

THE REPUBLIC OF TRINIDAD AND TOBAGO

IN THE HIGH COURT OF JUSTICE

CV 2013 – 01162

BETWEEN

AFRA RAYMOND

CLAIMANT

AND

THE MINISTER OF FINANCE AND THE ECONOMY

DEFENDANT

Before the Honourable Mr Justice Ronnie Boodoosingh

Appearances:

Mr Gilbert Peterson SC leading Mr Kinsley Walesby for the Claimant

Mr Russell Martineau SC leading Mr Gerald Ramdeen instructed by Ms Savitri Maharaj and Ms Stephenie Sobrian for the Defendant

Dated: 22 July 2015

JUDGMENT

1. On 10 April 2013, Afra Raymond, the claimant, applied for judicial review in relation to the refusal, by the defendant, of certain requests under the **Freedom of Information Act, Chap 22:02** (FOIA/ the Act). The information was requested by the claimant by an application dated 8 May 2012. The defendant responded by a letter dated 14 August

2012. The claimant replied to that letter by letter dated 21 December 2012. There was no response to this letter. The claimant sent a pre-action protocol letter and filed the application for leave on 20 March 2013. The court granted leave on 27 March 2013.

2. The requests and the replies by the defendant in its letter of 14 August 2012 are as follows:

Request 1

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. (Not provided to date)

Reply

The Government of the Republic of Trinidad and Tobago (GORTT) had been advised by the Board of Directors of CL Financial that audited financial statements have not been completed for the years referred to in your client's request. Please also note that your client's request for "any interim, preliminary, draft or unaudited statements which have been relied upon by the Ministry of Finance" does not comply with the provisions of Section 13(2) of the FOIA. We require further information from your client at this juncture in order to ascertain whether the documents envisioned by your client are official documents within the meaning of the FOIA. Your client is invited to consult with the Ministry in order to assist us in making a final determination.

Request 2

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. (Refused)

Reply

Having regard to the contents of the presentation, the Ministry is of the view that the information contained in the presentation falls within the exemption contained in Section 33 of the FOIA and accordingly the Ministry is unable to provide the document to your client in accordance with his request.

Request 3

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. (Not provided to date)

Reply

Your client is referred to Section 13(2) of the FOIA and is invited to consult with us further in order to tailor his request so as to comply with this Section. Our preliminary view on the matter however, is that documents containing the kind of information requested, once specified, are likely to be exempt under Section 30(1) of the FOIA.

3. There was a fourth request which was clearly outside of the purview of the FOIA and rightly refused.

4. Other reliefs were sought, but the key relief the claimant is seeking is an order of mandamus to compel the defendant to provide the information requested. The other reliefs related to the refusal or failure of the defendant to determine whether to provide the information and the unreasonable delay in making that determination.

5. In support of the claim was an affidavit of the claimant filed 10 April 2013. The previous affidavit of the claimant filed on 20 March 2013 at the leave stage and two affidavits of

Samantha Ramlogan, filed 22 July 2013 and 14 October 2013, were also relied upon. On behalf of the defendant, there was an affidavit of Mrs Kimi Rochard, Legal Officer IV at the Ministry of Finance and the Economy, filed 12 July 2013. The claimant filed written submissions on 7 February 2014, the defendant filed written submissions on the 8 April 2014 and the claimant replied on 30 April 2015. An oral hearing took place on 5 June 2015.

6. The FOIA is a unique piece of legislation intended to give citizens access to information once the requirements of the Act are met.
7. An application can be made to a public authority. The authority is entitled to take a reasonable amount of time to consider it. The public authority can decide to refuse the request. It can seek to consult with the applicant to see how the request or elements of the request can be fulfilled. If the request is being refused under particular exemptions stated in the Act, the public authority can consider whether that exemption should be overridden under section 35 of the Act.
8. Where there is a refusal, the public authority is required to provide reasons to the applicant for why the request is being refused. Where the section 35 override applies, the public authority is required to give consideration to whether the exemption should be overridden and set out why they have decided it should not apply.
9. The legislation has been in effect for some time now and this is not, anymore, a novel application being considered. The court has been called upon to make decisions in FOIA claims before, and the Court of Appeal has provided some guidance about the approach to be taken in specific cases.

