

Hearing 81-201900152

Decision

Lands & Survey Department

Sandy Hermiston

Ombudsman

24 September 2020

Summary

An applicant requested access to a cadastral claim file under the Freedom of Information Law (FOI Law) from the Lands & Survey Department (the Department). The Department claimed that the requested records were exempt from disclosure because disclosure would prejudice the conduct of public affairs, as it would undermine the system of land registration, and because the requested records contained personal information, the disclosure of which would be unreasonable.

The Ombudsman reviewed the case and reached the conclusion that neither of the reasons given for exemption applies, and the Department is required to disclose the requested records.

Statutes¹ considered

Freedom of Information Law (2018 Revision) (FOI Law)

Freedom of Information (General) Regulations 2008 (FOI Regulations)

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¹ In this decision, all references to sections are to sections of the Freedom of Information Law (2018 Revision) as amended, and all references to regulations are to the Freedom of Information (General) Regulations 2008, unless otherwise specified.

A. INTRODUCTION

- [1] On 23 May 2019, the Ombudsman issued Hearing Decision 67-201900197 in regard to a request under the FOI Law for access to a large number of cadastral claim files. In that decision, the Ombudsman accepted the Department's claim that the request would unreasonably divert the Department's resources under section 9(c). The Department was required to invite the applicant to narrow the request within 14 days, in accordance with regulation 10(1)(b). The Department contacted the applicant as required, but the applicant did not agree to narrow the request.
- [2] On 27 June 2019, the applicant made a new request for access to a single claim file with reference number 10,097, relating to parcel number 74a/35.
- [3] The Department's Information Manager refused to grant the applicant access on the basis of the following exemptions:
- section 20(1)(b) – disclosure would, or would be likely to, inhibit the free and frank exchange of view for the purposes of deliberation;
 - section 20(1)(d) – disclosure would otherwise prejudice, or would be likely to prejudice, the effective conduct of public affairs; and
 - section 23(1) – access would involve the unreasonable disclosure of personal information.
- [4] The applicant requested an internal review, which was conducted by the Director of the Department on 10 September 2019. The internal review upheld the initial decision, and the applicant made an appeal to the Office of the Ombudsman.
- [5] We sought a legal opinion (the Opinion) concerning the question of access to the claim files in the historical context of the introduction and implementation of the land registration system in the Cayman Islands in the early to mid-1970s. The Opinion was commissioned and shared with the Department to enhance our understanding of the context within which the claim files were created and to inform the debate on the question of access.

B. CONSIDERATION OF ISSUES

- a. **Consideration of whether the requested claim file is exempt because its disclosure would, or would be likely to, inhibit the free and frank exchange of views for the purposes of deliberation, pursuant to section 20(1)(b), and, if so, whether disclosure would nevertheless be required, as it would be in the public interest under section 26(1)**

[6] Section 20(1)(b) states:

20. (1) A record is exempt from disclosure if –

...

(b) its disclosure would, or would be likely to, inhibit the free and frank exchange of views for the purposes of deliberation.

[7] The Department has not presented any arguments to support its claim that the exemption in section 20(1)(b) was engaged at any time during this appeal.

[8] **Therefore, I consider that this claim has been abandoned and find that the exemption in section 20(1)(b) does not apply to the requested records.**

[9] Since I have found that the exemption does not apply, I am not required to carry out the public interest test in section 26(1).

b. Consideration of whether the requested cadastral claim file is exempt because its disclosure would otherwise prejudice, or would be likely to prejudice, the effective conduct of public affairs, pursuant to section 20(1)(d), and, if so, whether disclosure would nevertheless be required, as it would be in the public interest under section 26(1)

[10] Before considering the arguments relating to the exemption, I want to briefly draw attention to section 6(2), which states:

(2) The exemption of a record or part thereof from disclosure shall not apply after the record has been in existence for twenty years unless otherwise stated in this Law or if it can be demonstrated to the satisfaction of the Ombudsman that the exemption reasonably continues to apply.²

[11] Since all the requested records are well over 20 years old, the exemption in section 20(1)(d) can no longer be grounds for refusing access unless the Department “demonstrates to the satisfaction of the Ombudsman that the exemption continues to apply.” The consideration of whether the exemption in section 23 applies is not affected by this, since it applies “without limitation as to time” by virtue of section 23(3).

