Hearing 110 - 202600292
Decision

The Judicial and Legal Services Commission

Sharon Roulstone
Ombudsman

15 September 2026

SUMMARY
An applicant made a request to the Governor's Office under the Freedom of Information Act (2021 Revision) (the FOI Act) for records relating to the appointment of the Chief Justice. The Governor's Office released records responsive to item 7 of the request in full and transferred items 1 to 5 to the Commissions Secretariat on the basis that those records more closely relate to its functions.

The Commissions Secretariat, acting on instructions from the Judicial and Legal Services Commission (JLSC), refused the request on the grounds that the JLSC is not a public authority and that neither the JLSC nor the requested records fell within the scope of the FOI Act.

The Ombudsman was required to determine:

1. Is the Judicial and Legal Services Commission (JLSC) subject to the FOI Act as a public authority?

2. Whether records relating to the appointment of the Chief Justice fall within the scope of the FOI Act.

Following a review of the submissions, the Ombudsman found that the JLSC is not a public authority as defined in section 2 of the FOI Act. However, the Ombudsman determined that records relating to the appointment of the Chief Justice, where such records are held, administered, controlled or accessible through a public authority, fall within the scope of the FOI Act.

The Ombudsman further found that the Commissions Secretariat is the relevant public authority through which records responsive to the request may be held, in accordance with the definition of "hold" in section 2 of the FOI Act. Accordingly, the Ombudsman ordered the Commissions Secretariat to process the Applicant's request and issue within the statutory timeframe prescribed by the Act.

Statutes considered[1]

FOI Act (2021 Revision) (FOI Act)
Freedom of Information (General) Regulation (2021 Revision) (FOI Regulations)
The Cayman Islands Constitutional Order (2009)

Contents:

A. INTRODUCTION……..……..2
B. ISSUES UNDER REVIEW……..…..…….5
C. BURDEN OF PROOF……..……..6
D. CONSIDERATION OF ISSUES……5
E. FINDINGS AND DECISION……..……...13

A. INTRODUCTION

[1] On 17 January 2026, the applicant submitted a Freedom of Information request to the Governor's Office seeking records relating to the appointment of the Chief Justice, which the applicant requested in the following terms:

> *1)* "*A copy of the recommendation made by the Judicial and Legal Services Commission to the Governor for appointment of the Chief Justice.*
>
> *2) If the Governor referred such recommendation back to the Commission for reconsideration, a copy of that request or requests and the response to the request or requests.*
>
> *3) Any recommendation of the Commission, if one exits* [sic]*, that before the appointment of the Chief Justice, that the position be re-advertised.*
>
> *4) If the position was re-advertised, a copy of that re-advertisement or proposed re-advertisement.*
>
> *5) A copy of any recommendation made by former Chief Justice regarding whether or not the current Chief Justice should be appointed Chief Justice.*
>
> *6) All records showing any recommendation of the Commission or the Chief Justice leading up to the letter of appointment of the Chief Justice.*
>
> 7) *The letter of appointment of the Chief Justice.*"

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

[2] On 20 January 2026, the Governor's Office Information Manager (GOIM) provided a letter acknowledging the request and informing the Applicant that part of the request had been transferred on that same day, stating that:

> *"The records labelled 1- 6 you have requested more closely related to the functions of a different public authority. Therefore, your application for those records has been transferred to the* Commissions Secretariat*."*

[3] On 17 February 2026, the GOIM responded to the request, stating that no records responsive to items 5 and 6 were held by the Governor's Office. The GOIM further disclosed, in full, the Chief Justice's Instrument of Appointment in response to point 7 of the Applicant's request.