10. In **Caribbean Information Access Limited v The Honourable Minister of National Security, Civil Appeal No. 170 of 2008**, Jamadar JA stated:

“8. There is no dispute that “the policy, purpose and object of the FOIA are to create a general right of access to information in the possession of public authorities, ‘limited only by exceptions and exemptions necessary for the protection of essential public interests and the private and business affairs of persons in respect of whom information is collected and held by public authorities’.” There can also be no dispute that the court in both interpreting and applying the provisions of the FOIA is mandated to do so purposively, so as to further the policy, purpose and object stated above. The FOIA provides for a statutory right to information held by public authorities, and its effect is to broaden and deepen the democratic values of accountability, transparency and the sharing of and access to information about the operations of public authorities.”

11. Further, he said:

“17. The crux of this appeal is the most important issue of **what** is required of a public authority, when it claims exemption of disclosure and the granting of access to information and documents under the FOIA. Is it enough to simply state the section in the FOIA upon which it relies? Or, is a public authority required to go further and to give proper reasons why the exemptions claimed are reasonable (ultimately, to the standard that would satisfy a court on consideration of the matter in the event of judicial review of the decision)? And, even if documents requested are exempt, is a public authority required to consider overriding their exempt status and granting access nevertheless?

18. In my opinion, where a claim of exemption is relied on under the FOIA, a Respondent must satisfy a court of the reasonableness of the claim. This is because the FOIA specifically provides:

- (i) that where a decision is made that an applicant is not entitled to access to information requested, that the reasons for that decision must be given in writing; and
- (ii) that a person aggrieved by any decision of a public authority to refuse to grant access to information requested under the FOIA, may apply to the High Court for judicial review of that decision.

19. The sufficiency of reasons will always be determined by the circumstances and context which surround the particular request made and exemptions claimed.

However, when one considers section 23 of the FOIA, it is clear that once a decision is made that an applicant is not entitled to access to the document requested, then the statutory obligation to give reasons requires that all of the relevant requirements of section 23(1) and (2) must be satisfied. For example, the findings on any material question of fact, with reference to the material, must be stated; and if a document requested does not exist or cannot be located, that must be stated; and if a document is exempt under sections 24, 25 or 28, the decision to refuse access may be stated in terms which neither confirm or deny the existence of any document. It therefore follows that where exemption is claimed, the reasons must address the specific considerations identified in the sections and subsections relied upon.

26. The evidence of the Respondent in response to the requests was of a most general sort, often repeating the language of the sections of the FOIA relied on for the claims to exemption. It is incumbent on public authorities to provide sufficient information and reasoning so as to enable an applicant, and if necessary a court, to make an informed and independent objective assessment of the reasonableness of the claim to exemption. **Generally, it will be insufficient and inconsistent with the purpose of the FOIA, to simply cite or quote the sections and subsections relied on and to presume or assume that the concerns detailed in them are self-evident. This obligation applies even when the request for documents occurs during an active criminal investigation.**

27. The FOIA has provided a statutory right to information from public authorities subject to exceptions and exemptions. It is always for the public authority to show that it is entitled reasonably to rely on an exemption claimed and to not grant access to the documents requested. The exemptions provided for in section 28 are quite specific and limited. Thus, given the statutory right to access; the duty to assist in facilitating disclosure; the mandate to disclose even exempt documents where on a balance it is in the public interest to do so; the mandate to redact exempt documents in order to render them non-exempt so to facilitate disclosure; and the duty to interpret and apply the provisions of the FOIA (including the exemption provisions) in such a way so as to 'facilitate and promote ... the disclosure of information'; there is no presumption in favour of exemption from disclosure of or access to documents held by public authorities. The minimum standard of proof that the public authority must attain to justify exemption under section 28 is reasonableness – that is, as the wording of section 28(1) indicates, "a document is an exempt document if its disclosure would, or would be **reasonably likely** to ..."

