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Attorney-at-Law

The Permanent Secretary,  
Ministry of Finance,  
Eric Williams Financial Complex  
Brian Lara Promenade  
Port of Spain.

6<sup>th</sup> March, 2013

Dear Sir/Madam,

**Re: Request for Information by Mr. Afra Raymond made pursuant to the Freedom of Information Act 1999**

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I refer to the above-captioned matter and to my letter dated the 11<sup>th</sup> May, 2012 which contained my client's request pursuant to the Freedom of Information Act ("the said Act.") to your letter of response dated the 14<sup>th</sup> August, 2012 and to my letter of reply dated the 21<sup>st</sup> December, 2012. I write to you pursuant to the Pre-action Protocols of the Civil Proceedings Rules 1998.

I am instructed to indicate the following:-

- a) By letter dated the 11<sup>th</sup> May, 2012 I wrote to the Ministry of Finance ("The Ministry") enclosing my client's application for copies of the following documents pursuant to Section 13 of the Freedom of Information Act and requested that they be supplied within thirty (30) days of the date of that date in accordance with Section 15 of the said Act:-
  - i) CL Financial Limited's audited financial statements for the years 2008-2011 along with any interim, preliminary, draft or unaudited statements which have been relied upon by the Minister of Finance

- ii) The presentation made to Members of Parliament in September 2011 as a briefing for the debate on The Central Bank (Amendment) bill & The Purchase of Rights and Validation Bill 2011 including copies of all slides, power-point slides, tables, charts, schedules, text or other information which comprised that presentation.
  - iii) Any other information or analysis as to the composition of the creditors of CL Financial, in particular EFPA holders, the dates of repayment and the identities of those whose investments have been repaid.
  - iv) Copies of all declarations filed by the directors and officers of CL Financial Limited and its subsidiaries under the Integrity in Public Life Act.
- b) By letter dated the 11<sup>th</sup> June, 2012 having regard to the lack of an acknowledgment or response from the Ministry I wrote to you attaching a copy of my letter dated the 11<sup>th</sup> May, 2012 and requesting a response to same within seven (7) days failing which I indicated that I was instructed to apply for judicial review of your said failure and/or refusal to supply the requested information.
- c) By letter dated the 14<sup>th</sup> August, 2012 the Ministry responded indicating the following:-
- i. That in respect of the request for audited financial statements for the years 2008-2011 that there were no audited statements and that my client was required to consult with the Ministry in order to provide further information so that it could be determined whether the documents sought were official documents within the meaning of the Freedom of Information Act.
  - ii. That in respect of the request for the presentation made to Members of Parliament in September, 2011 as a briefing for the debate on the Central Bank (Amendment) Bill that the Ministry was of the view that the requested information fell within the exemption contained in Section 33 of the FOIA and that accordingly the Ministry was unable to provide the said document.

- iii. That in respect of the request for any other information or analysis as to the composition of creditors of CL Financial that my client was referred to Section 13(2) of the Act and was requested to tailor his request so as to comply with this Section. It was also indicated that the preliminary view of the Ministry was that the requested documents were likely to be exempt under Section 30(1) of the Act.
  - iv. That in respect of the request for all declarations filed by the directors and officers of CL Financial Limited and its subsidiaries under the Integrity in Public Life Act that these documents were secret and confidential and protected from disclosure by the Commission under Section 20(1) of the Integrity in Public Life Act.
- d) By letter dated the 21<sup>st</sup> December, 2012 I responded to the letter from the Ministry indicating the following:-
- i. That in respect of (i) above that I was instructed to indicate that my client was seeking all interim, preliminary, draft or unaudited statements that were relied upon by the Honourable Mr. Winston Dookeran at Paragraphs 21 and 22 of his affidavit filed on the 3<sup>rd</sup> April, 2012 in the High Court in H.C.A No. 1234 of 2011/CV 2011-01234 Percy Farrell & Ors v Clico, Central Bank & Ors in which he made reference to a \$24 billion dollar expenditure of public money.
  - ii. That in respect of (ii) above that the Ministry was requested to indicate under what subsection of Section 33 of the said Act my client's request had been refused so that my client could fully assess his legal options.
  - iii. That in respect of (iii) above that client's original request for the name and number of EFPA holders and the dates that their investments were repaid was clear and self-explanatory. In the circumstances, the Ministry was requested to either indicate what further information it required to make a determination or alternatively to indicate whether my client's request was being granted or refused, and if refused the grounds for same.

Please be advised that in the light of the letter of response from the Ministry my client is no longer pursuing his request for the information listed at Item Number (4) of his Freedom of Information Act. However, my client still awaits the information requested at Items Numbered (1)-(3) of his application "*The requested information.*"

To date you have failed to provide a final determination of my client's request for the requested information that was originally made on the 11<sup>th</sup> May, 2012 notwithstanding that the additional information that you requested was supplied to you by letter dated 21<sup>st</sup> December, 2012. You have further failed to indicate under what sub-section of Section 33 of the Act you have refused to provide the copy of the presentation made to Members of Parliament in September, 2011 despite my request for same by letter dated the 21<sup>st</sup> December, 2012 and in breach of your statutory duty to have originally provided such information in accordance with Section 23 of the said Act.

I wish to indicate that your continuing failure and/or refusal to make a decision as to whether or not you intend to provide the requested information is in breach of Section 15 of the said Act which requires such a decision to be made within thirty (30) days of the request. Further and/or alternatively if the Ministry has refused to provide the requested information then you are in continuing breach of Section 23 of the said Act in failing to provide my client express notice in writing of same including the findings on any material findings of fact, referring to the material on which those findings were based, the reasons for its decision, the name and designation of the person giving the decision and in failing to inform my client of his right to apply for judicial review.

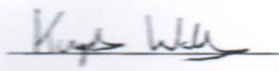
Furthermore, assuming, but not admitting that the requested information is exempt to date you have failed to indicate in writing what consideration, if any, was taken in making the said decision to the overriding provisions of Section 35 of the Act which having regard to the contentions of unauthorized misuse of public funds and/or the public interest required the Ministry to have considered whether such information should still be disclosed to my client.

In the circumstances, I am instructed to indicate that should you fail to supply the requested information within seven (7) days of the date hereof, or alternatively, to provide the grounds for any refusal to do so then I am instructed to apply without further notice for judicial review of your said decision on the basis that same is illegal, irrational and unreasonable and amounts to a failure to perform a statutory duty and to seek the following relief:-

- a) A Declaration that the continuing refusal and/or failure of the Ministry of Finance to provide the requested information to my client is illegal, null and void and of no effect.
- b) An order pursuant to Section 15 of the Judicial Review Act that there has been an unreasonable delay by the Ministry of Finance in making a decision as to whether to provide the requested information to my client.
- c) An order of Mandamus compelling the Ministry of Finance to provide the requested information to my client free of charge.
- d) Costs
- e) Such Further and/or other relief as the Court may deem just.

Please be guided accordingly.

Yours Sincerely,

  
Kingsley Walesby

CC: The Office of the Solicitor General, No. 23-27 Cabildo Chambers, Port of Spain