[4] On 17 April 2026, the Commissions Secretariat's Information Manager (the IM) responded to the Applicant's request stating the following:

> "*The Judicial and Legal Services Commission (JLSC) has now determined your request… After careful consideration, JLSC has concluded that the Act does not apply to the records described in your request. The request is therefore refused for lack of jurisdiction*
> *The reasons for this decision are set out below.*
>
> ***1. Application of the Act***
> *Section 7(1) of the Act provides a right of access only to records held by a "public authority" as defined in section 2 of the Act.*
>
> *Accordingly, the Act applies only where:*
> - *the requested records are held by a public authority; and*
> - *they are held in that authority's capacity as such.*
>
> ***2. Status of the Judicial and Legal Services Commission***
> *The records described in your request relate to the functions of the JLSC in connection with judicial appointments.*
>
> *The JLSC is established under the Constitution as an independent commission exercising constitutional functions. It is not listed within, nor does it fall within, the definition of "public authority" under section 2 of the Act.*
>
> *As a result, the JLSC is not subject to the access provisions of the Act…"*

[5] In the same correspondence, the IM further asserted that the Commission Secretariat provides administrative support to the JLSC. Therefore, any responsive records, if held, would be records of the JLSC and in support of its functions, and records held in this capacity would not fall under the FOI Act for disclosure.

[6] On 22 April 2026, the Applicant filed an appeal with the Office of the Ombudsman (OMB).

[7] On 30 April 2026, the OMB acknowledged the appeal and notified both parties.

[8] On 30 April 2026, as part of our review at the informal resolution stage of the appeal, the OMB requested clarification from the IM regarding their position that the JLSC is not a public authority for the purposes of the FOI Act, along with additional information to ensure that the

determination under section 33 of the Act (no records held) was appropriately made. The Search Efforts Form was also shared in this correspondence to facilitate their response and document the search for responding records.

[9] On 15 May 2026, the IM responded, maintaining their position, stating:

> *"The Commissions Secretariat is a civil service entity whose remit is limited to providing administrative and research support services to six separate commissions, including the JLSC. The Secretariat accepts that it is subject to the FOI Act in its own capacity as a civil service entity. However, the Secretariat itself, in exercise of its own remit, holds no records in relation to the request in its own right, nor does it have any remit or authority in relation to the recruitment or appointment of members of the judiciary."*

[10] In the same correspondence, the IM further stated that the JLSC is a constitutionally independent body and has received legal advice that it is not subject to the FOI Act. The IM maintained that applying the FOI Act to JLSC records would be inconsistent with judicial independence and the constitutional separation of powers.

[11] On 26 May 2026, the IM, on behalf of the JLSC, provided detailed legal justification, including reference to statutory provisions, of which they maintain that the JLSC is a constitutional body. They further refuted the application of section 2(2)(b) and highlighted section 105(6) of the Constitutional Order (2009), acknowledging that a request for documentation would contravene such provision.

[12] On 2 June 2026, the OMB issued a response quoting relevant provisions under the Constitutional Order 2009, the FOI Act (2021) and the Public Authorities Act (2020 Revision) to maintain that, as a constitutionally established body exercising public functions, the JLSC falls within the broad definition of a "public authority" for FOI purposes and requested the reasoning supporting the JLSC's contrary position.

[13] On 3 June 2026, the IM advised that the JLSC would need to seek further legal advice to provide a substantive response, at which time they requested a 30-day extension.

[14] On 5 June 2026, the OMB granted the JLSC a one-week extension to provide any documentation or submissions to support their position. OMB further advised that we would continue consideration of the matter based on the information before it and, where no submissions were received, may exercise any further powers or take any additional steps available under the Act.

[15] On 16 June 2026, the Applicant was advised that as submissions from the JLSC were submitted and under review, we would consider whether an expedited hearing may be appropriate to determine the preliminary issue of jurisdiction identified therein.

[16] On 2 July 2026, the OMB issued the notice of hearing to both parties.

B. ISSUE UNDER REVIEW

[21] The issue for determination in this appeal is:

a) Whether the Judicial and Legal Services Commission (JLSC) is a public authority as defined under sections 2 and 3 of the FOI Act.

b) Whether records relating to the appointment of the Chief Justice fall within the scope of the FOI Act.

C. BURDEN OF PROOF

[22] Under section 43(2) of the FOI Act, without prejudice to its jurisdictional objection, the JLSC was invited to provide evidence supporting its position. Where the JLSC relies on more than one exemption, it must fully justify each ground.