[12] Since the Department did not address this point in its submission, I invited it to provide its views. In response, the Department stated:

² The FOI Law was substantially amended in 2019, in particular to ensure compatibility with the Data Protection Law, 2017, which came into effect on 30 September 2019. Certain amendments, including this amendment to section 6(2), took effect on 14 June 2019, while the amendment to section 23 (the exemption relating to personal information) did not take effect until 30 September 2019. Since the initial request for this appeal was made on 27 June, the earlier amendments must be taken into account, but not the later one.

Our arguments that the ultimate aim of land registration is to secure a complete and indefeasible record of all rights held and, one should not look behind the curtain of a register are sufficient to demonstrate to the satisfaction of the Ombudsman, that the exemption reasonably continues to apply. As previously indicated, there are no overriding public interest.[sic]

[13] I do not find that this explanation is sufficient to demonstrate that the exemption applies or continues to apply. However, rather than reject the claim that the exemption applies or continues to apply on the basis of the age of the records, I will – out of an abundance of caution – consider whether the claimed exemption is engaged.

[14] Section 20(1)(d) states:

20. (1) A record is exempt from disclosure if –

...

d) its disclosure would otherwise prejudice, or would be likely to prejudice, the effective conduct of public affairs.

[15] According to the UK Information Tribunal in **Hogan and Oxford City Council v Information Commissioner**,³ demonstrating prejudice involves two steps: the prejudice must be “real, actual or of substance” and there must be a causal link between the disclosure and the prejudice.

[16] For the prejudice to be “real, actual and of substance”, the disclosure must at least be capable of harming the interest in some way, i.e. capable of having a damaging or detrimental effect on the effective conduct of the specified public affairs. The prejudice must be more than trivial or insignificant, but does not have to be particularly severe or unavoidable. According to guidance from the UK’s Information Commissioner:

There may be a situation where disclosure could cause harm... but the authority can mitigate the effect of the disclosure, perhaps by issuing other communications to put the disclosure in context. In such a case... the exemption may not be engaged, or we may still accept that the exemption is engaged but then consider the effect of these mitigating actions as a factor in the public interest test.⁴

³ Information Tribunal (UK), *Hogan and Oxford City Council v Information Commissioner*, EA/2005/0026 and 0030, 17 October 2006, paras 28-36.

⁴ Information Commissioner’s Office (UK), *The Prejudice Test: Freedom of Information Act*, Version 1.1, 5 March 2013, para. 19.

[17] In regard to the causal link between the potential disclosure and the prejudice claimed:

*There must be more than a mere assertion or belief that disclosure would lead to prejudice. There must be a logical connection between the disclosure and the prejudice in order to engage the exemption.*⁵

[18] The Department drew attention to the meaning of the identically worded exemption in the UK's Freedom of Information Act, 2000, as expressed by the UK's Information Tribunal in **McIntyre v Information Commissioner and the Ministry of Defence**:

*... this category of exemption is intended to apply to those cases where it would be necessary in the interests of good government to withhold information, but which are not covered by another specific exemption, and where the disclosure would prejudice the public authority's ability to offer an effective public service or to meet its wider objectives or purposes due to the disruption caused by the disclosure or the diversion of resources in managing the impact of disclosure.*⁶

[19] The Department also pointed out that the wording of the exemption requires that the likelihood of prejudice is "more probable than not" and that there is a "real and significant risk of prejudice" for the exemption to be engaged.⁷

[20] The Department argued the following:

(a) The Cayman Islands land registration system is based on the so-called Torrens land title system and:

8. ... This system through the court declares and guarantees the state of ownership of particular parcels, any interests existing in them and records such interests on a Register.

9. The intent of the Torrens system is to establish and maintain a government record which mirrors the precise, current state of title on a parcel of land. Consequently, documents filed in support of the initial registration are not open to public inspection.

(b) A 1927 Australian study entitled *The Principles of the Australian Land Title (Torrens) System* drew a distinction between the land registration system in Australia at that time and the "English Land Transfer Acts which do not make instruments available for public inspection".⁸

⁵ Information Commissioner's Office (UK), op. cit., para. 21.

⁶ Information Tribunal (UK), *Ian Edward McIntyre v Information Commissioner and the Ministry of Defence*, EA/2007/0068, 4 February 2008, para. 25.

