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29 September 2026

The Ombudsman
5th Floor,
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Grand Cayman

By email to: info@ombudsman.ky & sharon.roulstone@ombudsman.ky & daiana.sipos@ombudsman.ky

Dear Ombudsman,

**Proposed Applicant for Judicial Review**: The Judicial and Legal Services Commission ("JLSC")

**Details of matter being challenged**

1. This is a letter sent in accordance with the Cayman Islands pre-action protocol for judicial review (PD No. 4 of 2013). It concerns the decision dated 15 September 2026 concerning a freedom of information request made on 17 January 2026 for records concerning the appointment of the Chief Justice (the "Decision"). The request was initially made to the Governor's Office and was transferred to the Judicial and Legal Services Commission and dealt with by the Commissions Secretariat.

2. The Decision was taken under section 43 of the Freedom of Information Act (2021 revision) ("FOI Act") in the form of a preliminary determination on an appeal to the Ombudsman. Section 47 of the FOI Act states that the relevant public or private body may, within 45 calendar days, apply to the Grand Court for leave to seek judicial review.

3. The decision of the Ombudsman was that (a) the JLSC is not a public authority to which the Freedom of Information Act applies, and (b) the Commissions Secretariat is a public authority and the public authority most closely related to the request for documents from the JLSC.

4. Accordingly, the Ombudsman directed the Commissions Secretariat to process the freedom of information request in accordance with the time prescribed by the Act, calculated from the date of the decision.

5. The Decision was unlawful, in summary because (1) the status of the Commissions Secretariat was not one of the issues identified to the JLSC as being determined by the Ombudsman, and (2) the Ombudsman was in any event wrong in law in concluding that the Commissions Secretariat is subject to the FOI Act in respect of records held as agent of the JLSC.

**Interested Parties**

6. The applicant to the Ombudsman, Mr Bilika Simamba, will be named as an interested party to the judicial review proceedings and has been copied to this correspondence.

**Factual Context**

7. As noted above, a freedom of information request concerning records relating to the appointment of the Chief Justice was made to the Governor's Office. It was transferred to the JLSC.

8. On 17 April 2026 the Commissions Secretariat, through its Information Manager, Ms Melanie McField, responded to the freedom of information request on behalf of the JLSC, stating that the FOI Act "does not apply to the records described in your request". It was explained that the JLSC is established under the Constitution and the is not within the definition of "public authority" under the FOI Act.

9. The letter went on to state:

> "The Commissions Secretariat provides administrative support to the JLSC. Any records falling within the scope of your request, if held, would be held by the Secretariat solely on behalf of the JLSC and in support of its constitutional functions. Such records are not held by the Secretariat in its own right or in the exercise of executive governmental functions.
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> For the purposes of the Act, a record must be held by a public authority in its capacity as such.
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> Administrative custody of records on behalf of a body that is not subject to the Act does not bring those records within the scope of the Act."

10. The letter notified the applicant of his right of appeal to the Ombudsman. The applicant appealed to the Ombudsman.

11. On 30 April Ms Enya Parchment of the Ombudsman wrote to Ms McField at the Commissions Secretariat stating the Ombudsman's preliminary view that "your organisation" does fall within the scope of public authority under the FOI Act. This was a reference to the determination that the JLSC does not meet the definition under the FOI Act. The organisation

referred to was thus the JLSC (as confirmed subsequently by the Ombudsman). The letter requested that if the JLSC was not a public authority, "please provide detailed legal justification" or confirm that no records are held.

12. On 15 May 2026, Ms Mcfield responded to the 30 April email stating as follows:

> "It has previously been advised that the FOI Act should not be construed in a manner that would bring JLSC records within its scope, as such an interpretation would be inconsistent with constitutional principles and therefore impermissible in law. In particular, such a construction would create a situation in which the Government would have access to, and controlling powers over, confidential information pertaining to the discharge of judicial functions by members of the judiciary, including the power to release such information to the public. Such a result would be fundamentally inconsistent with the constitutional principle of separation of powers and the independence of the judiciary protected under the Constitution."

