

**IN THE REPUBLIC OF TRINIDAD AND TOBAGO**

**IN THE HIGH COURT OF JUSTICE**

**Claim No. CV2024- 03866**

**IN THE MATTER OF LEAVE TO MAKE AN APPLICATION FOR JUDICIAL REVIEW PROCEEDINGS PURSUANT TO PART 56.3 OF THE CIVIL PROCEEDINGS RULES, 1998 AS AMENDED AND PURSUANT TO SECTION 6 OF THE JUDICIAL REVIEW ACT**

**AND**

**IN THE MATTER OF THE FAILURE AND/OR REFUSAL OF THE TRINIDAD AND TOBAGO ELECTRICITY COMMISSION TO RESPOND PURSUANT TO SECTION 15 OF THE FREEDOM OF INFORMATION ACT, CAP 22:02**

**BETWEEN**

**DR. FAYARD MOHAMMED**

**Applicant/ Claimant**

**AND**

**TRINIDAD AND TOBAGO ELECTRICITY COMMISSION**

**Respondent/ Defendant**

*Before the Honourable Mr. Justice Frank Seepersad*

**Date: 15<sup>th</sup> October 2025**

**Appearances:**

- 1. Mr. Farai Hove Masaisai instructed by Ms. Chelsea Edwards for the Applicant.**
- 2. Mr. Keith Scotland S.C. and Ms. Asha Watkins-Montserin instructed by Ms. Keisha Kydd-Hannibal for the Respondent.**

## Decision

### Introduction

1. Before the Court for its determination is the applicant's application for leave to apply for judicial review filed on 11<sup>th</sup> November 2024 ("the application") The applicant seeks the following relief under **the Freedom of Information Act 1999** ("FOIA"):
  - a. An Order of Mandamus directing the respondent to provide the requested information/documents (per the **FOIA** request dated 26<sup>th</sup> September 2024) in accordance with the **FOIA**.
  - b. A Declaration that the failure and/or refusal of the respondent to provide a decision on the **FOIA** request is unreasonable and irrational.
  - c. A Declaration that the respondent breached its statutory duty under **section 15 of the FOIA** by failing to take reasonable steps to notify the applicant of approval or refusal of the request within 30 days of the request.
  - d. A Declaration that the respondent breached its statutory duty under **section 23 of the FOIA** by failing to issue a notice stating the reasons for referral of access to the requested information.
  - e. A Declaration that the applicant had a legitimate expectation to be notified by the respondent of whether he would be provided with the requested information and/or the reasons if he was not provided with it.
  - f. Alternatively, a declaration that the applicant is entitled to access the requested information pursuant to his **FOIA** application.
  - g. Interest, costs, and such further orders or writs as the Court considers just pursuant to **section 8(1)(d) of the Judicial Review Act, Chap. 7:08** ("the **JRA**").
  
2. On 20<sup>th</sup> January 2025, the Court directed, and the parties agreed, that the matter would proceed as a "rolled up" hearing and submissions were duly filed by all parties.

### **The operative factual matrix**

3. In this case, the applicant submitted a request for information pursuant to **section 13 (1) of the FOIA** on 26<sup>th</sup> September, 2024 to the respondent for the following information:
  - a. The Policy and/or procedure for the installation of High-Tension Power Lines over Private Property; and
  - b. Any policy documents for and in relation to the installation of High-Tension Power Lines over Private Property.
4. The respondent was served with the FOI request on 26<sup>th</sup> September, 2024 (“the request”).
5. On the same day, 26<sup>th</sup> September, the applicant issued a Pre-Action Protocol Letter and gave notice of his intention to make a claim for judicial review if the information in his application was not provided by 28<sup>th</sup> October, 2024 which was thirty (30) days after the request was issued. There was, however, no response to the applicant’s Pre-Action Protocol Letter.
6. The application was thereafter filed and was supported by an affidavit of Dr. Fayard Mohammed.
7. The respondent filed an affidavit of Ms. Candace Price. Ms. Price, the respondent’s designated officer for the **FOIA**, deposed that she only received the applicant’s FOI request on 25<sup>th</sup> October 2024.
8. Ms. Price further deposed that she issued a response to the applicant’s FOI request on 13<sup>th</sup> November 2024 and outlined that the respondent could not accede to the requests for documentation/information (“the **FOIA** response”). The letter demonstrated that the respondent’s refusal was based on a potential breach of the sub judice rule and a claim that the respondent was aware of separate legal proceedings involving the applicant. Ms. Price further stated that the request for information amounted to a fishing expedition to bolster the applicant’s case in the separate legal proceedings.