⁷ Information Commissioner's Office (UK), op. cit., para. 40.

⁸ Kerr, D., *The Principles of the Australian Land Title (Torrens) System*, Law Book Company of Australasia, 1927, p. 49.

(c) The same source also stated that:

... documents executed prior to application filed in support [of initial registration] with the Registrar are not open to public inspection, but can only be produced to the Registrar upon the written order of the applicant or his successor in title, or upon the order of the Court.”⁹

(d) The underlying principle of indefeasibility of title means that “the person who is recorded as the owner of a parcel of land is recognised as such and should not have their title challenged or overturned”.

(e) The Department argued:

When taking into account the nature of the records and the circumstances in which the records were obtained it was envisaged that the records would be used for the sole purpose it was [sic] submitted for and would not be made available to the public. It could reasonable [sic] be inferred that once initial registration of land was established the records would be sealed indefinitely.

[21] The Department responded as follows to the Opinion, which we shared with it:

(a) The Land Register was created from the adjudication records, not the claim files, since there could be competing claims. At the time of the adjudication, access to the claim files was limited to attorneys for rectification purposes under the Land Adjudication Law. Decisions were made by the adjudicator and could be appealed to the court within 30 days. “The claim files were kept only for those purposes as the Court had powers of rectification if the decision of the adjudicator was wrong in law”.

(b) An email dated 2002 from former Registrar of Lands Clark Buchanan stated [emphasis in original] that:

...the Cayman Islands Land Registry... operates under the “curtain principle” whereby one does not look behind the register... THERE IS NO GENERAL PUBLIC RIGHT OF ACCESS TO THE CLAIM FILE/S ... The adjudication record card in the parcel file is a synopsis of the DECISION taken at adjudication... so we come forward from that – but we cannot go back – to do so would only foster uncertainty and indeed breed dissension amongst landowners.

(c) The Department made available an excerpt of the Memorandum of Objects and Reasons which, it said, accompanied the 1971 Registered Land Law. The second paragraph of this document states:

⁹ Kerr, D., op. cit., p. 199.

Registration of any person as the proprietor with absolute title of a parcel will vest in such person the absolute ownership of that parcel, free from all other interests and claims...

However, all the work of re-adjustment and confirmation of now doubtful titles will be wasted if, after everything has been sorted out, the whole province of Land Tenure is to be thrown back to an inadequate system of registration.

The Department asserts that it is apparent from this Memorandum “that there would be no need to look at the adjudication [sic] claim files”.

- (d) The Cadastral Survey and Registration Project ended in 1977. Since persons can no longer initiate action to recover land, the applicant has “no recourse to lay claim”, otherwise “there would be no certainty to absolute ownership of property promulgated under section 23 of the Registered Land Law.”

[22] In summary, the Department asserted that the exemption in section 20(1)(d) was engaged because there would be a real and significant risk of the occurrence of prejudice to the effective conduct of public affairs in the form of a disruption to the system of land registration if the record were disclosed.

[23] First, I would like to establish that the responsive record (the claim file) is subject to the FOI Law. Section 6(1) states:

6. (1) Subject to the provisions of this Law, every person shall have a right to obtain access to a record other than an exempt record.

[24] The FOI Law is applicable to “records” held by public authorities. According to section 2:

“record” means information held in any form including –

(a) a record in writing;

(b) a map, plan, graph or drawing;

(c) a photograph;

(d) a disc, tape, sound track or other device in which sounds or other data are embodied, whether electronically or otherwise, so as to be capable (with or without the aid of some other equipment) of being reproduced therefrom;

(e) any film (including microfilm), negative, tape or other device in which one or more visual images are embodied whether electronically or otherwise, so as to be capable (with or without the aid of some other equipment) of being reproduced therefrom,

held by a public authority in connection with its functions as such, whether or not it was created by that authority or before the commencement of this Law; and

“relevant decision” means a decision made in relation to the disclosure or otherwise of a record;

and:

“hold”, in relation to a record that is liable to production under this Law, means in a public authority’s possession, custody or control.

[25] Although the cadastral claim files have, for a number of years, been stored in the Records Centre of the Cayman Islands National Archive, the Department continues to own the records and control access to them. The requested claim file is therefore a record that is held by the Department and is subject to the provisions of the FOI Law.