13. The email also stated in respect of the Commissions Secretariat:

> "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.
>
> The records sought by the applicant concern the functions and activities of the JLSC.
>
> …
>
> Accordingly, any records potentially responsive to the request would be records of the JLSC that may be physically held by the Secretariat solely on the JLSC's behalf in the course of providing administrative support services."

14. On 19 May 2026, the Ombudsman wrote to Ms Mcfield stating "the Office maintains its preliminary view that the Judicial and Legal Services Commission ('JLSC') is properly to be regarded as a "public authority"" under the FOI Act." Detailed reasoning for this view was provided and it was stated that any public body will be treated as a public body by the Ombudsman unless exempted by Cabinet.

15. The email also included the following statement:

> "Further, the fact that records may be physically held by the Commissions' Secretariat does not displace the application of the Act where those records relate to the exercise of public functions.

> Section 33 of the FOI Act contemplates circumstances in which a public authority may assert that records are not held; however, this provision must be applied in a manner that is consistent with the overarching purpose of the Act, including the promotion of transparency and accountability in public administration."

16. The meaning of this statement was that if records are held for the JLSC by another body that does not mean that the JLSC can state that it does not have the records. At this stage, the Ombudsman was not suggesting that the Commissions Secretariat was subject to the FOI Act in respect of records of the JLSC that it holds as agent for the JLSC.

17. On 26 May 2026, Mr Mcfield responded to Ms Parchment providing further reasoning for why the JLSC is not subject to FOI Act and raising section 105(6) of the Constitution.

18. On 2 June, Ms Parchment responded again stating, "this Office maintains its preliminary view that the JLSC falls within the definition of a "public authority" under the Freedom of Information Act (2021Revision) ('FOI Act')". The Ombudsman provided a further opportunity for legal submissions to be made on the point.

19. On 5 June Ms Parchment wrote further:

> "Having considered the circumstances, the Ombudsman's Office is prepared to grant a one-week extension, rather than the 30 days requested, to enable the JLSC to provide any documentation or submissions you consider necessary in support of your position.
> In particular:
>
> 1. If your authority maintains that it is not a "public authority" for the purposes of the Freedom of Information Act (2021 Revision), please provide a detailed written legal justification, including reference to the relevant statutory provisions, legislative authority, or other legal basis upon which that position is founded.
>
> 2. If responsive records are held, please provide copies of those records to this Office. Alternatively, if access is being refused in whole or in part, please identify the specific exemption(s) relied upon under Part III of the Freedom of Information Act (2021 Revision) and provide submissions in support of the application of those exemption(s).
>
> 3. If your position is that no responsive records are held, please complete and return the attached Reasonable Search Efforts Template, setting out the searches undertaken, the locations searched, and the basis upon which you concluded that no responsive records exist."

20. On 2 July 2026 the Ombudsman issued a notice of written hearing. It stated that the Ombudsman will "consider and decide" the following points:

i. Whether the JLSC is a 'public authority' within the meaning of section 2 of the FOI Act.

ii. Whether the JLSC has established a lawful basis for failure to process the request on the grounds that the FOI Act does not apply to them.

iii. Whether the JLSC has identified any statutory exemption or other legal basis permitting the withholding of responsive records.

iv. Whether responsive records are held by the JLSC.

v. If responsive records are not held, whether the JLSC has undertaken and documented reasonable search efforts consistent with Regulation 6 of the FOI Regulations.

21. The Ombudsman provided its Practice and Procedures (2022 update), which state: "A decision of the Ombudsman is binding and the relevant public or private body has 45 calendar days to apply to the Grand Court for a judicial review."

22. It is evident from the list of issues to be determined by the Ombudsman and from the background context that the Ombudsman was to consider whether the JLSC was a public authority under the FOI Act and not the status of the Commissions Secretariat.

23. The Appellant and the JLSC filed submissions on the issues identified by the Ombudsman.

24. On 15 September 2026 the (acting) Ombudsman issued the Decision. It states that:

"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."