9. On 16<sup>th</sup> January, 2025, the applicant filed his affidavit in reply to the Ms Price's affidavit.

### **The respondent's grounds of opposition**

10. In essence, the respondent opposes the application on the following grounds:

- a. Failure to make full and frank disclosure (breach of the duty of candour) as the applicant failed to disclose material facts to the Court.
- b. Failure to exhaust alternative remedies as the respondent stated that there was the alternative of specific disclosure which was available to the applicant.
- c. That there was no arguable ground for judicial review which was clothed with a realistic prospect of success.
- d. That the reliefs sought and the manner in which this application has been launched amount to an abuse of the Court's process.

11. The respondent further asserts that the applicant omitted material facts and failed to disclose the **FOIA** response.

12. The respondent also points out that no amendment was made to the application to correct the erroneous assertion that no response to the **FOIA** request was issued.

### **Issues**

13. The following issues arise for determination:

- a. Whether the applicant has breached his duty of candour;
- b. Whether the applicant has exhausted all alternative remedies;
- c. Whether the applicant's application amounts to an abuse of process;
- d. Whether there are arguable grounds for judicial review;
- e. Whether the doctrine of legitimate expectation arises on these facts;
- f. Whether the Court should mandate disclosure of the requested documents; and
- g. Whether the applicant is entitled to costs.

**Whether the applicant breached his duty of candour.**

14. In **R v Lancashire County Council, ex parte Huddleston** [1986] 2 All ER 941, Sir John Donaldson MR described the relationship between the courts and public authorities as one of partnership in upholding proper administration. He noted that judicial review is a process to be conducted with all the cards face upwards on the table.
15. The obligation of candour applies to all parties and no party should seek to mislead the Court by omission or otherwise. In essence, the duty of candour mandates that all parties in judicial review proceedings should be full and frank with the Court as it relates to all relevant facts including facts which may weigh against them and which are reasonably required for the Court to arrive at an accurate decision: see **Graham v Police Service Commission of Trinidad and Tobago and Another** [2011] UKPC 46 at [18].
16. The duty of candour is logically rooted in the need for transparency and fairness. This requirement is essential and must be strictly adhered to by public authorities against whom assertions have been made as the need for an accurate account of the material facts is fundamental.
17. Laws LJ explained in **R (Quark Fishing Ltd) v Secretary of State for Foreign and Commonwealth Affairs** [2002] EWCA Civ. 1409 that:

“There is no duty of general disclosure in judicial review proceedings. However, there is of course a very high duty on public authority respondents, not least central government, to assist the court with full and accurate explanations of all the facts relevant to the issue the court must decide.”
18. **The factual matrix in this case demonstrates that, at the time of filing the application, no response to the applicant’s FOIA request was issued. Consequently, at the time the application was filed, there was no FOIA response to disclose. However, after the response was received, the applicant did not file a supplemental affidavit to indicate that he had subsequently received the FOIA response.**

**19. This failure does not negative the reality that no response was issued prior to the filing of the application and the information relative to the FOIA response was in fact placed before the Court by the respondent.**

**20. In the circumstances, the Court holds the view that the applicant did not breach his duty of candour and this objection as advanced by the respondent is devoid of merit.**

**Whether the applicant has exhausted all alternative remedies.**

21. Section 9 of the JRA provides in mandatory terms that:

“9. The Court shall **not grant leave** to an applicant for judicial review of a decision where any other written law provides **an alternative procedure to question, review or appeal that decision**, save in exceptional circumstances.” (emphases added)

22. The said section reflects the common law principle which recognizes that, save in the most exceptional circumstances, the jurisdiction to grant judicial review will not be exercised where other remedies are available and have not been used: see **R v Ministry of Agriculture, Fisheries and Food, ex p Live Sheep Traders Ltd. [1995] COD 297.**

23. It is trite that an alternative remedy must be:

- a. Adequate in law to address the grievance;
- b. Available at the time of application; and
- c. Capable of providing equivalent relief to the statutory or constitutional claim.