D. CONSIDERATION OF ISSUES

a) Is the Judicial and Legal Services Commission (JLSC) subject to the FOI Act as a public authority?

[23] During the hearing stage of the appeal, the JLSC, through legal counsel, submitted that it is not a "public authority" within the meaning of section 2 of the FOI Act and is therefore not subject to the Act. The JLSC relied on the definition of "public authority" in section 2 of the FOI Act, which provides that:

> *""**public authority**" means —*
> *(a) a ministry, portfolio or department;*
> *(b) a statutory body or authority, whether incorporated or not;*
> *(c) a government company which —*
> *(i) is wholly owned by the Government or in which the Government holds more than fifty percent of the shares; or*
>
> *(ii) is specified in an Order under section 3(2); or*
> *(d) any other body or organisation specified in an Order under section 3(2)."*

[24] The JLSC submitted that the relevant phrase in section 2 is *"statutory body or authority, whether incorporated or not"*, and that this expression must be interpreted in the factual and statutory context of the Cayman Islands' public governance framework. It argued that the phrase principally targets statutory authorities and government companies, commonly referred to as SAGCs, rather than constitutional commissions such as the JLSC. The JLSC submitted that SAGCs are legally separate entities established to deliver public services under statutory governance frameworks that generally include ministerial oversight, reporting requirements and other executive accountability mechanisms, notwithstanding their separate legal status.

[25] The Applicant submits that the refusal of access is founded upon two propositions: the first is that the JLSC is not a "public authority" within the meaning of the FOI Act, to which the Applicant disagrees.

[26] The Applicant relies on sections 2, 3, 6 and 7 of the FOI Act. In particular, the Applicant notes that section 6 creates a general right of access to records held by public authorities and that section 7(1) requires a person seeking access to a record to apply to the public authority holding that record. The Applicant further relies upon the definition of "public authority" in section 2, which includes, among other entities, "a statutory body or authority, whether incorporated or not". The Applicant submits that the JLSC falls squarely within this definition and constitutes a statutory body or authority for the purposes of the Act.

[27] The Applicant outlines that the JLSC's second ground for refusal is that because the JLSC exercises functions conferred by the Constitution, records relating to those functions fall outside the scope of the Act. The Applicant contends that both suggestions are legally erroneous. The Applicant rejects the proposition that the expression *"statutory body or authority"* should be interpreted narrowly so as to exclude bodies established under the Constitution. In the Applicant's view, the Constitution is itself a source of law, and constitutional bodies are no less public in nature than the bodies established under ordinary legislation. The Applicant argues that an interpretation excluding constitutional commissions would be inconsistent with both the wording and purpose of the FOI Act and would improperly restrict the broad access rights established by the Legislature.

[28] The JLSC also relied on the wording of section 105 of the Constitution. It submitted that the JLSC does not operate as a statutory body or authority in the ordinary sense, but "consists of" named constitutional office holders and appointed members who meet to perform limited constitutional functions. On that basis, the JLSC submitted that the statutory language in section 2 of the FOI Act, read in context, does not extend to the JLSC.

[29] The Applicant further submits that section 3 of the FOI Act supports this interpretation. The Applicant notes that section 3(1) applies the Act generally to public authorities and records, while section 3(5) expressly identifies the institutions, functions and categories of records which are excluded from the FOI Act's operation. The Applicant emphasises that the exclusions include, among other matters, the judicial functions of courts and judicial officers, specified security and intelligence services, certain records of the UK Government, the Cayman Islands Stock Exchange and records obtained or created by the Ombudsman in the exercise of its functions. The Applicant notes that the JLSC is not expressly identified among those exclusions and that no Order has been made by Cabinet under section 3 excluding the JLSC from the application of the Act.

[30] First, in response to the parties' submissions, I note that section 3(2) of the FOI Act provides a mechanism by which Cabinet may, after consulting the body or organisation concerned, declare by Order that the FOI Act applies to additional bodies or organisations. In particular, section 3(2)(b) and (c) permit Cabinet to declare that the FOI Act applies to:

"(b) any other body or organisation which provides services of a public nature which are essential to the welfare of the Caymanian society, or to such aspects of their operations as may be specified in the Order; and

(c) any other body or organisation which receives government appropriations on a regular basis."