25. The Ombudsman found that the JSLC is not a public authority under FOI Act but that records of the JSLC which are "held, administered, controlled or accessible through a public authority" fall within "the scope of FOI Act". The Ombudsman further found that the Commissions Secretariat is the relevant public authority through which records responsible to the request may be held, in accordance with the definition of "hold" in section 2 of the FOI Act.

26. She stated in its Findings and Conclusions:

> "the Commissions Secretariat is the public authority most closely connected with the administration and management of records potentially responsive to the request.
>
> 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."

27. The Ombudsman concluded that,

> "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**."

**Grounnds for Judicial Review/The issues**

28. The Ombudsman's decision was taken under section 43 of the FOI Act in the form of a preliminary determination on an appeal. Section 47 of the FOI Act states that the relevant public or private body may, within 45 calendar days, apply to the Grand Court for leave to seek judicial review.

29. The decision of the Ombudsman that the JLSC is not a public authority under the FOI Act is correct and in accordance with the JLSC's submissions to the Ombudsman. However, the Ombudsman's further finding that the records of the JLSC are within the "scope" of FOI Act because held by the Commissions Secretariat is unlawful as was the direction to the Commissions Secretariat to process the FOI Act request for records of the JLSC.

30. The decision of the Ombudsman that the records of the JLSC are subject to the FOI Act when held by the Commissions Secretariat essentially undermines that finding, since all of the records of the JLSC are likely to be held by the Commissions Secretariat, since its function is to provide administrative support to the JLSC which does not itself have any employees or secretariat.

**(1) Unfairness**

31. The question of whether the records of the JLSC were within the "scope" of FOI Act when held by the Commissions Secretariat was not raised in the notice of hearing, the JLSC was not given fair notice of the issue, and therefore the status of the Commissions Secretariat was not addressed by the JLSC (or it appears the Appellant). The second of the two issues that the Ombudsman's decision states fell to be determined was not communicated to the parties. The

issue that fell to be determined was whether the Ombudsman was right in her preliminary view that the JSLC was a public authority under the Act.

32. We also note that the Ombudsman also failed to consider the issues of exemption which were raised in the notice of hearing.

33. Since the Ombudsman's findings went beyond those communicated to the parties, the decision was procedurally unfair.

**(2) Error of law**

34. The Ombudsman states that the Commissions Secretariat is a public authority under FOI Act but does not explain the basis for that conclusion.

35. The Commissions Secretariat was established in 2010 under the Office of the Deputy Governor to provide support to the independent entities established by the 2009 Constitution as Institutions Supporting Democracy (Judicial and Legal Services Commission, Constitutional Commission, Human Rights Commission, Commission for Standards in Public Life). Since that time, it has also provided support to the Anti-Corruption Commission and the Civil Service Appeals Commission. The Commissions Secretariat maintains the independence of the Commissions it supports.

36. The Commissions Secretariat was not established by primary or secondary legislation, but by executive arrangements.

37. The Ombudsman's decision that the Commissions Secretariat is subject to the FOI Act is wrong in law.

38. First, the FOI Act does not apply to the Commissions Secretariat at all.

    a. The Commissions Secretariat is established under the Office of Deputy Governor. The Office of Deputy Governor is established by section 34 of the Constitution Order 2009, a UK statutory instrument and not a Cayman Islands statute or an Act of the Westminster parliament. It is thus not a "statute" within the meaning of the FOI Act. Whilst the authority of the Office of Deputy Governor is subject to that of the Governor, it is a distinct office under the Constitution. The Commissions Secretariat is itself not equivalent to the Office of the Deputy Governor, but established under its auspices.

    b. It follows that the Commissions Secretariat is not public authority within the meaning of the FOI Act. It is not a "ministry, portfolio or department", nor a "statutory body or authority" (section 2(a) and (b) of the FOI Act). It is also not a government company

nor an organisation specified by Order (sections 2(c) and (d)). As such, FOI Act does not apply to the Commissions Secretariat as a public authority.

c. FOI Act applies to the Governor's Office (s.3(1)(aa)), but the Commissions Secretariat is not part of the Governor's Office.