24. The said principle is in essence one of restraint and not prohibition, but it cannot apply where the remedy invoked is itself sanctioned by statute.

25. The respondent asserts that an application for specific disclosure under the **CPR** could have been made, but same is not a statutory remedy. Such an application is a procedural tool which is governed by judicial discretion. The **CPR** provisions which deal with disclosure do not confer a general right of access to documents nor does it bind public authorities to general transparency obligations which fall outside the specific context of civil litigation.
26. By contrast, the **FOIA** empowers members of the public with a general right (subject to stated exceptions) of access to official documents held by public authorities and for matters related thereto. The **Act** recognized the need for transparency and accountability and created a freestanding statutory right to access official documents held by public authorities.
27. A review of the **FOIA** reveals that this right is not made contingent upon litigation nor is it subordinate to procedural applications made. Consequently, the **Act** creates a stand-alone statutory regime. As Jamadar J.A. (as he then was) explained in **The Minister of Planning and Sustainable Development v The Joint Consultative Council for the Construction Industry Civ. App. P200 of 2014** at paragraph 22, the objective of a presumptive general right to information is to be “limited only by exemptions and exemptions necessary for the protection of essential public interests ...”.
28. On this issue, this Court also agrees with and adopts the rationale advanced at **paragraphs 24 – 29 of CV2007-03180 Stephen Lewis v The Commissioner of Police**, a decision delivered by des Vignes J (as he then was).
- 29. Consequently, this Court is resolute in its view that an application for specific disclosure under Part 28 of the CPR for the documents/information requested cannot amount to an “alternative procedure to question, review, or appeal the respondent’s/intended defendant’s decision” and recourse to same cannot be used as a viable alternative to avoid compliance or discharge of the statutory obligations created under the FOIA.**

**30. The FOIA inures to the benefit of all citizens a right to access information and facilitates the vindication of that right by enabling an aggrieved person to approach the Court to challenge any supposed violations of that right. The existence of an alternative procedural avenue under the CPR relative to an ongoing civil matter does not offer the same level of protection.**

**31. The respondent also raised the issue of recourse to the Ombudsman. Section 38A of the FOIA allows a party aggrieved by the refusal of a public authority to grant access to an official document to complain to the Ombudsman within twenty-one days of the notice of refusal. The Ombudsman is bound to make recommendations with respect to the granting of access to the document and by section 38A (3), a public authority "is required to consider the recommendations of the Ombudsman".**

**32. In H.C.A. No. Cv. S.2005 of 2004 Chandresh Sharma v The Integrity Commission,** Jamadar J (as he then was) explained at page 14 that this procedure under **section 38A** is designed to further the object of the **FOIA** which is to say, "to facilitate and promote, promptly and at the lowest reasonable cost the disclosure of information": see **section 3(2)**.

**33. In Chandresh Sharma (supra),** Jamadar J (as he then was) expressed the view at page 15 that given that the **FOIA** itself sets out the right to complain to the Ombudsman, and the obligation of a public authority is to consider the Ombudsman's recommendations, that this is a procedure to question and/or review a decision of a public authority to refuse access to an official document, as contemplated by **section 9 of the JRA**. Notwithstanding this view, the learned judge explained at page 16 of his judgment that in judicial review proceedings, relief is not as of right, but is a matter of discretion. Thus, in spite of his opinion at page 15, the learned judge concluded that:

“In light of the above, what effect should the non-pursuit and/or non-disclosure of the alternative form of redress prescribed by **section 38A of the FOIA** have on this case? **In my opinion the issues raised in this case are of public importance. Of prime importance is the public's right of**

access pursuant to the FOIA to information held by the IC. Also of general importance is the approach to be taken by the Courts and public authorities to the interpretation and application of the FOIA. In this context one cannot lose sight of the history, reality and aspirations of the community in relation to persons in public life, public authorities, the IC and the State's needs and concerns with respect to these. In this regard the role and function of the Court includes ensuring that the intention of Parliament and the will of the people are not frustrated. For these reasons, in the special circumstances of this case, this Court in the exercise of its discretion will not deem these proceedings an abuse of process and will allow the Applicant limited relief (set out below). However, the non-pursuit and non-disclosure of the alternative redress to the Ombudsman will affect this Court's order for costs, as also explained below.” (emphases added)

