

THE REPUBLIC OF TRINIDAD AND TOBAGO

IN THE HIGH COURT OF JUSTICE

CV 2019–05288

Between

Denyse Renne

Claimant

And

The Commissioner of Police

Defendant

Before the Honourable Mr Justice Ronnie Boodoosingh

Appearances:

Mr Rumeal Peters for the Claimant

Mr Lester Chariah and Mr Safraz Alsaran for the Defendant

Date: 2 September 2020

JUDGMENT

1. The claimant is an investigative journalist and citizen who made a Freedom of Information Act (FOIA) request of the Commissioner of Police on 3 October 2019. A letter in response was sent on 26 November 2019 after the time for providing the information had passed. A pre-action letter had already been sent by that time. In respect of the request certain information was provided. In other cases the information was not provided and exemptions were claimed under the relevant sections of the FOIA. In other instances it was suggested that it was impracticable to provide the information.

2. This claim concerns those requests which were denied. The law in these matters has been dealt with in numerous cases and have been set out in the submissions and it is not necessary to set out any detailed principles of law. From the authorities the following basic legal principles can be noted. Freedom of information requests must be dealt with promptly.

There is a general duty on public authorities to provide information. This is done to ensure openness, transparency and accountability in the exercise of public functions. Citizens are entitled to ask for information and to be given it unless there is good reason for not doing so. The providing of information, however, is limited to some extent by the FOIA. A public authority may claim exemptions under the Act. If they do so, they must set out clearly what the exemption claimed is. But more than that, they must undertake a public interest analysis to decide whether the exemption provided in the Act should be overridden. Considerations set out in the Act must be balanced and weighed. There is a duty to undertake such an analysis in a careful manner considering that the overall thrust of the Act is to provide information to the public. The FOIA also allows the public authority to engage the information seeker to modify, clarify, narrow or tweak the request for information if needed. Where an exemption is claimed, the public authority must act reasonably and must provide reasons for upholding the exemption even after the public interest override analysis. The reasons should not be a mere recitation of the Act, but must show proper consideration was given to the matters set out in the Act.

3. The defendant provided some limited information contained in the request. Information was provided in respect of monies paid into a fund called the ISOS Fund. The information was amended in the affidavit of Mr Cristian Chandler filed on behalf of the defendant. Information was provided on the number of Firearm Users' Licences granted for a specific period. In respect of a request of what mechanisms were used to identify which retiring police officers were being allowed to return to the police service, Mr Chandler deposed that there is no specific criteria used. He did mention factors such as experience and lack of disciplinary action against the police officers while they had been serving was considered. This, in itself, provided some information even if that information showed that there appeared to be no established criteria for re-hiring persons.

4. However the request went further than that for the mechanism used. Criteria is only one aspect of mechanism. Criteria refers to the benchmarks or measures used to select persons. Mechanism also relates to whether there was an open invitation for persons to apply or

whether it was based on specific invitations or whether there was an interview process etc. This aspect of the request has therefore not been answered and the defendant is to provide such information to the claimant as to the process adopted in selecting the officers.

5. Based on these principles I can now turn to the other requests made and the reasons advanced by the defendant for denying the requests.

Information on FULs and which sector the persons granted licences belong to such as businessmen and private citizens

6. The response of the defendant is that such information is not requested on the application form submitted by applicants. A copy of the Form used for applications was attached to Mr Chandler's affidavit. In other words, the answer was that such information was not known. I note that the Form does provide for the occupation of persons applying to be granted licences to be stated. In such circumstances it ought to be possible for the numbers of persons by categories of occupation to be

provided. In such circumstances, this matter will be referred back to the defendant to provide such information on categories of persons as may be gleaned from the occupations stated on the application forms. There can be no public interest exemption taken in this regard for merely providing the categories of persons who obtained them.

The list of all names of former police officers retained by the Police Service and the positions they now hold from August 2018 to the date of the request

7. An exemption was claimed under this that those police officers were recalled to assist in covert intelligence operations. Therefore this information could compromise the intelligence and confidential investigations services they provide. These persons would have been police officers before so the fact they were police officers before would have been known. It would seem reasonable that if they have been hired for covert intelligence operations their identities should not be disclosed as this may compromise their activities and their safety.

However, it would be strange if this were to apply to all police officers who have returned. As noted in the claimant's submissions, the relevant legislation provides for Special Reserved Police Officers with certain types of duties to be appointed. The names of those who have not been hired specifically for covert intelligence operations can be disclosed. In respect of this matter, therefore, I would order that the information be disclosed of the names of all returning police officers except those who were returned for the purposes of conducting covert, intelligence services.