[31] No such Order has been identified in relation to the JLSC. This is relevant because, if the JLSC does not already fall within the definition of "public authority" in section 3(2), then the Act could not apply to it on that basis. The absence of such an Order therefore supports the conclusion that the JLSC has not been separately brought within the scope of the Act by Cabinet. However, it does not resolve the issue on its own. The central question remains whether the JLSC is already captured by section 2, particularly by the phrase " a statutory body or authority, whether incorporated or not."

[32] In support of this submission, the Applicant relies on the interpretive maxim *expressio unius est exclusio alterius,* meaning that the express mention of one thing may imply the exclusion of another. The Applicant submits that where the Legislature has expressly identified the bodies, functions, or records excluded from the FOI Act, it should not ordinarily be inferred that further exclusions were intended but left unstated. Accordingly, the Applicant argues that the absence of any express exclusion for the JLSC is indicative of a legislative intention that the JLSC remain subject to the Act.

[33] I accept that the Applicant's reliance on *expressio unius est exclusio alterius* is relevant to the interpretation of section 3(5) of the FOI Act. Section 3(5) expressly identifies certain institutions, functions and categories of records excluded from the Act. The fact that the JLSC is not expressly identified among those exclusions may support the Applicant's submission that the legislature did not intend to exclude the JLSC by implication. However, section 3(5) is an exclusionary provision; it does not itself determine whether a body is a public authority. The threshold question remains whether the JLSC falls within the definition of "public authority" in section 2. If it does not, the absence of an express exclusion in section 3(5) cannot, by itself, bring the JLSC within the scope of the Act.

[34] In support of this interpretation, the JLSC relied on the Public Management and Finance Act (PMFA) and the Public Authorities Act (PAA), as well as Auditor General reports concerning the governance of SAGCs. The JLSC submitted that those materials demonstrate that statutory authorities and government companies form a distinct category of public-sector entity. It noted that such entities are generally established by ordinary legislation, are capable of being funded by Cabinet, and are subject to governance and accountability arrangements that do not apply to the JLSC. The JLSC also relied on the Cayman Islands Government organisational structure, which distinguishes ministries and departments, statutory authorities and government companies, and boards, committees and commissions.

[35] The JLSC submitted that the Public Authorities Act reinforces this distinction. It noted that the Public Authorities Act defines a "public authority" as "a statutory authority or government company" and defines "statutory authority" as an entity established by law to carry out functions capable of being funded, partly or entirely, by money provided by Cabinet, and for

which the Governor or Cabinet has the power to appoint or dismiss the majority of the board or other governing body. The JLSC further relied on section 5 of the Public Authorities Act, which provides that "the purpose of a public authority is to help the Government achieve its policy objectives when those objectives are more effectively accomplished through the use of separate legal entities rather than through the civil service."

[36] The JLSC submitted that it does not fit that statutory model. It argued that it is not a SAGC, is not subject to the Public Management and Finance Act or the Public Authorities Act, is not subject to Auditor General oversight in the manner contemplated for SAGCs, has no board governing its operations, employs no staff, and does not operate as a separate public-service delivery entity. Rather, the JLSC submitted that it is a constitutional commission established under section 105 of the Constitution. It further submitted that it is not created by an Act of the Cayman Islands Parliament or by ordinary United Kingdom legislation, but is convened under the Constitution, which is contained in a United Kingdom Order in Council.

[37] I accept that the words "statutory body or authority" must be read in their statutory and governmental context. The material relied upon by the JLSC demonstrates that SAGCs form a recognised category within the Cayman Islands public sector, with a governance structure, funding, staffing, reporting, and accountability arrangements that are distinct from constitutional commissions. The JLSC itself does not share those features. It is not established as a corporate body, does not operate through a board of directors in the SAGC sense, does not employ staff, and is not subject to the PMFA and PAA.