34. This Court agrees with the aforesaid views as expressed by Jamadar J (as he then was). In general, section 38A(1) is clear and a person aggrieved by the refusal of a public authority to grant access to an official document, may, within twenty-one days of receiving notice of the refusal under section 23(1), complain in writing to the Ombudsman. This is an alternative procedure available to the applicant to question, review or appeal the public authority's impugned decision and there is no evidence before this Court to illustrate that the applicant availed himself of this alternative statutory remedy. This process is one which enables an aggrieved person to seek recourse without the incurrance of the costs generally associated with the institution of litigation, but does not operate as a precondition for the filing of a judicial review application. Notably, the Ombudsman, unlike the Court, cannot mandate the disclosure of any requested information and the process simply allows the public authority the opportunity to conduct a review. In addition, it must be understood that

**requested information is often required for advancement or institution of litigation and time is, in those circumstances, of the essence. Therefore, it would be unfair and disproportionate to curtail the advancement of any such position by mandating that an applicant is obligated to seek recourse to the Ombudsman before invoking the Court's jurisdiction.**

35. The grant of relief in judicial review proceedings is discretionary and the Court must consider (i) the behaviour of the public authority in not responding to the applicant's **FOIA** request within the statutorily-prescribed period, (ii) the alleged breaches of the public authority's statutory duties under the **FOIA** (which will be discussed further below), and (iii) the public importance of ensuring that the machinery and statutory procedures explicated in the **FOIA** to give effect to the right of access to information held by public authorities are protected and not rendered nugatory by actions of public authorities thereby depriving persons of the right to information.

**36. In the circumstances, this Court, in the exercise of its discretion, will not oust the applicant from invoking the Court's jurisdiction by holding that there was a failure to explore alternative remedies.**

**Whether the application is an abuse of process and whether the Court can refuse leave on that basis.**

37. The Court must now consider whether the application is an abuse of the Court's process.

38. On this issue, Counsel for the respondent has submitted that multiple hallmarks of abuse of process are present. Firstly, the respondent points to the applicant's failure disclose the **FOIA** response. According to the respondent, that failure amounted to an attempt to secure an advantage at the leave stage of this matter and amounts to an abuse of the *ex parte* nature of the permission process. Secondly, the respondent contends that the applicant has pursued duplicative proceedings by simultaneously seeking the documents via a specific disclosure application and these judicial review proceedings. Finally, the respondent submits that the

absence of merit in the applicant's claim contributes to the abusive nature of these proceedings.

39. Lord Diplock said in **Hunter v Chief Constable of West Midlands Police [1982] AC 529 at 536c** that it would be unwise to create fixed categories of abuse of process. The term "abuse of the court's process" defies exhaustive definition, but it fundamentally connotes the use of the court's procedures in a way that is illegitimate or improper. Lord Bingham, in **Attorney General v Barker [2000] 1 FLR 759**, albeit in a different context, explained that an abuse of process is when a party to proceedings seeks to use "the process for a purpose or in a way significantly different from its ordinary and proper use."

40. When the Court has to determine whether an abuse of process has occurred, it is required to exercise its discretion as to whether or not to strike out the proceedings or to take such other steps or make such other orders as are appropriate: see **Real Time Systems Limited v Renraw Investments Ltd [2014] UKPC 6 at para 17 per Lord Mance**. The Court must also undertake a balancing exercise, and must consider the principle of proportionality.

**41. In this Court's view, the respondent's attempt to characterize the applicant's application for judicial review under the FOIA as "oppressive litigation," "parallel tactics," or a "hopeless claim" is factually inaccurate and is categorically rejected by this Court.**

42. The applicant's application is grounded in what he articulates as clear statutory breaches under the **FOIA** including:

1. The right to a decision under **section 13(1)**;
2. Notification of approval or refusal within thirty (30) days under **section 15**; and
3. A written notice of deferral under **section 23**.

**43. This Court holds the view that these are not speculative or collateral issues. Rather, the incontrovertible evidence establishes that there have been direct breaches of**

statutory duties by the respondent. These breaches will be discussed further in this judgment, but the conjoint effect of the said breaches elevates this claim from being what one would consider to be a “hopeless claim”.