The collective salaries of all the persons who have been returned as police officers

8. This information was claimed as being exempted and onerous to compile. In my view, the total amount being spent on returning police officers cannot be subject to an exemption. There is nothing particularly sensitive about this or onerous about providing it. There must be a budget item for this in the police service and the figure can therefore be

ascertained on a quick review of the payroll can generate the amount. The applicant would be entitled to this information as to how much is being spent in total or as expressed by the claimant “collectively”.

The names of former Defence Force persons now attached to the police service, their rank in the police service and their remuneration packages.

9. The response was that these persons have been hired to provide intelligence services and therefore it would compromise those operations and their safety if their names were disclosed. This, in my view, would be a proper ground for claiming an exemption under the FOIA in respect of the names of those persons so engaged. Again, for there to be a legitimate exemption they must have been hired for covert operations. However, it cannot compromise their operations or safety if information is provided as to what ranks they hold and what they are paid. There must be a salary contract that can be referred to, to obtain information as to their remuneration. There was no evidence that

consideration was given to providing some information in a redacted form. Properly redacted, the information can indicate a list by letter or number, the rank given and the salary paid.

The names of all contractors / suppliers retained by the police service for the period August 2018 to the date of the request and the cost of the services

10. This request was denied on the basis that it was not specific. The letter in response sought to point that out and indicated the broadness of the request. The response suggested that the request be streamlined and it would be onerous to provide the information. There is a duty on the public authority to engage to assist in the information process. No doubt, however, there must be some records within the police service which can identify who or which entities have been given contracts and who have supplied goods and services to the police service. The fact that there may be many suppliers does not make the information not subject to disclosure. There must be a department or personnel within

the Police Service that deals with matters such as contracts and procurement. Presumably the Police Service has to report to the relevant Ministry on moneys spent on the provision of goods and services. Presumably there will be records of what is provided for within the service and what is sourced externally. There was, in my view, no good reason advanced for not providing this information.

List of all advertisements by the police service for the procurement of goods and services

11. If there have been advertisements, these should be easy to compile and provide to the claimant. The advertisements would have been public. There would have been records of when and what was advertised. It cannot be considered to be onerous or difficult to provide these and no proper exemption can be claimed for public advertisements in any event.

Names of all external attorneys retained by the police service to attend to civil matters and the cost of services

12. No legal professional privilege can attach to providing the names of attorneys engaged and the cost of such engagements. At the end of the day, public funds have been used to pay attorneys. It is a legitimate request that the claimant has made. Legal professional privilege attaches to communications made for the purposes of obtaining legal advice. There is no privilege in a name or the fees paid with public funds. I note, however, that no date was provided so this request will be limited to the period of the other requests from August 2018 to the date of the request.

Timing of the Response

13. The Act provided for the information to be given or a response within 30 days. This was not complied with although there was a response shortly

after. Public authorities must see the giving of information to be an important exercise deserving of priority. The Act makes that plain by providing the short timelines it has. There ought to be a designated entity within the police service and in each government department for receiving and complying with freedom of information requests. There ought to be a designated person or persons and an email address that a person requesting information can send a query to. This should be checked daily and efforts made to comply with the requests as soon as practicable within the ambit of the FOI Act. Even though there was a response eventually, nonetheless the claimant is entitled to a declaration as sought.

ORDER

14. It is declared that the defendant breached the duty under section 15 of the **Freedom of Information Act** to provide a response to the claimant's freedom of information request within 30 days of the request.

15. The defendant is to provide the claimant with the following information pursuant to the claimant's Freedom of Information request on or before 11 September 2020:

- a. The mechanisms used, other than criteria, to identify which retired police officers returned to the Police Service between August 2018 and the date of the freedom of information request.
- b. The categories of persons, as may be gleaned from the occupations stated on the application forms of persons, who were granted Firearms Users' Licences from August 2018 to the date of the request.
- c. The names of all returning police officers except those who were returned for the purposes of conducting covert, intelligence services from August 2018 to the date of the request.

- d. The total or collective salaries of all the persons who have been returned as police officers from August 2018 to the date of the request

- e. The names of all retired Defence Force members except those who were retained for the purpose of conducting covert intelligence services and a list by letter or number of all persons hired, the rank given, and the salary paid to them.

- f. The names of all contractors / suppliers retained by the police service for the period August 2018 to the date of the request and the cost of the services.

- g. A list of all advertisements by the police service for the procurement of goods and services from August 2018 to the date of the request.

h. The names of all external attorneys retained by the police service to attend to civil matters and the cost of services for the period August 2018 to the date of request

16. The claimant has succeeded and entitled to her costs. The defendant is to pay the costs of this claim to the claimant to be assessed by a Registrar on the application of a party in default of agreement.

Ronnie Boodoosingh (E-signed)

Ronnie Boodoosingh

Judge