[26] Section 12(1) requires that only the exempt part(s) of a record be withheld. It states:

12. (1) Where an application is made to a public authority for access to a record which contains exempt matter, the authority shall grant access to a copy of the record with the exempt matter deleted therefrom.

[27] Much of the Department’s reasoning is predicated on the use that the applicant purportedly intends to make of the claim file if it is disclosed. The Department asserted that “the disclosure of the records to the Applicant would defeat the purpose of having the current registration system... [which] serves as a certificate of full indefeasible and valid ownership”. It would “indicate to the public that there is a possibility that the initial registration of the title could be called into question if a third party is entitled to access same.”

[28] The applicant has explained that he is indeed seeking to investigate and (if possible) challenge the ownership of certain parcels of land. However, the Department has pointed out that there is no judicial path open to the applicant to challenge the ownership of the land, about which more information is given below.

[29] Regardless of the record’s current legal relevance, the use that the applicant may make of the claim file is not under consideration. Section 6(3) of the FOI Law stipulates that “An applicant for access to a record shall not be required to give any reason for requesting access to that record”. The question of what value the claim file might or might not have to a member of the public is not a relevant basis for restricting access, as confirmed by the previous Information Commissioner:

Questions of access to a record held by Government cannot be concerned with how that record might be used in the future. This would be a shortcut to censorship, and would contradict the fundamental objectives of the FOI Law. Either a record is exempt under the Law or it is not, but, in either case, any presumed future use of a record can have no bearing on its disclosure. This principle is stated in section 6(3),

*which states that an applicant is not required to give any reason for requesting access. In the UK it is known as “motive blindness”.*¹⁰

[30] Furthermore, it is clear that the land adjudication process is entirely complete, and that the time period for challenging an adjudication of title has long since expired. As well, Cabinet issued a minute stating that new requests for Crown land grants based on alleged pre-adjudication titles would not be entertained by Cabinet after 14 February 1999.

[31] The historical development of the land registries in England, Australia, Nigeria and Kenya - which served as examples for the Cayman Islands - demonstrates a clear trend towards increased accessibility to land registration documentation, including in relation to documents initially used to establish the register.

[32] In the Cayman Islands context, the Registrar is not, and historically has not been, under any legal duty to withhold the records in all circumstances, and there were several means by which the information in the documents handed over for adjudication were likely made publicly accessible in a way that would remove any current legal protection against disclosure of the information. For instance:

- Prior to the creation of the Land Register some documents demonstrating land ownership were registered with the public recorder and were open to the public. As further explained below, the requested claim file contains a conveyance registered with the public recorder, which the Department believes should be withheld, even though it is publicly accessible elsewhere.
- The boundary demarcation process was carried out in public. Again, the requested claim file contains a demarcation certificate which resulted from a demarcation process that was carried out in public.
- The adjudication record, including extensive documentation, was required by law to be displayed and open to the public¹¹.

[33] The Department’s quote from a 93-year old study on Australian land registration practice may establish that records similar to the requested claim file were not accessible to the general public in Australia in 1927, but it does not demonstrate that a Torrens system of land registration must inevitably mean that all access is withheld to records used in the creation of the Register, or that the claimed FOI exemption is engaged in the Cayman Islands in 2020. The Australian study is a historical “snapshot” from a different jurisdiction

¹⁰ Information Commissioner’s Office (UK), *Freedom of Information Good Practice Guidance No. 6: Consideration of requests without reference to the identity of the applicant or the reasons for the request*, Version 1.0, October 2007, cited in Hearing Decision 37-02613 28 of the Cayman Islands Information Commissioner’s Office, May 2014, para. 143; see also Information Tribunal (UK), *S v Information Commissioner and the General Register Office*, EA/2006/0030 9 May 2007, paras 19 and 80.

¹¹ By virtue of section 19 of the Land Adjudication Law, 1971.

and has no relevance in the present-day Cayman Islands, which enjoys a modern FOI regime that applies to the claim files.