44. Furthermore, applications under the FOIA should never be viewed as “litigation tactics”, but rather, they are expressions of a citizen’s right to access information held by public bodies. The entire scheme of the FOIA is oriented towards ensuring that aggrieved persons are able to gain access to documents and information held by public bodies and reliance on that statutory scheme to achieve its fundamental goal cannot be properly be described as a “parallel tactic” or “oppressive litigation”.

45. In this Court’s view, the applicant has legitimately invoked the protection of a statutory right and has supported that invocation by evidence of non-compliance with the right by the respondent. The applicant’s case is far outside the remit of what can be considered duplicative, vexatious, or abusive and the evidence has established that the respondent was guilty of non-compliance with its statutorily-imposed obligations.

**Are there arguable grounds for judicial review?**

46. The Court must now turn to the issue as to whether there are arguable grounds for judicial review.

47. **Section 6 of the JRA** requires that leave be granted where the Court is satisfied that:

- a. The applicant has a sufficient interest in the matter;
- b. The application raises an arguable case with a realistic prospect of success;  
and
- c. The claim is not frivolous, vexatious, or an abuse of process.

48. The threshold for the grant of leave was outlined in the seminal decision of **Sharma v Brown-Antoine & Others [2006] 69 WIR 379** where the Judicial Committee made it clear that the threshold for leave is low and that a Court must be satisfied that (i) there is an arguable ground for judicial review with a realistic prospect of success and (ii) that the

claim is not barred by delay or an adequate alternative remedy. Importantly, the Board asserted that the test is flexible and must be assessed in light of the nature and gravity of the issue to be argued.

49. The position outlined in **Sharma (supra)** was re-affirmed in **Sookhan v Children's Authority of Trinidad and Tobago [2021] UKPC 29** where Lord Stephens, in delivering the advice of the Judicial Committee, stated at paragraph [2]:

“2. The threshold for the grant of leave to apply for judicial review is low. The Board is concerned only to examine whether the respondent has an arguable ground for judicial review that has a realistic prospect of success and is not subject to a discretionary bar such as delay or an alternative remedy: see governing principle (4) identified in *Sharma v Brown-Antoine* [2006] UKPC 57; [2007] 1 WLR 780, para 14.”

**50. This Court holds the view that the application has satisfied the Court that:**

- a. The applicant has a direct and personal interest in the request for information which was submitted to the respondent; and**
- b. The request was properly made.**

**51. The issues raised are justiciable and fall squarely within the scope of judicial review, namely, breaches of statutory duties, and the potential deprivation of a legitimate expectation owed by a public body to a member of the public.**

**52. Section 13 (1) provides that a person who wishes to obtain access to an official document shall make a request in the prescribed form to the relevant public authority for access to the document. The section, along with the entire statutory scheme of the FOIA, serves to broaden and deepen the democratic values of accountability, transparency, and the sharing of and access to information about the operations of**

**public authorities: see para 8 of Caribbean Information Access Ltd v The Honourable Minister of National Security Civ. App. No. 170 of 2008.**

**53. In this Court's view, the respondent's failure to provide any substantive decision on the applicant's request within the statutorily-prescribed time period is a breach of this section and was unreasonable and irrational especially where the authority adverted to no stated exemption. Administrative inefficiency and/or the lack of resources cannot be used as a defence for non-compliance with mandatory statutory obligations. The breach of statutory obligations violates public trust, erodes accountability, transparency, and ultimately, undermines the entire legislative scheme of the FOIA.**

54. In addition, **section 15 of FOIA** provides that:

15. A public authority shall take reasonable steps to enable an applicant to be notified of the approval or refusal of his request as soon as practicable but in any case not later than thirty days after the day on which the request is duly made.

