

Office of the Ombudsman
3rd Floor
Anderson Square Building
64 Shedden Road George Town
Grand Cayman KY1-1107

16 September 2020

Dear Ombudsman,

Non-Response To Request for Internal Review Under The Freedom of Information Law (“FOI Law”) (in relation to Request for Quotations (the “RFQ”) No.: T2019/007 issued to prospective respondents to submit non-binding quotations for The Smith Barcadere Redevelopment Project)

On 24 June 2020, I submitted the enclosed Freedom of Information request (the “FOI Request”).

On 1 July 2020 (the “1 July Correspondence”), I received an email responding to the FOI Request and stating that the Cabinet Office only holds records in relation to item numbers 2 and 3 of the FOI Request, however, the records were not provided to me because Cabinet records are exempt under Section 19 (1) of the FOI Law. For your convenience, items 2 and 3 of my application are as follows:

“2. Confirmation whether any exemptions were granted at any time whatsoever in connection with The Smith Barcadere Redevelopment Project

3. If any exemptions were granted, please provide copies of signed minutes of meetings recording such exemptions.”

However, section 19(1) of the FOI Law is subject to section 19(2) of the FOI Law which states that section 19(1) “does not apply to records which contain material of a purely factual nature or reports, studies, tests or surveys of a scientific or technical nature” (the “Permitted Records”). Items 2 and/or 3 of the FOI Request clearly fall within the Permitted Records as they comprise materials of a purely factual nature or reports, studies, tests or surveys of a scientific or technical nature in relation to RFQ No.: T2019/007 issued to prospective respondents to submit non-binding quotations for The Smith Barcadere Redevelopment Project. In order to comply with the FOI Law, the Cabinet Office must provide all of the Permitted Records in relation to the FOI Request.

Section 26(1) of the FOI Law also states that “notwithstanding that a matter falls within sections 18, 19(1)(a), 20(1)(b) and (d), 21, 22, 23 and 24, access shall be granted if such access would nevertheless be in the public interest.” Under the FOI regulations, “public interest” means but is not limited to things that may or tend to:

- (a) promote greater public understanding of the processes or decisions of public authorities;
- (b) provide reasons for decisions taken by Government;
- (c) promote the accountability of and within Government;

- (d) promote accountability for public expenditure or the more effective use of public funds;
- (e) facilitate public participation in decision making by the Government;
- (f) improve the quality of services provided by Government and the responsiveness of Government to the needs of the public or of any section of the public;
- (g) deter or reveal wrongdoing or maladministration;
- (h) reveal information relating to the health and safety of the public, or the quality of the environment or heritage sites, or measures to protect any of those matters; or
- (i) reveal untrue, incomplete or misleading information or acts of a public authority.

Section 19(1)(a) includes opinions, advice or recommendations, or a record of consultations or deliberations prepared for or arising in the course of proceedings of the Cabinet which are matters of public interest as defined in the FOI regulations. It is a matter of public interest to access information which explains reasons for decisions taken by Government including any exemptions granted at any time whatsoever in connection with The Smith Barcadere Redevelopment Project, in order to promote the accountability of and within Government, to promote accountability for public expenditure or the more effective use of public funds in relation to plans and/or meetings (whether public or private) for The Smith Barcadere Redevelopment Project and to deter or reveal wrongdoing or maladministration and to reveal untrue, incomplete or misleading information.

Failure To Respond To Request For Internal Review

On 25 July 2020, I applied for an internal review of the 1 July Correspondence.

Under section 34(3) of the FOI Law, a person who conducts an internal review shall take that decision within a period of thirty calendar days after the date of receipt of the application. Such decision was expected on or before 24 August 2020. As of 16 September 2020, no response was provided and no indication of any decision relating to an internal review was provided in accordance with section 34(3) of the FOI Law. This is a breach of the FOI Law.

Application To Ombudsman For Decision

Under section 42 of the FOI Law, a person who has made a request for a record and has exhausted the other means of redress provided for under the FOI Law except this section may in writing apply to the Ombudsman for a decision that a public authority has —

- (a) failed to indicate whether or not it holds a record;
- (b) failed to communicate the information contained in a record within the time allowed by this Law or at all;
- (c) failed to respond to a request for a record within the time limits established in this Law;

(d) failed to provide a notice in writing of its response to a request for a record;

(e) charged a fee that is in contravention of this Law; or

(f) otherwise failed to comply with an obligation imposed under this Law.

The notification of the internal review decision must have been given on or before 24 August 2020 but was never provided to me. Where no notification has been given within the period required by the FOI Law, then an appeal may be submitted within thirty calendar days after the expiration the period allowed for the notification of an internal review decision.

I am therefore submitting this appeal to the Ombudsman on the basis that:

(a) there was a failure to comply with the obligation under the FOI Law to take a decision within a period of thirty calendar days after the date of receipt of the 25 July 2020 application for internal review of the 1 July Correspondence;

(b) there was a failure to communicate the information contained in a record within the time allowed by the FOI Law (the information requested was not exempt from the FOI Law as it comprised materials of a purely factual nature or reports, studies, tests or surveys of a scientific or technical nature in relation to The Smith Barcadere Redevelopment Project);

(c) this is a matter of public interest.

I am asking the Ombudsman to:

(a) hear, investigate and rule on this appeal;

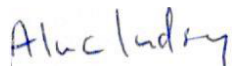
(b) report on the compliance by the Cabinet Office with its obligations under the FOI Law;

(c) make recommendations for reform both of a general nature and directed at the Cabinet Office;

(d) refer to the appropriate authorities (including the auditor general) if it appears that a criminal offence has been committed

Thank you in advance for considering this appeal.

Yours sincerely,



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