[34] The Memorandum from the previous Registrar of Lands indicates what the Department's policy in regard to claim files was almost 20 years ago, which was some years prior to the enactment of the FOI Law. However, the Department's policies, procedures and practices, no matter how well established, do not override the provisions of the FOI Law or demonstrate that the claimed exemption applies. The fact that the Torrens land registration system is intended to establish and maintain an indefeasible record of land ownership and the fact that the Department has traditionally applied a "closed curtain" approach to the claim files do not support the conclusion that these files should forever remain inaccessible to the public for inspection, as the Department states.

[35] As to the argument that the claim files were created for the sole purpose of serving the cadastral adjudication process, it is very common for public authorities' records to be created for a specific purpose that is understood to be the "sole" purpose at the time. The suggestion that this justifies sealing records forever is disrespectful, as it ignores the public's right to access government records and disregards the objectives of the FOI Law, in particular its emphasis on reinforcing government's accountability, public participation and transparency, as stated in section 4. If the Department's logic were correct, the vast majority of records held by government today would be excluded from public scrutiny under the FOI Law simply because at the time of their creation no thought was given to their potential disclosure in the future. This logic is obviously flawed, as this cannot have been the purpose intended by the Legislature in enacting the FOI Law.

[36] The Department makes sweeping statements with little or no evidence, such as "once registration of land was established the records would be sealed indefinitely" and that the Torrens system must mean that "documents filed in support of the initial registration are not open to public inspection".

[37] I do not contest that the principle of indefeasibility forms an intrinsic part of the legal framework for land registration in the Cayman Islands. However, the Department has not demonstrated why the unchangeable nature of the Land Register necessitates withholding access to the claim files.

[38] It appears that the Department may be confusing the functional workings of land registration (which requires certainty of land title and simplification of documentation) with the absolute necessity to keep the source documents in the claim files hidden from view.

[39] Given that the Cayman Islands Land Registry is well established and functions well, and is supported by robust legislation, I do not agree that prejudice that is "real, actual or of substance" would result from the disclosure of the requested claim file as alleged. It is not conceivable that the disclosure of this or of any other claim file (or of all claim files) would

have the detrimental effects professed. There is simply no credible causal link between the disclosure of a cadastral claim file and the supposed collapse of the present system of land registration, and the Department's generalizations in this regard appear vastly exaggerated.

[40] **For these reasons, I do not find the Department's arguments to be persuasive and I reject the Department's assertion that disclosure would, or would be likely to, cause real, actual or substantive harm to the system of land registration in the Cayman Islands. Since the disclosure of the requested records would not, or would not be likely to, be capable of prejudicing the effective conduct of public affairs, I find that the records are not exempt pursuant to section 20(1)(d).**

[41] Since I have found that the exemption does not apply, I am not required to carry out the public interest test in section 26(1).

- c. **Consideration of whether the requested claim file is exempt because it would involve the unreasonable disclosure of personal information of any person, whether living or dead, pursuant to section 23(1), and, if so, whether disclosure would nevertheless be required, as it would be in the public interest under section 26(1)**

[42] The exemption in section 23(1) states:

23. (1) Subject to the provisions of this section, a public authority shall not grant access to a record if it would involve the unreasonable disclosure of personal information of any person, whether living or dead.

[43] Personal information is defined in regulation 2 as follows:

"personal information" means information or an opinion (including information forming part of a database), whether true or not, and whether recorded in a material form or not, about an individual whose identity is apparent, or can reasonably be ascertained, from the information or opinion, including but not limited to-

(a) the individual's name, home address or home telephone number;

(b) the individual's race, national or ethnic origin, colour or religious or political beliefs or associations;

(c) the individual's age, sex, marital status, family status or sexual orientation;

(d) an identifying number, symbol or other particular assigned to the individual;

(e) the individual's fingerprints, other biometric information, blood type, genetic information or inheritable characteristics;

(f) information about the individual's health and health care history, including information about a physical or mental disability;

(g) information about the individual's educational, financial, employment or criminal history, including criminal records where a pardon has been given;

(h) anyone else's opinions about the individual; or

(i) the individual's personal views or opinions, except if they are about someone else;

but does not include –

(i) where the individual occupies or has occupied a position in a public authority, the name of the individual or information relating to the position or its functions or the terms upon and subject to which the individual occupies or occupied that position or anything written or recorded in any form by the individual in the course of and for the purpose of the performance of those functions;

(ii) where the individual is or was providing a service for a public authority under a contract for services, the name of the individual or information relating to the service or the terms of the contract or anything written or recorded in any form by the individual in the course of and for the purposes of the provision of the service; or

(iii) the views or opinions of the individual in relation to a public authority, the staff of a public authority or the business or the performance of the functions of a public authority; and

[44] The exemption in section 23(1) involves a two-step test to establish (1) whether the information that is claimed to be exempt is "personal information" and (2), if so, whether the disclosure of the information would be unreasonable. Under section 26(1), even if the exemption does apply, the information may nevertheless be disclosed if it is in the public interest to do so.