**55. The FOIA outlines that a public authority must respond to a request for information within thirty (30) days. This is a positive obligation and the respondent breached section 15 of the FOIA when the mandatory thirty (30) day deadline expired and no response on the applicant's FOI request was issued. At that point, the applicant's right to seek judicial review crystallized and the applicant was justified in adopting the course which was engaged as a breach of statutory duty clearly occurred when there was a failure to communicate a decision within a thirty (30) day period. This Court also holds the view that the subsequent response delivered after the application for leave had already been filed did not retroactively cure the breach and same does not render the application premature or defective.**

**56. The applicant's omission to mention the response by Ms. Price cannot be used to attack the legitimacy of the application having regard to the breach of section 15 of**

**the Act and the respondent's attempt to shift procedural blame onto the applicant is rather unfortunate and amounts to a disingenuous deflection from its statutory non-compliance.**

**57. This Court therefore holds that the application for leave was properly initiated after the respondent failed to comply with the mandatory obligation imposed by section 15 of the FOIA.**

58. The respondent also disregarded **section 23 of the FOIA** which mandates that where a decision is made by a public authority that an applicant is not entitled to access to the document in accordance with his request or that provision of access to the document be deferred or that no such document exists, the public authority shall prepare for the applicant a notice in writing of its decision which includes a cluster of information such as, among other things, the reasons for the decision.

59. The evidence adduced in this matter is pellucid and has established that the respondent failed and/or omitted and/or refused to provide the applicant with the statutorily-mandated notice under **section 23 of the FOIA**.

**60. In this case, the applicant has therefore demonstrated that he has an arguable ground for judicial review which has a realistic prospect of success.**

**Whether the doctrine of legitimate expectation can arise on these facts.**

61. The next question to be determined is whether the doctrine of legitimate expectation arises on the facts of this case.

62. In summary, the applicant's argument is that the respondent's refusal to accede to the **FOIA** request was based on extraneous considerations and that the failure to issue a notice under **section 23**, constitutes a breach of statutory duty and violated his legitimate expectation. In addition, the applicant states that he was entitled to expect that his request

would be processed in accordance with law, and that any refusal would be reasoned, lawful, and procedurally fair.

63. The doctrine of legitimate expectation is well-established in public law and arises where a public authority, by its conduct or representations, induces a reasonable expectation that it will act in a particular way. This expectation may be procedural or substantive and is enforceable through judicial review where the authority's departure from that expectation is unfair, irrational, or unlawful.

64. In **Judicial Review Handbook by Sir Michael Fordham, Seventh Edition, 2020**, the learned author explained at paragraph 41.2.8 that, in principle, there are no rigid preconditions for the establishment of a legitimate expectation:

“41.2.8 No rigid preconditions. R v Inland Revenue Commissioners, ex p Unilever Plc [1996] STC 681, 690f (Sir Thomas Bingham MR: “The categories of unfairness are not closed, and precedent should act as a guide not a cage”); Rowland v Environment Agency [2003] EWCA Civ 1885 [2005] Ch 1 at §68(2) (“**It is not always a condition for a legitimate expectation to arise that there should be a clear, unambiguous and unqualified representation by the public authority ...: the test is whether the public authority has acted so unfairly that its conduct amounts to an abuse of power**”); R (Bibi) v Newham LBC [2001] EWCA Civ 607 [2002] 1 WLR 237 at §27.” (emphasis added)

65. Furthermore, in **Judicial Review: Principles and Procedure by Auburn, Moffett and Sharland 2013**, the learned authors explained at paragraph 19-43:

“19-43. When determining whether a legitimate expectation has arisen in a particular case, it is necessary to have regard to all the circumstances of that case.' **Much is likely to turn upon the particular factual matrix under consideration. However, it is**

**possible to identify some factors that, where they arise, are likely to be of particular relevance in this context.”** (emphasis added)

66. One of the factors which **Auburn, Moffett and Sharland** identified is the statutory context however, the learned authors go on to state as follows:

**“Legitimate expectations relating to introduction or implementation of legislation**

19-58. It is unlikely that unimplemented statutory provisions will give rise to a legitimate expectation that a public body will act as if they were in force.' **However, a legitimate expectation may arise that a public body will not act in a manner that would frustrate the implementation of such provisions in the future.”** (emphases added)

67. **Auburn, Moffett and Sharland** also referenced the decision of **R v Secretary of State for Home Department ex parte Fire Brigades Union [1995] 2 AC 513**. In **ex parte Fire Brigades Union**, where Lord Browne-Wilkinson observed at pages 553 - 554 that:

“In public law the fact that a scheme approved by Parliament was on the statute book and would come into force as law if and when the Secretary of State so determined is in my judgment directly relevant to the question whether the Secretary of State could in the lawful exercise of prerogative powers both decide to bring in the tariff scheme and refuse properly to exercise his discretion under section 171(1) to bring the statutory provisions into force.”