[38] The Applicant argues that there is nothing in the FOI Act suggesting that the JLSC is exempt merely because it performs functions relating to judicial appointments. According to the Applicant, the JLSC is an administrative body rather than a court and does not exercise judicial functions. The Applicant submits that where the Legislature intended to exclude entities or functions from the Act, it did so expressly. Consequently, the Applicant contends that the JLSC cannot rely upon an implied exemption arising from its constitutional status or subject matter.

[39] The Applicant further submits that constitutional status does not, by itself, place a body outside the FOI regime. The Applicant observes that the Governor's Office is expressly subject to the Act, and the Ministers and other constitutional office holders routinely respond to FOI requests. The Applicant therefore argues that the performance of constitutional functions does not, of itself, confer immunity from the Act's operations.

[40] The JLSC further submitted that the performance of an important public function is not, by itself, sufficient to bring a body within the scope of the FOI Act. It argued that if the performance of a public function were determinative, the statutory mechanism for extending the Act to additional bodies would be unnecessary. In particular, the JLSC relied on the provision permitting Cabinet to specify additional bodies or organisations by Order and argued that such a mechanism would serve no meaningful purpose if every body performing a public function were already subject to the Act.

[41] The JLSC also submitted that applying the FOI Act to it would be inconsistent with section 105(6) of the Constitution. It relied on the constitutional protection that, in the exercise of their functions, the Commission and its members "shall not be subject to the direction or control of any person or authority". The JLSC submitted that this provision protects the independence of the Commission in relation to judicial and legal appointments and prevents another authority from directing how it deals with records connected with those functions.

[42] The JLSC argued that the FOI Act's review and enforcement mechanisms would place the JLSC under the direction or control of the Ombudsman in a manner inconsistent with section 105(6) of the Constitution. The JLSC relied in particular on the Ombudsman's powers on appeal, including the power to require a public authority to take steps necessary to comply with its obligations under the Act. It also referred to the Ombudsman's powers to require publication of information, make recommendations about records management, and the enforcement provisions under which failure to comply with an order may be treated as contempt of court. The JLSC submitted that, if the FOI Act applied, those powers would allow the Ombudsman to direct how the JLSC handles and discloses records connected with its constitutional functions.

[43] I do not accept that consideration of a records request by a public authority that administers records for the JLSC necessarily infringes section 105(6) of the Constitution. Section 105(6) protects the independence of the Commission in the exercise of its constitutional appointment functions. The present appeal does not concern the substance of any appointment decision nor seek to direct the Commission as to how those functions should be exercised. Rather, it concerns the operation of a statutory access regime applicable to public authorities.

[44] The distinction is important. A requirement that a public authority consider whether records are disclosable under the FOI Act does not equate to directing or controlling the Commission in the exercise of its constitutional responsibilities. Any disclosure obligations arise from the Act itself and remain subject to the exemptions enacted by Parliament.

[45] The JLSC further submitted that several operational provisions of the FOI Act are incompatible with its constitutional structure. It pointed to the requirement for internal review to be conducted by a responsible Minister, Chief Officer, or principal officer of the public authority, and submitted that those descriptions do not apply to the JLSC or its Chair. It also relied on the Act's requirement that every public authority appoint an information manager, submitting that the JLSC has no employees and no statutory authority to employ staff for that purpose. The JLSC also argued that provisions permitting referral to an appropriate disciplinary authority are inapplicable to the JLSC because there is no such disciplinary authority in relation to the Commission.

[46] I have considered the Applicant's submission that the JLSC should fall within the FOI Act because it performs important public functions, exercises authority in relation to judicial appointments, and is not expressly excluded from the Act. I accept that those submissions carry force, particularly given the broad purpose of the FOI Act and the public interest in transparency around constitutional decision-making. However, the question for determination is not whether the JLSC performs an important public function; it plainly does. The question is whether, accurately interpreted, the JLSC falls within one of the categories of "public authority" selected by the Legislature in section 2 of the FOI Act.

