Opening Doors to Information
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This report has been produced in-house with design and layout by Pasha Delahunty, Registrar of Hearings & Assistant to the Information Commissioner

APRIL 2010
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## 2009 Annual Report

Presented by the Information Commissioner, Jennifer P. Dilbert MBE, JP, to the Legislative Assembly of the Cayman Islands pursuant to section 40 of the Freedom of Information Law, 2007
Role of the Information Commissioner

Section 39 of the *Freedom of Information Law, 2007*, sets out the role of the Information Commissioner. In addition to the powers and responsibilities provided for in the Law, the Commissioner may —

a. hear, investigate and rule on appeals filed under this Law;
b. monitor and report on the compliance by public authorities with their obligations under this Law;
c. make recommendations for reform both of a general nature and directed at specific public bodies;
d. refer to the appropriate authorities cases where it appears that a criminal offence has been committed; and
e. publicise the requirements of this Law and the rights of individuals under it.

The Information Commissioner
& Staff of the ICO - 2009
The objects of the Freedom of Information Law, 2007 are to reinforce and give further effect to certain fundamental principles underlying the system of constitutional democracy, namely —

(a) Government accountability;
(b) transparency; and
(c) public participation in national decision-making

by granting to the public a general right of access to records held by the public authorities, subject to exemptions which balance that right against the public interest in exempting from disclosure governmental, commercial or personal information.

‘Glass Houses’ are transparent. A transparent government is an accountable government.

The Information Commissioner’s Office (ICO) promotes access rights to Government records and monitors the compliance of public authorities with the Freedom of Information Law, 2007 (Law).

Successive Government’s have demonstrated a commitment to Freedom of Information (FOI) by passing appropriate legislation and FOI is also enshrined in the Cayman Islands Constitution.

The ICO is working to ensure that information is available and the public understands how to access it.

We are very proud to launch the Information Commissioner’s Office logo along with our first Annual Report.

The ICO has been using the Cayman Islands crest since opening its offices in April 2009. However, we recognize that it is important to assert the independence of the Office and one way to do so is with our own individual branding.

The ICO’s logo is simple, effective and unique. We incorporated our signature shades of blue, orange and yellow which also correlate to the sea, sun and sand, elements of these beautiful Islands. You will also note that inside the ‘O’ of the abbreviation is a key-hole that helps to illustrate our tag line and motto... “Opening Doors to Information”
Information Commissioner’s Foreword

I have now completed one year as Cayman's first Information Commissioner, having taken up this position on 5 January, 2009, the day that the Freedom of Information Law, 2007 (FOI Law) came into effect. This first year has not been without its challenges, but I am happy to report that some of these difficulties have now been overcome and we are well placed to continue to enshrine Freedom of Information within the way of life of the people of the Cayman Islands.

Freedom of Information is critical to a well-functioning democracy. The FOI Law of the Cayman Islands is based on the principle that the Government should rarely, and only in compelling circumstances, possess more information than citizens possess. This process, however, commences only when a person actually makes a request and uses the Law to hold Government accountable to it. For the process to be successful, public authorities must uphold their obligations under the Law, and respond to requests for records in a timely, helpful and legal manner. If an applicant is not satisfied with the way a request is being handled, they may appeal to my office which seeks to ensure that the Law is being properly applied.

According to Government records there were 822 FOI requests made by the public during 2009. Of the 678 closed requests as at 31 December 2009, 337 applicants were granted full access to the records they sought. This office received 26 appeals from requestors who were unsatisfied with the results of their request. I can only speculate as to why such a low number decided to take their request to the next level. However, my office is now charged with publicizing the Law and people’s rights of access, and throughout the year we have held many events to try to educate the public and promote the Law. I should take this opportunity to let the public know that if they want this Law to be effective and bring about positive change in the Cayman Islands, then they must learn about the Law, and use the system to its full potential.

The FOI Law takes away the discretion of Government to determine what information, if any, they choose to provide, when they will provide it, and to whom. It replaces this discretion with a set of rules that apply when responding to a FOI request. In order for this system to work properly there therefore has to be “buy-in” from senior government officials. In several cases this year I have found such commitment from various authorities to be lacking. There needs to be a stronger push to proactively publish records, especially when it is in the public interest to release information. The Government has an opportunity to be a shining example of how FOI should work in the Caribbean, if not the world. It would be remiss in not doing so, especially given the resources that it has dedicated to providing this freedom to its people, a freedom enshrined in our new Constitution.

In 2010, there are two important events that must take place in order for this Office and the Law to continue functioning in a manner that effectively supports access to information. Firstly the independence of
The first formal Decision of the Information Commissioner was signed on 30 July 2009.

this office must be firmly entrenched in the FOI Law and the Public Finance and Management Law. Secondly, a review of the Freedom of Information Law, as contemplated by section 58(2), must be conducted and any recommendations for change implemented.