28. Exemptions are also to be approached in a careful and contextually sensitive manner. This is so particularly in the class of exemptions provided for by section 28 – Law Enforcement Documents. A delicate balancing of competing policy interests must be engaged. Thus, in my opinion the appropriate test, as I have indicated, is one

of reasonableness: Is it reasonable, balancing the competing interests and in light of the explanations given (and where necessary, the evidence supplied), to uphold the exemptions claimed? This is an objective test and the public authority must satisfy the court on the civil standard of likelihood.”

(Emphasis supplied and footnotes omitted).

12. Further in **Ashford Sankar v Public Service Commission, Civil App No. 58 of 2007**, Narine JA stated:

“22. It seems to me that having regard to the object of the Act as expressed in section 3 and the obvious bias in favour of providing access to information, there is an onus on a public authority which is refusing access to a document on the ground of public interest to comply strictly with the requirements of sections 23 and 27(3). The respondent failed to comply with the clear provisions of the Act to provide proper reasons for its refusal, so as to enable the appellant to make an informed decision as to whether or not he would challenge the refusal by way of judicial review. In these circumstances it is clearly undesirable that the respondent should be permitted to provide new reasons, or to add to, or augment vague or insufficient reasons originally advanced for refusal of access. In my view, [to] do so will ultimately frustrate the clear purpose of the Act, which is to permit the public to access information unless refusal of access can be brought within one of the exemptions specifically set out in the Act, and adequate and intelligible reasons are provided for such refusal.

34. As noted earlier in this judgment, the object of the Act is to make information freely accessible to the public with a view to promoting transparency and accountability in the decision-making of public authorities. It is an important piece of legislation in a post-colonial society in which bureaucrats have historically been reluctant to expose their decisions to the glare of public scrutiny. Freedom of access to information is also important in a society that is politically polarized along ethnic lines, and in which appointment to public office, and decisions involving the allocation of state resources are often the subject of speculation and mistrust. Against this historical and social background, the right to access information from public authorities must be jealously guarded, and must not be allowed to be whittled down. Information requested must be provided unless refusal of access to information is expressly permitted by the Act, and the public authority provides adequate and intelligible reasons for refusal.”

13. These two cases provide clear guidance on the approach persons who consider FOIA applications should take and how a first instance court should treat with judicial review claims resulting from refusal of FOIA requests. It is in this context that I go on to consider the arguments and objections advanced by the defendant for not providing the information requested.

Delay

14. Several arguments have been raised by the defendant in support of its case that the claim should be dismissed. The first is delay. The claimant's attorney had written on 11 May 2012 enclosing the claimant's application dated 8 May 2012. The defendant by letter dated 14 August 2012 responded. In respect of two of the requests made, Requests 1 and 3, there was an invitation for the claimant to engage in consultation to provide information on whether the documents requested were official documents within the meaning of the Act. There was a categorical statement that there were no audited financial statements for the years 2008 – 2011. In respect of the request for the presentation to Members of Parliament, it was stated that the exemption fell within section 33 of the FOIA, but which sub-section was considered and why the request fell under that section was not stated. The claimant was also advised to tailor one of the requests to comply with section 13(2).

15. The response given therefore was that one request was denied, but no reason other than the reference to a section of the FOIA was stated, and there was an invitation to consult and/or tailor his request in respect of another request and to consult regarding the third. These responses could not have been seen therefore as a categorical determination of the request such as to trigger time running for judicial review proceedings to follow.