[47] Section 105 of the Constitution establishes the JLSC and sets out its composition and the manner in which its members are appointed. Section 105(6) further provides that, in exercising their functions, the JLSC and its members shall not be subject to the direction or control of any other person or authority. Section 106 of the Constitution then expressly identifies the functions of the JLSC, including its role in judicial and legal appointments. I accept that these provisions are material to the statutory interpretation exercise. They indicate that the JLSC is a constitutionally independent commission created to perform specific appointment functions,

rather than a ministry, portfolio department, statutory authority, government company or other public body operating within the ordinary administrative and accountability framework contemplated by section 2 of the FOI Act.

[48] Having considered the submissions of both parties, I am not satisfied that the JLSC falls within the definition of "public authority" in section 2 of the FOI Act. Although the Applicant is correct that the JLSC performs important public functions and that transparency in judicial appointments is a matter of legitimate public interest, those considered do not, without more, bring the JLSC within the scope of the Act. The language of section 2, read in its statutory and governmental context, does not support treating the JLSC as a "statutory body or authority" merely because it performs constitutional functions. The JLSC is not a ministry, portfolio, or department; it is not a statutory authority or government company within the SAGC framework; and no Order has been made under section 3(2) applying the FOI Act to it.

[49] **I therefore find that the JLSC itself is not a public authority for the purposes of the FOI Act.**

[50] The above conclusion is limited to the status of the JLSC as a body. It does not determine the separate question of whether records relating to the appointment of the Chief Justice fall within the scope of the FOI Act where such records are held, administered, or controlled by a public authority.

b) Whether records relating to the appointment of the Chief Justice fall within the scope of the FOI Act.

[51] The JLSC submitted that the request concerned JLSC records, not Commissions Secretariat records. Its position was that the Commissions Secretariat provides administrative support to the JLSC, but that any responsive records relating to the appointment of the Chief Justice would remain records of the JLSC because they relate to the JLSC's constitutional functions and activities. The JLSC submitted that the mere fact that records may be physically held by the Commissions Secretariat for administrative purposes does not convert them into records of the Secretariat or bring them within the scope of the FOI Act.

[52] The JLSC's position therefore treats the status of the records as following the constitutional status of the JLSC. On that view, if the records relate to the JLSC's constitutional appointment functions, they remain outside the FOI Act even if they are physically held or administered by the Commissions Secretariat.

[53] The JLSC further submitted in the alternative that, if the FOI Act applies, records of this nature would be exempt under sections 20 and 23, and that disclosure would not be in the public interest under section 26. I note those submissions, but they are analytically distinct from the threshold question of whether the records fall within the scope of the FOI Act. Exemptions will only arise if the Act applies.

[54] The Applicant additionally submits that there is a broader public interest in the understanding of the JLSC's operations, including its accountability mechanisms, complaint-handling procedures, and judicial appointment processes. According to the Applicant, disclosure of the requested records would assist the public in assessing whether those processes have been conducted fairly, lawfully and appropriately, thereby promoting public confidence in both the JLSC and the administration of justice generally.

[55] In the alternative, the Applicant submits that even if the exemptions in section 20(1)(b) or 20(1)(d) of the FOI Act were engaged, disclosure would nevertheless be required pursuant to the public interest balancing exercise under section 26 of the Act. The Applicant maintains that disclosure would advance transparency, accountability, public understanding of government and constitutional decision-making, and scrutiny of the judicial appointments process. The Applicant further argues that any legitimate concerns regarding personal privacy or confidentiality could be adequately addressed through redaction rather than complete refusal of access.

[56] The finding that the JLSC itself is not a public authority does not automatically determine whether records relating to the appointment of the Chief Justice fall outside the FOI Act. The Act is concerned with access to records held by public authorities. Sections 6 and 7 therefore require attention to the public authority holding the record, not only to the body whose functions are reflected in the record.

[57] The focus of the FOI Act is not solely the institutional status of the body to which a record relates, but whether the record is held by a public authority for the purposes of the Act. The statutory right of access under sections 6 and 7 is exercised against the public authority that holds the record. Accordingly, a distinction must be drawn between the authorship or provenance of a record and the question of whether a public authority holds, administers, controls or has access to that record as part of its official functions.