39. Second, in any event, the nature of the services provided by the Commissions Secretariat is administrative support to Commissions which do not have employees or secretariats of their own. In this capacity, officials of the Secretariat act as agents of those entities, hold record on behalf of those entities, and ensure their independence from government. The relevant legal character of officials of the Commissions Secretariat acting in these ways is that of the Commission in respect of which it is acting as agent, not as a separate public authority. Therefore, the non-applicability of FOI Act to the principal body – here the JLSC – means that the FOI Act also does not apply to the Commissions Secretariat acting as its agent.

40. The Commissions Secretariat has stated that it accepts FOI Act applies to it other than when it is acting in right of one of the bodies it supports. In fact, for the reasons set out above, FOI Act does not apply to the Commissions Secretariat. The Commissions Secretariat voluntarily acts in accordance with FOI Act as if the legislation applied to it, other than when it is acting in right of a body such as the JLSC to which the FOI Act does not apply. However, even if that is wrong (which it is not), the FOI Act does not apply to the Commissions Secretariat when it is acting as an agent for a body that is not subject to the FOI Act.

41. Thirdly, information and documents held by the Commissions Secretariat on behalf of Commissions to which the FOI Act does not apply, such as the JLSC, are not "records" and therefore the Act does not apply also for this reason (s.3(1)(b)). The definition of records is very broad, applying to information held in any form. But it is subject to the information being "held by a public authority in connection with its functions as such…". The Commissions Secretariat is not a public authority. Moreover, the requirement that records are held "in connection with" a body's functions means that they must relate to those functions, it does not permit disclosure of documents held or generated when a body is acting as agent for another body, here the JLSC.

42. The points set out above are reinforced by the requirements of the Constitution and if those points are wrong, then the FOI Act is unconstitutional, since it allows the Ombudsman to make determinations relating to the handling and disclosure of confidential and other information on the part of the JLSC. That would be contrary to s.105(6) of the Constitution, which provides that in the exercise of its functions, the JLSC and its members shall not be subject to the direction or control of any authority.

43. The FOI Act sets out a range of functions relating to requests for information and in exercising such functions, the JLSC would be subject to the direction and control of the Ombudsman, since the Ombudsman would be able to direct its agent which is under the control and authority of the JLSC, to disclose records generated in that capacity. The Ombudsman is authorised to hear, investigate and rule on appeals under the FOI Act. If it allows an appeal, the Ombudsman, may, amongst other things, "*require the public authority to take such steps as may be necessary to bring it into compliance with its obligations under the law*" (s.43(3)(c)). Failure to comply with an order of the Ombudsman can be treated as a contempt of court (s.48).

44. More generally, the Ombudsman has power to decide that a public authority has failed to comply with an obligation under the FOI Act and may require the authority to take steps as may be necessary or expedient to bring it into compliance, including by ordering it to publish information, or recommend changing practices about keeping, management and destruction of records (s.44(1), (2)).

45. Therefore, the FOI Act cannot apply to the Commissions Secretariat in respect of documents generated or obtained whilst it was acting as agent for the JLSC because it would mean that the JLSC came under the direction and control of the Ombudsman in relation to practices concerned with handling and disclose of its records.

**Details of matters the Ombudsman is required to take**

46. For these reasons, the Decision is unlawful. Please confirm that (a) the Ombudsman withdraws its Decision, and (b) confirms that the records of the JLSC held by the Commissions Secretariat are not subject to the FOI Act. Please also confirm that the Ombudsman will not treat the period for responding to a request pursuant to section 7(4) of the FOI Act as running until this matter has been resolved.

47. Given the restricted time period in which any application for judicial review must be made, please respond to this letter as soon as possible and in any event within 7 calendar days.

Yours sincerely,

Attorney General's Chambers

Attorney General's Chambers

Cc: Bilika Simamba, by email to: bhsimamba@gmail.com