacted.
7. The Tribunal dismisses any notion or allegation that the appeal is frivolous or vexatious, as made by counsel for the Respondent.

DECISION

The Tribunal finds that the documents reviewed, the Motor Vehicle Certificate of Title and Discharge of Lien, are not exempt documents in their entirety. In general, these documents do contain personal information which if disclosed could constitute unreasonable disclosure. Each specific request must be examined in relation to its particular circumstances. In this specific case, the Tribunal has decided that the following items of information should be redacted:

Motor Vehicle Certificate of Title

Particulars of Vehicle

1. Registration Plate Number

Particulars of Ownership

1. Tax Payer Registration Number (TRN)
2. Owner's Address

Particulars of Liens

1. Amount of Lien

Application for Transfer of Motor Vehicle

Section I

1. Driver's Licence Number
2. Address of Registered Owner

Section II

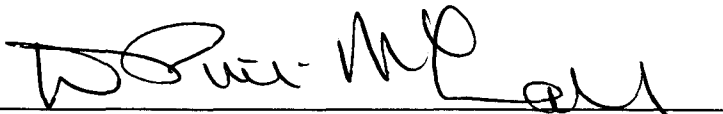
1. Name, signature and driver's licence number (including expiry date) of person ('Mr. B')
2. Tax Payer Registration Number

The Tribunal notes with curiosity, the appearance of a third person's name, signature and driver's licence number in this section. This information was not disclosed to the Tribunal at the hearing.

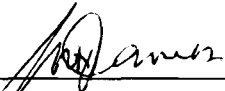
Discharge of Lien Advice

1. Registration Plate Number
2. Owner's Address
3. Amount of Lien

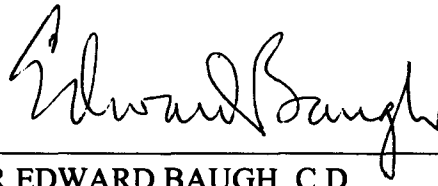
The documents should be released to the Appellant subject to the redactions ordered.



HONOURABLE DOROTHY PINE-McLARTY, O.J.
CHAIRPERSON

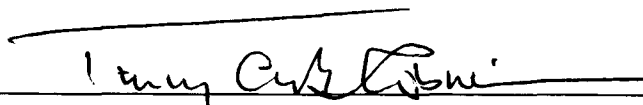


HONOURABLE JUSTICE WESLEY JAMES (RET.)
MEMBER



PROFESSOR EDWARD BAUGH, C.D.
MEMBER

MR. JOHN MAXWELL, C.D.
MEMBER



REVEREND PHILIP G. O'B. ROBINSON, O.D.
MEMBER

**Access to Information
Appeal Tribunal**

October 25, 2010