16. The claimant's attorney, however, responded by letter dated 21 December 2012 giving clarification of what was sought in respect of Request 1 – that which was relied upon by the Minister of Finance, Mr Dookeran, in an affidavit filed on 3 April 2012 in High Court proceedings CV 2011– 01234 Percy Farrell and Others v Clico and Others. Regarding Request 2, the claimant asked for information on which sub-section of section 33 was being relied on. And in respect of request 3, the claimant indicated the request was self explanatory but asked what further information was needed to make a decision. In any event, the claimant asked for a determination to be made whether the requests were being denied. The defendant's witness Mrs Rochard said she did not see this letter but the claimant has provided evidence that it was received by the defendant. The claimant cannot be faulted because the defendant's internal correspondence system did not allow the required person to see the claimant's letter.

17. Request 2 had, of course, been denied but no reasons to satisfy the requirements as outlined by the cases cited above were given. There was also no indication that a section 35 public interest override assessment (evaluation) had been carried out by the defendant.

18. A pre-action letter was sent on 7 March 2013, and the leave application was filed on 20 March 2013.

19. In these circumstances, in my view, time began to run for the leave application to be filed at earliest on 21 December 2012. The claimant's letter of 21 December 2012 can be seen as an attempt to engage in the consultation requested by the defendant. The claimant was also entitled to a fuller statement of reasons, which he also requested.

Process Not Followed

20. A second argument raised by the defendant is that the claimant failed to make the request in conformity with section 13 of the FOIA. Section 13(1) says an applicant for information must make the request using the form in the schedule. The court cannot be too technical about matters such as these. In this case form cannot trump substance. The application was made by an attorney on behalf of the claimant attaching the claimant's request. There really was no magic in the use of the form attached to the schedule. The critical issue was whether the information requested was provided.

21. All the form required was the contact details for the applicant; what was requested and the medium or form in which the request was being made. It also required the applicant to sign the form. It required the applicant to identify clearly what was being requested to enable the designated person at the authority to be able to readily identify the document being requested. The form attached to the attorney's letter complied in all material respects with these requirements.

22. Further, the defendant's December 2012 letter did seek to engage consultation with the claimant as contemplated by section 14(2) of the Act. The FOIA does not, however, specify the form such consultation is to take place nor does it specify the time frame. It is no doubt expected that the consultation would take place within a reasonable time. Four months passed before the claimant's 21 December 2012 letter was sent. This was a longer time than it might have been expected the claimant would take to respond, but the defendant had taken three months to respond to the claimant's request in the first place when section 15 of the FOIA contemplated that a request would be responded to within 30 days. It can be said of this that what was good for the goose must also have been good for the gander.

23. Additionally, while the claimant did seek to provide some clarification, that clarification did not change what was requested. The clarification requested by the defendant was provided, in my view, with sufficient particularity to allow the defendant to treat with the application as it was able to do to some extent in its 14 August 2012 letter. Given these facts there really could be no complaint that the claimant did not comply with section 13 of the FOIA.

Vague Requests

24. Another argument raised by the defendant was that the requests were vague. In my view, a careful examination of the requests shows that this was not so. In relation to Request 1 the defendant was able to respond by its 14 August 2012 letter that there were no final audited statements. They must have therefore been clear as to what the request referred. They simply did not give any indication about the other components of that request. In any event, clarification, if it was needed, came in the 21 December 2012 letter.

25. Request 2 was for a presentation. Either a presentation had happened or not. What was used in the presentation was requested. Any slides, power-point, charts etc. used were requested. The request was neither vague nor incapable of specifying. In any event, the defendant's 14 August 2012 letter did not raise this as an objection.

26. For Request 3, again the request was clear: who comprised the creditors especially EFPA holders; who among them were paid and when this was done. There was nothing inherently vague about this request. The defendant would have known who was being referred to as EFPA holders, and would either have had information on who among them were paid and when, or not. It seems obvious that what was asked for was any document listing these. In addition, the 14 August 2012 letter did not so much as refer to the request

as vague, but rather invited the claimant to tailor his request to comply with section 13 (2) of the Act.