[58] In the present case, the evidence before me demonstrates that the Commissions Secretariat acts as the administrative support office for the Judicial and Legal Services Commission and is itself recognised as a public authority for the purposes of the FOI Act. The Secretariat receives, manages and stores records generated in support of the Commission's functions. While such records may relate to the constitutional functions of the JLSC, this does not automatically place them beyond the reach of the FOI Act where they are maintained through a public authority.

[59] To conclude otherwise would create a category of records that could be physically held and administered by a public authority, yet remain entirely immune from the statutory access regime solely because of the identity of the body to which they relate. Neither section 2 nor section 3 of the FOI Act expressly creates such an exclusion. Had the Legislature intended records administered through a public authority to be exempt solely because they relate to a constitutional commission, it could have expressly provided for such an exclusion as it did elsewhere in section 3(5).

[60] I therefore find that the relevant question is not whether the records originate from the JLSC, but whether the records are held, administered, controlled or accessible through a public authority for the purposes of sections 6 and 7 of the Act. Where that threshold is satisfied, the records fall within the statutory scheme and any claim that they should not be disclosed must be assessed through the exemptions provided by the Act rather than by excluding the records from the Act altogether.

[61] I therefore distinguish between the constitutional status of the JLSC and the question of whether records connected with its work are held, administered, controlled or accessible through a public authority. A record may relate to the functions of a body that is not itself a public authority, but that does not automatically place the record outside the remit of the FOI Act. The fact that a record is described as a "JLSC record" is not determinative. Where the request has been transferred to a public authority, and where that public authority provides administrative support to the body concerned, the authority must clearly assess and explain whether it holds, controls, administers, or has access to responsive records for the purposes of the Act.

[62] In considering what records are "held" for the purposes of the FOI Act. I note that a record may be regarded as held by a public authority where it was created or obtained by that public authority in the exercise of its official functions; this does not negate whether the records are physical or digital. The fact that a record relates to the functions of another body does not necessarily mean that it is not held by the public authority for the purpose of the FOI Act.

[63] In reaching this conclusion, I do not find it necessary to determine ownership of the records as between the JLSC and the Commissions Secretariat. The FOI Act is concerned with whether records are held by a public authority, not with legal ownership in the property sense. Records may remain records of the JLSC in a constitutional or administrative sense whilst also being held by a public authority for the purposes of the Act. Those concepts are not mutually exclusive.

[64] The evidence before me does not establish that the Commissions Secretariat is merely an external storage facility with no ability to access, manage or administer the records. Rather, the Secretariat's acknowledged role in providing administrative support necessarily entails a degree of record management sufficient to require proper consideration of the Applicant's request under the FOI Act.

[65] **In my view, records relating to the appointment of the Chief Justice fall within the scope of the FOI Act where they are held, administered, controlled, or accessible through a public authority for the purposes of the FOI Act.**

Procedural Concerns

[66] Beyond the substantive jurisdictional issue, I must address procedural matters arising from how the request was handled. These matters concern the partial transfer of the request from the Governor's Office to the Commission Secretariat, the Secretariat's role in holding records for the JLSC, the identity of the decision-maker, and the extent to which the Secretariat considered its own obligations under the FOI Act.

[67] The Applicant's original request was made to the Governor's Office. On 20 January 2026, the Governor's Office transferred items 1 to 6 of the request to the Commissions Secretariat on the basis that those records are more closely related to the functions of that public authority. That transfer is significant because it indicates that the Governor's Office considered the Commissions Secretariat to be the appropriate public authority to process those parts of the request, at least insofar as the records were held or administered through that office.

[68] The Cayman Islands National Archive (CINA) lists the Commissions Secretariat as a public authority and as the entity responsible for managing records for FOI purposes. The Secretariat also provides administrative and research support to a number of constitutional and statutory commissions, including the JLSC. The significance of the transfer therefore extends beyond whether the JLSC itself is a public authority under the FOI Act. It also raises the distinct question of whether records that are physically held, administered, or accessible through the Commissions Secretariat are held by a public authority for the purposes of the Act, even where the records relate to the functions of a commission supported by the Secretariat.