Is the information "personal information"?

[45] The Department made a copy of the requested claim file available to us. It consists of seven documents: a demarcation form, a form letter, a conveyance, a claim form and three declaration forms completed by witnesses. The conveyance is dated 9 January 1957 and the remainder of the documents are dated from December 1975 to January 1976.

[46] The Department claimed that disclosure of the requested claim file would involve the unreasonable disclosure of third-party personal information. It asserted that the individuals identified in the claim file submitted personal and sensitive information in order for the Department to fulfil its legal obligation in accordance with the land adjudication procedures. The Department argued that those individuals “may have a legitimate expectation that the records would remain confidential considering the fact that such records were previously sealed and restricted from public access.” The Department did not distinguish between the different types of individuals who are identified in the claim file.

[47] Each of the documents in the requested claim file contains personal information in the form of the names of individuals, such as the claimant/owner of the land, the previous owner of the land and corroborating witnesses, as follows:

#	Type of document	Type of personal data	Date
1	Demarcation certificate form	Names of claimant and witness A, and signature of demarcator	13 January 1976
2	Form letter from Regional Cadastral Survey to Royal Bank	Names of claimant and cadastral survey team member	22 January 1976
3	Conveyance	Names of buyer (claimant) and seller	9 January 1957
4	Declaration form	Names of witness B, owners of adjoining land and justice of the peace	12 January 1976
5	Declaration form	Names of claimant, owners of adjoining land and justice of the peace	13 January 1976
6	Declaration form	Names of witness C and justice of the peace	30 December 1975
7	Second Schedule claim form	Name of claimant	31 December 1975

[48] The signature of the demarcator in document 1, the name the member of the cadastral survey team in document 2 and the names of the justices of the peace in documents 4-6 are not considered personal information, since the definition in regulation 2 excludes “the name of the individual” where that individual occupies or has occupied a position in a public authority, or where the individual is or was providing a service for a public authority. The exemption in section 23(1) therefore cannot apply to these names.

[49] Witness A is identified by a last name on the demarcation certificate (document 1). This may be a person acting in an official capacity (e.g. the demarcation officer or a person assisting that officer, or the records officer who collected the demarcation certificate), but it may also be a private individual who was called on to witness the demarcation process. If the former, the name would not be considered personal information under regulation 2 and the exemption would not apply to it, as explained above. If the latter, the exemption could potentially apply to this name and this is considered further below.

Would the disclosure of the information be unreasonable?

[50] As the owner of the land, the claimant was identified in the publicly accessible Land Register. Therefore, it would not be unreasonable to disclose the claimant's name in documents 1-3, 5 and 7.

[51] The conveyance (document 3) bears the stamp of the public recorder and was officially recorded and publicly accessible.¹² Moreover, details of the manner in which the land had been acquired, and from whom, formed part of the adjudication record, which would have been publicly accessible.¹³ Therefore, it would not be unreasonable to disclose the personal information in document 3.

[52] The statements in documents 4 and 5 include the names of owners of adjoining pieces of land. Since the demarcation and adjudication processes were conducted in public, these names would have been made public. As owners of land, their names would also appear on the Register. As a result, it would not be unreasonable to disclose the names of the owners of neighbouring pieces of land in documents 4 and 5.

[53] This leaves the names of only the three witnesses as being potentially exempt under section 23(1):

- The name of witness A was inscribed on the demarcation certificate form (document 1).
- Witnesses B and C testified to the claimant's ownership and occupation of the land in two declaration forms (documents 4 and 6).

[54] The questions that need to be considered to determine whether disclosure would be unreasonable under section 23(1) are as follows:¹⁴

(i) Is the information sensitive?

The focus of the demarcation certificate (document 1) is the particular piece of land and not the individual who acted as a witness (witness A). The boundary

¹² By virtue of section 5, 6 and 14 of the Public Recorder Law (2007 Revision).