Private Company

27. The fourth argument raised is that the information requested in Request 1 constitutes information related to a private company. It is important to note that the request was made to the defendant, a public authority in respect of information held by it. It turns out that that information is in regard to a private company, that is any interim, preliminary, draft or unaudited statements for CL Financial Limited for 2008 to 2011.
28. But the FOIA does contemplate that a public authority may hold records. Records may come from different sources and may include information related to private entities. Further, the request was for information used to prepare an affidavit in a claim before the court. It is therefore necessary to consider what the Act contemplates.
29. Section 23 provides:
- 23. (1) Where in relation to a request for access to a document of a public authority, a decision is made under this Part that the applicant is not entitled to access to the document in accordance with the request or that provision of access to the document be deferred or that no such document exists, the public authority shall cause the applicant to be given notice in writing of the decision, and the notice shall—*
- (a) state the findings on any material question of fact, referring to the material on which those findings were based, and the reasons for the decision;*
 - (b) where the decision relates to a public authority, state the name and designation of the person giving the decision;*

- (c) where the decision does not relate to a request for access to a document which if it existed, would be an exempt document but access is given to a document in accordance with section 16(2), state that the document is a copy of a document from which exempt information has been deleted;*
- (d) inform the applicant of his right to apply to the High Court for judicial review of the decision and the time within which the application for review is required to be made;*
- (e) where the decision is to the effect that the document does not exist or cannot, after a thorough and diligent search, be located, inform the applicant of his right to complain to the Ombudsman.*

30. In Part IV of the Act provision is made in detail for different categories of exempt documents. These include Cabinet documents (section 24); Defence and Security documents (section 25); International Relations documents (section 26); Internal Workings documents (section 27); Law Enforcement documents (section 28); and Documents affecting legal proceedings or subject to legal professional privilege (section 29).

31. Section 30 provides for the exemption of certain documents relating to personal privacy of persons:

30. (1) 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).

(2) Subject to subsection (4), the provisions of subsection (1) do not have effect in relation to a request by a person for access to a document by reason only of the inclusion in the document of matter relating to that person.

(3) Where a request by a person other than a person referred to in subsection (2) is made to a public authority for access to a document containing personal information of any individual (including a deceased individual) and the public authority decides

to grant access to the document, the public authority shall, if practicable, notify the individual who is the subject of that information (or in the case of a deceased individual, that individual's next-of-kin) of the decision and of the right to apply to the High Court for judicial review of the decision and the time within which the application for review is required to be made.

(4) Nothing in this Act shall be taken to require a public authority to give information as to the existence or non-existence of a document of a kind referred to in subsection (1) where information as to the existence or non-existence of that document, if included in a document of a public authority, would cause the last-mentioned document to be an exempt document by virtue of this section.

32. Section 31 relates to protection of trade secrets from commercial entities. Section 32 relates to documents containing material obtained in confidence. Section 33 deals with documents affecting the economy, commercial affairs and certain documents concerning the operations of public authorities.

33. Section 33 of the Act states:

33. (1) A document is an exempt document if—

- (a) its premature disclosure under this Act would be contrary to the public interest by reason that the disclosure would be reasonably likely to have a substantial adverse effect on the economy of Trinidad and Tobago, including but not limited to, the premature disclosure of proposed introduction, abolition or variation of any tax, duty, interest rate, exchange rate or instrument of economic management;*
- (b) its disclosure under this Act would be contrary to the financial interests of the public authority by giving an unreasonable advantage to any person in relation to a contract which that person is seeking to enter into with the public authority for the acquisition or disposal of property or the supply of goods or services;*
- (c) its disclosure under this Act, by revealing information to a competitor of the public authority, would be likely to prejudice the lawful commercial activities of the public authority;*

(d) *subject to subsection (4), it contains information obtained by a public authority from a third party who has consistently treated it as confidential and the disclosure of that information to a competitor of a third party, would be likely to prejudice the lawful commercial or professional activities of the third party;*