68. This Court holds the view that it is not a rigid pre-condition that in order for a legitimate expectation to arise that there should be a clear, unambiguous and unqualified representation by a public authority: see **Judicial Review Handbook at paragraph 41.2.8** and the decisions cited there. As a consequence, this Court cannot accept the respondent’s position that in this case, where there were clear statutory timelines that no legitimate

expectation could arise without there first being a clear, unambiguous and unqualified representation by the public authority.

**69. This Court is resolute in its view that a legitimate expectation arose in this case and that same is premised upon the pellucid statutory obligations which were imposed upon the respondent as it had a duty to faithfully discharge the obligations imposed upon it by virtue of the FOIA and, in particular, by virtue of section 13 (1), section 15(1), and section 23(1).**

70. In this case, this Court is resolute that the respondent breached its statutory obligations when it (i) failed to provide the applicant with an access decision within thirty (30) days of his request, and (ii) failed to provide the applicant with the statutorily-mandated notice under **section 23 of the FOIA**.

71. **As this Court has earlier noted, the FOIA provides applicants with a right to information held by public officials “limited only by exemptions and exemptions necessary for the protection of essential public interests ...”: see paragraph 22 of Jamadar J.A.’s decision in the case of The Joint Consultative Council (supra).**

**72. In this Court’s view, the applicant had a legitimate expectation that the public authority would follow the law and discharge the obligations imposed by the FOIA, and that legitimate expectation was frustrated by the actions and/or omissions of the respondent.**

**Whether the Court should mandate the provision of the requested documents.**

73. The penultimate question for the Court’s consideration is whether it should mandate the provision of the requested documents.

74. In **Ashford Sankar v Public Service Commission CA No. 58 of 2007**, Narine J.A. (as he then was) explained that **section 3(1) of the FOIA** makes it clear that the object of the Act is to extend the right of the public to access information in the possession of public authorities: **see para 16**. At paragraph 17, His Lordship continued:

“17. Clearly **the intention of the framers of the Act was to promote disclosure of information held by public authorities to the public, as opposed to suppressing or refusing access to information. The presumption is that the public is entitled to access the information requested unless the public authority can justify refusal of access under one of the prescribed exemptions specified under sections 24 to 34 of the Act.** Even so, under section 35, although the information requested falls within one of the specified exemptions, the public authority is mandated to provide access where there is reasonable evidence that abuse of authority or neglect in the performance of official duty or injustice to an individual, danger to the health or safety of the public, or unauthorised use of public funds, has, or is likely to have occurred, and disclosure of the information is justified in the public interest.” (emphases added)

75. In this case, the material parts of the access decision were as follows:

“Please note that the Commission is unable to accede to your requests at Nos. 1 and 2 above.

Please note however that the applicant, Dr. Fayard Mohammed, is party to a matter with the Commission regarding the installation of power lines etc and that this matter is scheduled for trial on the 20<sup>th</sup> and 21<sup>st</sup> January 2025 at the High Court of Justice. Having regard to the fact that this matter presently engages the attention of the Honourable Court **the principle of sub judice may apply.** This rule discourages actions that could interfere with the court’s ability to determine matters impartially. Please note further that the Commission remains mindful of the existence of this

matter and will not engage in any conduct that could potentially prejudice the court's decision and undermine the judicial process.

Moreover, it is passing strange that this request is being made outside the parameters of disclosure as per the Civil Proceedings Rules and this solidifies our belief that **this request is being used as a fishing expedition to attempt to support the Claimant's case**" (emphases added)

76. It is evident that the respondent denied access to the requested information based on the grounds that disclosure would breach the principle of sub judice and that the request amounted to a fishing expedition. It is evident that the respondent did not provide the sections under which it was claiming exemption from disclosure nor was reference made to the **section 35** override.

77. As Narine J.A. (as he then was) explained in **Ashford Sankar (supra)**, the **FOIA** sought to extend the right of the public to access information in the possession of public authorities **unless the public authority can justify refusal of access under one of the prescribed exemptions specified under sections 24 to 34 of the Act**. In this case, the respondent did not justify its refusal of access under one of the prescribed exemptions specified under **sections 24 to 34 of the FOIA**.