¹³ By virtue of section 19 of the Land Adjudication Law, 1971.

¹⁴ Ombudsman (Cayman Islands), *Hearing Decision 59-00517: Lands and Survey Department*, 14 December 2017, para. 27.

demarcation process was conducted in public. Nothing other than a name is revealed about the witness. Under these circumstances, I do not find the name of witness A on the demarcation certificate to be sensitive information.

Witnesses B and C described their relationship with the claimant/owner, the boundaries of the land, the purchase of the land in 1957 and the kind of work they did on the land. The focus of this information is primarily on the parcel of land and it repeats some information already made public, e.g. on the boundaries and the sale of the property to the claimant. The information that is revealed about the two witnesses is insignificant in nature and is not sensitive.

Therefore, I do not consider the personal information on the witnesses sensitive in nature.

(ii) Would disclosure prejudice the privacy of an individual?

Witness A is identified by surname only. No additional information is included on this individual. The demarcation certificate was part of a process that was open to the public and that was conducted almost 45 years ago. Therefore, I do not consider that the disclosure would prejudice the privacy of the individual.

Witnesses B and C came forward to testify to confirm the ownership of the land. Their statements are focused mostly on the land and their relationship to the claimant, not on themselves.

Under these circumstances, I do not consider that the disclosure of the names of the witnesses would prejudice their privacy.

(iii) Would disclosure prejudice the public authority's information-gathering capacity (e.g. as a regulator)?

The land registration system is well established, and the land adjudication process concerning the record in question has been entirely completed and is not ongoing. The process was mandatory under the Land Adjudication Law. It is not reasonably likely that the disclosure of three names of witnesses in a process that was mandatory and largely conducted in public several decades ago could prejudice the Department's information-gathering capacity.

(iv) Has the information “expired”?

The demarcation certificate and the two witness statements in documents 1, 4 and 6 date from December 1975 to January 1976. The information provided is relevant to a land claim, but does not have any ongoing impact on the individuals involved.

Given the age and nature of the information, I find that the information has indeed expired.

(v) Is the information required for the fair determination of someone’s rights?

The applicant sought access to the requested records in relation to an ownership claim over his great-grandfather’s land. That matter has been the subject of his and his family’s investigations for several decades.

However, as indicated above, the time period for challenging the adjudication of title has long expired, and Cabinet issued a minute stating that new requests for Crown land grants based on alleged pre-adjudication titles would not be entertained by Cabinet after 14 February 1999.

It is likely that the disclosure of the responsive record would promote a greater understanding of the decisions made at the time the cadastral record was created.

(vi) Would the social context render disclosure reasonable?

It is accepted practice for current land registration and ownership information to be open to the public, as confirmed by the Department’s process of disclosing such information for a fee.

There is an ongoing interest in the fairness and lawfulness of land adjudication, whether current or historical.

As explained above, the disclosure of information under the FOI Law does not hinge on what subsequent uses it may be put to.

(vii) Is there any suggestion of procedural irregularities or wrongdoing?

The applicant believes that the land was misappropriated several decades ago, and in that context wishes to find out about the circumstances that led to the various changes in ownership of particular parcels over time. The responsive record may help clarify that question.

[55] **For these reasons, I do not find that disclosure of the personal information in the requested claim file would be unreasonable. Therefore, the exemption in section 23(1) is not engaged.**

[56] Since I have found that the exemption is not engaged, I am not required to conduct a public interest test under section 26(1).

C. FINDINGS AND DECISION

Under section 43(1) of the Freedom of Information Law, I make the following findings and decision:

- a) Disclosure of the requested claim file would not, or would not be likely to, inhibit the free and frank exchange of views for the purposes of deliberation. Therefore, the exemption in section 20(1)(b) is not engaged.
- b) Disclosure of the requested claim file would not prejudice, or would not be likely to prejudice, the conduct of public affairs. Therefore, the exemption in section 20(1)(d) is not engaged.
- c) Disclosure of the requested claim file would not involve the unreasonable disclosure of personal information of any person, whether living or dead. Therefore, the exemption in section 23(1) is not engaged.
- d) The Lands & Survey Department is required to disclose the requested claim file within 14 days.



Sandy Hermiston
Ombudsman