(e) *its disclosure under this Act would be contrary to the public interest by reason that it would disclose instructions issued to, or provided for the use or guidance of, officers of a public authority on the procedures to be followed or the criteria to be applied in negotiation, including financial, commercial and labour negotiation, in the execution of contracts, in the defence, prosecution and settlement of cases, and in similar activities relating to the financial property or personal management and assessment interests of the State or of a public authority.*

(2) *Subsections (1)(c) and (d) do not apply to the disclosure of information which—*

(f) *relates to the quality, suitability or safety of the goods or services supplied by the public authority if the prejudice referred to in subsection (1)(c) or (d), as the case may be, would be likely to result from the exercise of more informed choice by persons seeking to acquire those goods or services; or*

(g) *consists of the results of any investigation carried out by, or any information supplied to, the public authority concerning a public safety hazard.*

(3) *For the purposes of subsection (2)(b), “public safety hazard” includes the hazard to the public associated with any product which is offered for sale or otherwise available to the public, or with any substance which is released into the environment or workplace or is present in food intended for human consumption, or with any form of public transport, or with any installation or manufacturing process or substance used therein, and for the purposes of this subsection “the public” includes persons in their place of work.*

(4) *A document referred to in subsection (1)(d) is not an exempt document if the third party has consented to its disclosure to the applicant.*

34. Regarding Request 2, it is a real stretch to see where under this section a presentation made to Members of Parliament for a briefing for a debate would fall. It is not a premature disclosure of sensitive information. It gives no advantage to anyone. It would not prejudice the operations of a public authority as against a competitor. No commercial or professional interest could be compromised. It does not disclose instructions given for any “*negotiation, including financial, commercial and labour negotiation, in the*

execution of contracts, in the defence, prosecution and settlement of cases, and in similar activities relating to the financial property or personal management and assessment interests of the State or of a public authority”.

35. Section 34 relates to documents for which secrecy applies.

36. Section 35 provides what is called an override provision. It states:

35. 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 in the performance of official duty; or*
- (b) injustice to an individual; or*
- (c) danger to the health or safety of an individual or of the public; or*
- (d) unauthorised use of public funds,*

has or is likely to have occurred 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.

37. All of these sections contain detailed provisions setting out what categories and kinds of documents will be exempt. None of them set out that documents held by a public authority relating to a private entity are simply exempt, without more. There is no such category or specific kind of document identified in these limiting sections. All of the limits relate to specific matters such as trade secrets or which affect the economy or so.

38. As concerns Request 1, the reason that the information relates to a private entity, therefore, does not stand up to a careful scrutiny of the relevant sections of the FOIA.

39. Regarding Request 3, even if the information about the EFPA holders fell into the section 30(1) case of being one which would involve the unreasonable disclosure of personal information of any individual (including a deceased individual) the Act provides what was to be done in this regard.
40. First a section 35 evaluation had to be made. Reasons for any refusal could have been given. And if the decision was taken to give the information, then section 30(3) sets out a process which could have been followed to alert the persons concerned.
41. Section 30(1) of the Act in any event relates to the unreasonable disclosure of personal information. At its highest the information which was requested would have disclosed who the EFPA holders were; who among them were paid; and when they were paid. The request was not for the amounts due to them or paid to them. Disclosure of the names of persons paid with public funds cannot be considered to be an unreasonable disclosure of personal information. Part of the defendant's analysis as to whether this would lead to "unreasonable disclosure of personal information" would have had to be that public funds were used to repay these persons. And further, whether under section 35 there was "unauthorised use of public funds has or is likely to have occurred" 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."
42. The claimant has provided some evidence in his affidavit filed on 10 April 2013 of the context of the request. At paragraph 8.3.11 the claimant stated:

"I say that there is reasonable evidence in the public domain that there was an abuse of authority and neglect in the performance of official duties by the Directors of CL Financial Limited and its subsidiaries, CMMB, CIB, CLICO and British-American Insurance which ultimately lead to this series of collapses. There is evidence of great

injustice to individuals as numerous policyholders have been constrained to accept repayment of their personal savings over a twenty year period instead of having immediate access to all of their personal savings with interest. Furthermore, the granting of access to the requested information is justified in the public interest having regard to the benefit that will accrue from doing so which exceeds any potential damage that might otherwise arise from doing so.”

