

Hearing 86-202100161

Decision

Workforce Opportunities & Residency Cayman (WORC)

Sandy Hermiston
Ombudsman

6 September 2021

Summary

An applicant made a request under the Freedom of Information Act (2021 Revision) (the FOI Act) for the questions used by WORC in interviews aimed at detecting and investigating potential marriages or civil partnerships of convenience under the Immigration (Transition) Act (2021 Revision) (the Immigration Act). Marriage checks are conducted where an application for Caymanian Status or Permanent Residency on the basis of marriage was submitted, and there are suspicions about the veracity of the marriage or civil partnership.

WORC claimed that the questionnaire containing standard questions posed in such interviews was exempted under the FOI Act, since disclosure would “reveal lawful methods ... for preventing, detecting, investigating or dealing with matters arising out of breaches or evasions of the law...”.

The Ombudsman found that the exemption was correctly applied, since the requested record is a law enforcement record whose disclosure would reveal lawful methods of detecting and investigating breaches of the law, and would prejudice the effectiveness of those methods. WORC had correctly withheld the responsive record and no further action was required on the part of WORC.

Statutes¹ considered

Freedom of Information Law (2021 Revision) (FOI Act)

Freedom of Information (General) Regulation (2021 Revision) (FOI Regulations)

¹ In this decision, all references to sections are to sections of the Freedom of Information Act (2021 Revision), and all references to regulations are to the Freedom of Information (General) Regulations (2021 Revision), unless otherwise specified.

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A. INTRODUCTION

- [1] On 1 March 2021 the applicant made the following request to WORC under the FOI Act:

I am writing to request copies of the marriage interviews or questionnaires used by enforcement or compliance and the boards to question people who are married persons and civil partners. Please provide copies of the questionnaires used for marriages of convenience, Caymanian status applications and resident and employment rights certificates.

- [2] The Information Manager (IM) provided the initial decision on 11 March 2021, exempting the responsive records on the basis of the exemption in section 16(d), as a law enforcement record that would, or could reasonably reveal lawful methods for detecting breaches of the law, whose disclosure would be likely to prejudice the effectiveness of those methods. The responsive record in this case was identified as a questionnaire with standard questions used by WORC in cases where an application is submitted for Caymanian Status or Permanent Residency on the basis of marriage or civil partnership.
- [3] The applicant requested an internal review, and the Director of WORC claimed the same exemption applied by the IM.
- [4] Subsequently, the applicant made an appeal to the Ombudsman, and we accepted the appeal on 30 March 2021. An attempt at informal resolution was made, but it ultimately proved unsuccessful, and the matter was referred for a formal hearing.

B. CONSIDERATION OF ISSUES

Is the responsive record exempt under section 16(d) because it is a record relating to law enforcement that “[is] exempt from disclosure if [its] disclosure would, or could reasonably be expected to ... reveal lawful methods or procedures for preventing, detecting, investigating or dealing with matters arising out of breaches or evasions of the law, where such revelation would, or could be reasonably likely to, prejudice the effectiveness of those methods or procedures”?

- [5] Section 16(d) provides for the following exemption from the general right of access:

Records relating to law enforcement

16. Records relating to law enforcement are exempt from disclosure if their disclosure would, or could reasonably be expected to —

(d) reveal lawful methods or procedures for preventing, detecting, investigating or dealing with matters arising out of breaches or evasions of the law, where such revelation would, or could be reasonably likely to, prejudice the effectiveness of those methods or procedures;

- [6] WORC argued that it is a summary offence under section 70(1) of the Immigration (Transition) Act (2021 Revision)(the Immigration Act) for a person to enter into a marriage/civil partnership of convenience in the context of an application for Caymanian Status or Permanent Residency on the basis of marriage. WORC's Enforcement Section therefore performs so-called marriage checks "to determine if a marriage is stable and intact".

- [7] WORC explained that marriage checks are "normally carried out in instances where one party has submitted an application for Cayman Status or Permanent Residency and there are doubts as to the validity of the marriage." Such doubts may arise "in situations where there are allegations that the parties are living apart, there are allegations of domestic abuse or of marital infidelity, etc."

- [8] WORC explained further that:

When an individual is granted Caymanian Status or Permanent Residence, they are granted certain immigration rights. These include the right to live and work in the Cayman Islands without the need of a work permit. In the case of Cayman Status, this also gives the recipient the right to change jobs and to work for any employer of their choice without being subject to immigration restraints.

Therefore, in cases where there is doubt as to the status of the marriage, as part of the marriage check, the couples are interviewed separately and asked a number of questions regarding the marriage. Each party to the marriage is asked the same question as the other and their answers are then compared after the interview.