[69] Against that background, the IM's response created uncertainty as to both the identity of the decision-maker and the basis on which the transferred request was processed. The correspondence stated that the JLSC, rather than the Commissions Secretariat, had determined the request, and further asserted that any responsive records, if held, would be records of the JLSC and not records held by the Secretariat in its own right. In my view, this gives rise to a procedural concern. Once the request was transferred to the Commissions Secretariat as the relevant public authority, the Secretariat was required to make clear whether it had independently considered its own obligations under the FOI Act, including whether it held, controlled, administered, or had access to responsive records for FOI purposes.

[70] The JLSC declined to make substantive submissions on whether responsive records were held or whether reasonable searches had been undertaken in accordance with the FOI Regulations. It maintained that, because the FOI Act does not apply to the JLSC, it was not appropriate or necessary for it to respond to those issues. In my view, that position reinforces the procedural concern arising from the handling of the transferred request. Once the request had been transferred to the Commissions Secretariat as the relevant public authority, it was necessary to clearly address whether the Secretariat, in its own capacity, held, controlled, administered, or had access to responsive records for FOI purposes.

[71] I have also considered the relevance of Ombudsman Hearing Decision 76-201900087[2], which concerned the Commissions Secretariat and records connected to the Civil Service Appeal Commission (CSAC). I recognise that CSAC and the JLSC are different bodies, with different legal origins, functions and constitutional significance. That decision cannot therefore be treated as determinative of whether the JLSC itself is a public authority under the FOI Act, or whether records relating to judicial appointments fall within the Act. However, it remains relevant to the narrower procedural issue of how the Commission Secretariat's custody, administration, or access to records held for a commission should be treated for FOI purposes. It supports the need for clarity as to whether the Secretariat was merely facilitating access to another body's records, or whether its role engaged its own statutory responsibilities as a public authority.

[72] The handling of the request also raises concerns about the Commissions Secretariat's understanding and application of FOI procedures. Those concerns include the delay in providing a substantive response, the need for repeated clarification of the legal basis for refusal, and the apparent uncertainty regarding the distinction between records held by the Secretariat and records said to be controlled by the JLSC. These concerns are addressed institutionally as they demonstrate the importance of ensuring that Information Managers and supporting public authorities have a clear understanding of their obligations concerning transfers, searches, record-holding, control, statutory timeframes, and the provision of legally sufficient reasons for refusal.

[2] Hearing 76-201900087 - Hearing_Decision_76-201900087.pdf

[73] The concern is not simply that the requested records may relate to the JLSC's constitutional functions. The concern is that the request was transferred to the Commissions Secretariat as the public authority apparently holding or administering the relevant records, but the response was framed as a decision of the JLSC rather than a decision of the Secretariat under the FOI Act. This distinction is material because, where a public authority holds records for another body, the authority must still clearly identify the legal basis on which it says the records are outside the scope of the Act or are otherwise not held for FOI purposes.

E. FINDINGS AND DECISION

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

- For the purposes of this appeal, I am not satisfied that the Applicant has established that the JLSC falls within the definition of public authority under section 2 of the FOI Act.

- Records relating to the appointment of the Chief Justice, once held, administered, controlled or accessible through a public authority, are subject to the provisions of the FOI Act and fall within its scope.

- On the evidence before me, the Commissions Secretariat is the public authority most closely connected with the administration and management of records potentially responsive to the request. The request was transferred to the Secretariat by the Governor's Office on the basis that the records more closely related to its functions and the Secretariat has accepted that it provides administrative support to the JLSC. In those circumstances, I am satisfied that the Secretariat is the appropriate public authority to conduct searches, determine whether responsive records are held for the purposes of the FOI Act and, where records are identified, apply any exemptions that may be relevant.

Decision: The appeal is upheld to the extent that the request was not considered by the appropriate public authority. **Accordingly, I direct the Commissions Secretariat to process the request in accordance with the time prescribed by the Act, calculated from the date of this decision.**



Daiana Sipos
Acting Ombudsman