43. None of what the claimant said in the paragraph quoted above has been challenged by the defendant and what he says seems to be both a reasonable and fair assessment for an informed citizen to conclude based on what is in the public domain.

44. The claimant also alluded to the benefits of transparency in government which is self evident, as did the defendant in its submissions. However, he provided no basis for his claim of there being a “possible public perception of misfeasance in public office” if the information was not provided and I make no such finding.

45. Accordingly, I find it unjustified to have said that the disclosure would have led to any unreasonable disclosure of information relating to a private individual.

THE APPROPRIATE ORDER

46. In considering the appropriate order, I return to the Court of Appeal cases cited. In the **Caribbean Information Systems** case decided by the Court of Appeal in October 2012, one of the court’s orders was for the matter to be remitted for a section 35 evaluation to be undertaken. In **Ashford Sankar**, decided in April 2014, the Court of Appeal ordered the minutes of the meeting requested be provided. From these cases it can be gleaned that whether the matter should be remitted turns on whether it is necessary to do so to

give the decision maker the opportunity to consider if the request should be granted, or where an exemption claimed is reasonably justified, to consider a section 35 evaluation. This process safeguards against the court substituting its views for the decision maker. Where, however, an exemption is unreasonably claimed or irrational in the sense that the request clearly does not fall within the ambit of the specific exemption, the court would be entitled to make an order for disclosure.

47. Here, the Request 1 objection provided that the request did not comply with section 13 (2) of the Act. The Request 3 response was in similar terms with the addition that it was considered it may likely fall under a section 30(1) exemption. Regarding request 2, it was considered it fell within section 33, but no section 35 evaluation was conducted.

48. The reasons advanced before this court did not add materially to these initial responses of the defendant. In my view, there was inadequate consideration of the application.

49. As I have set out above, neither section 33 nor section 30(1) of the FOIA, when carefully considered, provide a justifiable basis for the exemptions claimed for Requests 2 and 3 respectively. Any reliance on these sections was unreasonable in the circumstances of this case. No exemption was claimed for Request 1 outside of the private company argument. Accordingly, there would be no point in remitting any of the requests for further consideration. The exemptions do not apply.

50. In consequence, I hold that the defendant is obliged to provide the information requested under the 3 requests. I have been told by counsel for the defendant that the audited accounts in Request 1 are not yet available. I have also adjusted the requests made for clarity. I therefore order that the defendant provide:

(i) Any interim, preliminary, draft or unaudited statements of CL Financial Limited for the years 2008 – 2011 which were relied upon to prepare the affidavit of Minister Winston Dookeran filed on 3 April 2012 in High Court proceedings CV 2011 – 01234, Percy Farrell and Others v Clico and Others.

(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 list of the creditors of CL Financial existing as at the date of the request, the names of the EFPA holders, the dates of the repayment of EFPA holders and the identities of those whose investments have been repaid.

OTHER RELIEF

51. Given the court's order I do not consider it necessary to make any further declaratory order. Suffice it to say, requests for information should be properly considered within the time frame set out in the Act and genuine efforts must be made to treat with applications when they are made and facilitate them where appropriate. Clear reasons must be given, in a timely manner, when the requests are refused.

52. Costs must follow the event. The claimant has succeeded. There was an application made by the claimant to rely on an additional affidavit of the claimant. I refused that application after a hearing. I had reserved on the costs of that application to the end. Dealing with costs in the round and taking account of the costs applicable to that hearing,

I will order the defendant must pay 70% of the claimant's costs to be assessed in default of agreement. I am grateful to the attorneys on both sides for their very helpful submissions.

Ronnie Boodoosingh

Judge