78. In **Caribbean Information Access Ltd v The Honourable Minister of National Security Civ. App. No. 170 of 2008**, the Court of Appeal held that:

"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 to reasonably 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 as 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.” (emphasis added)**

79. The public authority does not enjoy a presumption in favour of exemption from disclosure of the documents and information it possesses and it must appropriately justify its refusal using one of the exemptions enumerated between **section 24** and **section 34 of the FOIA**. Further, even after relying on an exemption, the public authority then has to engage in the **section 35** balancing exercise in order to determine whether even in the face of exemption, there was still a duty to disclose.

**80. This Court has reviewed the exceptions to the right of access to information enumerated between sections 24 and 34 of the FOIA and has determined that the reasons the respondent provided for its access decision cannot fit under any of the statutory exceptions. In addition, there is simply no statutory exemption made for the sub judice rule or for the prevention of fishing expeditions.**

**81. Having considered the response to the applicant’s FOI request, this Court also holds the view that the sub judice rule and the prevention of fishing expeditions, the two reasons advanced by the respondent for refusing access, were positions which were devoid of merit and did not amount to justiciable reasons for the non-provision of the requested information.**

**82. This Court therefore concludes that the applicant is entitled to the information sought.**

**Is the applicant entitled to costs?**

83. In **Vijay Singh v Public Service Commission (2019) UKPC 18**, the Privy Council delivered a seminal decision on the issue of costs in judicial review proceedings. That appeal was concerned with the court's exercise of the discretion as to costs where an application is made for leave to apply for judicial review, but where no such proceedings are thereafter instituted because the subject matter of the applicant's complaint is speedily resolved. Lord Briggs noted at paragraph 1 of the judgment that the issue concerned the effect upon what appears to be the usual practice of the courts of Trinidad and Tobago in such circumstances, namely, to make no order as to costs, of a failure by one of the parties to comply with the provisions of the relevant pre-action protocol.

84. The applicant in this case has demonstrated:

- a. That a valid **FOIA** request was submitted;
- b. That the respondent allegedly received the FOI request on 25<sup>th</sup> October 2024, but did not issue a response to the applicant's request until 13<sup>th</sup> November 2024. In addition, the respondent did not seek an extension of time to reply to the request for information.
- c. The respondent ultimately failed to comply with its statutory duties under **sections 13, 15, and 23**; and
- d. That he had a legitimate expectation that the law as outlined under the **FOIA** would be followed.

85. As Lord Briggs recognized at paragraph 38 of **Vishal Singh (supra)**, compliance by the respondent with its obligations under the applicable pre-action protocol would have readily enabled the applicant to avoid the significant expenses incurred by instituting judicial review proceedings. In addition, the Court has found that there existed no justification for the refusal to provide the requested information.

86. In the circumstances, there are no exceptional circumstances in this case that would justify a departure from the general rule that costs must follow the event. The applicant acted

reasonably, complied with procedural requirements, and pursued a legitimate public law claim. The respondent, by contrast, failed to discharge its statutory obligations and resisted the application on grounds that were ultimately rejected. The balance of fairness and judicial economy therefore supports an award of costs to the applicant.

### **Conclusion**

87. For all of these reasons, the Court orders that:

- a. It is declared that the respondent has breached its statutory duty under **section 13 (1) of the FOIA** by its failure and/or refusal to provide a decision to the applicant on his request for information and that the said failure and/or refusal was unreasonable and irrational.
- b. It is declared that the respondent has breached its statutory duty under **section 15 of the FOIA** to take reasonable steps to notify the applicant of the approval or refusal of his request within thirty (30) days of same;
- c. It is declared that the respondent breached its statutory duty under **section 23 of the FOIA** by failing to issue a notice stating the reasons for the deferral of access to the requested information;
- d. It is declared that the applicant had a legitimate expectation to be notified by the respondent of whether he would be provided with the requested information and/or the reasons if he was not provided with same; and
- e. The respondent is directed to provide the applicant with the information requested in its application within fourteen (14) days of this order.

88. Costs shall be assessed by this Court in default of agreement.

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**Frank Seepersad**  
**Judge**