At the end of the investigation, a report is prepared detailing the findings of the investigation and the report, depending on the outcome of the investigation, may be sent to the Department of Public Prosecutions for a ruling on prosecution, or to the Caymanian Status and Permanent Residency Board for possible refusal or revocation of Permanent Residence or Caymanian Status.

(a) Is the questionnaire a record relating to law enforcement?

- [9] It is a commonly accepted principle of statutory interpretation that exemptions in the Act should be interpreted narrowly given the purpose and intent of the Act.
- [10] The term “law enforcement” in section 16 is not defined in the FOI Act or the Interpretation Act (1995 Revision). Therefore, the phrase should be given its ordinary meaning, in accordance with the principles of statutory interpretation.
- [11] The Merriam-Webster Dictionary defines the term “law enforcement” as: “the department of people who enforce laws, investigate crimes, and make arrests; the police”.² The Cambridge Dictionary defines it as “the activity of making certain that the laws of an area are obeyed”.³ Black’s Law Dictionary defines it as: “the detection and punishment of violations of the law”, and notes: “This term is not limited to the enforcement of criminal laws”.⁴
- [12] The exemption in section 16 is not limited to the police. Given the ordinary meaning of the term “law enforcement”, other public authorities may undertake and perform law enforcement roles similar to the police in particular areas. In so far as the records of those activities relate to law enforcement, the exemption may be applicable.
- [13] Since the requested record in this appeal forms part of WORC’s enforcement obligations under the Immigration Act, and it is tied to an offence under section 70 of that Act, I find that the record is related to law enforcement.

(b) Would the disclosure of the requested record reveal, or could it reasonably be expected to reveal, a lawful method or procedure for preventing, detecting, investigating or dealing with matters arising out of breaches or evasions of the law?

- [14] The requested record forms part of the marriage checks undertaken by WORC in the context of an application for Caymanian Status or Permanent Residency on the basis of marriage, where it is suspected that the applicants may have committed the criminal offence of engaging in a marriage of convenience.
- [15] The enforcement officers who conduct the interviews choose a number of relevant questions from the questionnaire, in addition to any further questions that are thought to be relevant. The questions are posed to each of the two partners and the answers are then compared to detect any inconsistencies.
- [16] The fact that WORC conducts marriage checks by means of interviews with status or residency applicants is well known. As the appellant pointed out, some of the questions may be predictable, but none of the questions in the questionnaire are publicly available.

² <https://www.merriam-webster.com/dictionary/law%20enforcement>

³ <https://dictionary.cambridge.org/dictionary/english/law-enforcement>

⁴ Garner, Bryan A. (Ed.), Black’s Law Dictionary. Tenth Edition. 2014, St. Paul MN, Thompson-Reuters

[17] Consequently, the questionnaire contains information on the lawful methods used by WORC for detecting and investigating potential breaches of the Immigration Act, and disclosure would reveal those methods.

(c) Would disclosure of the questionnaire prejudice, or reasonably likely prejudice, the effectiveness of those methods or procedures?

[18] The Appellant stated that for the disclosure to cause prejudice to the effectiveness of the methods or procedures, they must not be widespread and well-known, as was pointed out in guidance from the Information Commissioner of the Australian State of Victoria.⁵

[19] The appellant argued that some of the questions were either predictable or could have been shared by interviewees who had previously undergone an interview, and could therefore no longer be regarded as unknown.

[20] While a small number of the questions may indeed be reasonably predictable, none of the questions are in the public domain. Publicizing the questionnaire would have the harmful effect of allowing couples to coordinate their responses in advance of an interview, thus preventing WORC from detecting or investigating breaches of the law. This would inevitably prejudice the effectiveness of the questionnaire, harm the integrity of the interview process, and ultimately undermine the rule of law.

[21] **Since the requested record is a law enforcement record whose disclosure would reveal lawful methods of detecting and investigating breaches of the law, and would prejudice the effectiveness of those methods, the exemption in section 16(d) applies to the requested questionnaire.**

[22] The exemption in section 16 is not subject to a public interest test under section 26, and no further test is required.

C. FINDINGS AND DECISION

Under section 43(1) of the Freedom of Information Act, for the reasons outlined above, I make the following findings and decision:

- The requested record is a law enforcement record, whose disclosure would reveal lawful methods of detecting and investigating breaches of the law, and would

⁵ Office of the Victorian Information Commissioner, Exemption Practice Note7 section 31(1)D) – Methods for preventing, detecting, investigating breaches of the law, June 2020 – D20/5242, page 2.
<https://ovic.vic.gov.au/wp-content/uploads/2020/06/EPN-7-%E2%80%93-Section-311d-%E2%80%93-Disclose-methods-or-procedures-for-preventing-detecting-investigating.docx>

prejudice the effectiveness of those methods. Therefore, the exemption in section 16(d) applies to the requested record, and the record has been correctly withheld.

- WORC is not required to take any further steps.



Sandy Hermiston
Ombudsman