While the Law states that the Information Commissioner is responsible to the Legislative Assembly (LA), reporting lines to the LA have not yet been established. In addition, despite my best efforts, amendments to the Public Finance and Management Law have not yet been made, to therefore allow this Office to control its own budget; control of finances for the ICO remains under the Cabinet Office. This adversely affects the independence of this office, can cause substantial delays in processing payments, and restricts our ability to promote and fully enforce the FOI Law. Meaningful changes in this regard need to be made forthwith.

The ICO has come a long way in its first year, starting with the physical establishment of an Office, hiring of staff and the creation of a set of policies and procedures for its various functions, which will see it into the foreseeable future. An office in Cayman Brac was also set up, to facilitate quarterly visits to promote FOI in the Sister Islands. I am honoured to have taken part in this whole process, and to have had the opportunity to build a diverse and competent team to assist me in this important initiative. I would like to take this opportunity to thank them for their hard work and dedication.

Given budgetary and time constraints, I have not been able to forge as many relationships with my counterparts on the international scene as I would have liked to. However, those that I have met have been extremely helpful and cooperative, especially the Information Commissioners of British Columbia, the UK and Scotland. I look forward to continuing to work with and learn from Information Commissioners worldwide, as well as connecting with my counterparts in the Caribbean to assist in bringing more freedom of information to the region as a whole.

Jennifer P. Dilbert
Information Commissioner
Cayman Islands
**Year at a Glance**

| Jan | The *Freedom of Information Law, 2007* came into effect on 5 January 2009  
Information Commissioner, Jennifer Dilbert took office on 5 January 2009  
The Information Commissioner’s Office (ICO) received its first appeal under the Law |
|-----|---------------------------------------------------------------------|
| Feb | The Information Commissioner attended two seminars hosted by the Privacy & Data Protection, UK entitled FOI Level I (Essential Knowledge) and Level II (Applying the Exemptions)  
The Information Commissioner was formally introduced to the Information Managers at a network meeting hosted by the FOI Unit |
| Mar | Christina Smith commenced work with the ICO as the Office Manager on 9 March 2009  
The ICO moved into its offices on the 2nd floor of Elizabethan Square on 16 March 2009  
The ICO’s Appeal – Policies & Procedures policy document was finalized and published  
The Information Commissioner visited the Office of the Information and Privacy Commissioner (OIPC) for the Province of British Columbia, Canada |
| Apr | Mary Carlson from the OIPC commenced a contract with the ICO as Implementation Advisor  
Gary Cordes took up his post as Deputy Information Commissioner on 14 April 2009  
A presentation on the policies and procedures of the ICO was made to the Information Managers Network on 22 April 2009  
The 1st Quarterly Report and Operational Plan of the ICO was finalized and distributed |
| May | The ICO launched its website on 6 May 2009  
The Deputy Information Commissioner visited the OIPC in British Columbia, Canada |
| Jun | Maria Dupuis from the OIPC spent 10 days at the ICO helping put in place hearing policies and procedures  
The ICO participated in the FOI Unit retreat “Looking Backward, Going Forward” held on 17 June 2009  
The ICO hosted a seminar on Data Protection on 24 June for relevant parties within the Government, led by the Implementation Advisor |
| Jul | Sonji Myles commenced work with the ICO as Intake Analyst on 14 July 2009  
The Information Commissioner issued her first Decision in ICO Hearing 01009 which involved a request for salary information from Government Information Services (GIS)  
Pasha Delahunty commenced work with the ICO as the Registrar of Hearings & Assistant to the Information Commissioner on 30 July 2009 |
<table>
<thead>
<tr>
<th>Date</th>
<th>Event Description</th>
</tr>
</thead>
<tbody>
<tr>
<td>Aug</td>
<td>The ICO staff participated in a series of training sessions with the Implementation Advisor which focused on disseminating &amp; interpreting the FOI Law. Information Commissioner contributed an article about the operation of the FOI Law and role of the ICO which was published in the 4th quarter edition of the ‘Financial Review’</td>
</tr>
<tr>
<td>Sep</td>
<td>Cory Martinson commenced working with the ICO as an Appeals &amp; Policy Analyst on 1 September 2009. The ICO thanked and said goodbye to Implementation Advisor, Mary Carlson, who was instrumental in setting up the ICO and its policies and procedures. The inaugural edition of the ICON (Information Commissioner’s Office Newsletter) was produced, published and distributed. Throughout the month of September, ICO staff were out in the community and schools making presentations and promoting ‘Right to Know’</td>
</tr>
<tr>
<td>Oct</td>
<td>Right to Know (RTK) week was held from 28 September – 3 October. The ICO marked International RTK Day with an in-house access clinic and tea. The ICO made its first official visit to the Sister Islands with an access clinic and several presentations to the community of Cayman Brac. The RTK Fun Run / Walk / Ride-a-thon which was hosted by the FOI Unit and sponsored by the ICO took place during the morning of 3 October 2009. The ICO released a comprehensive document to the media and public outlining the different roles of the Information Commissioner’s Office (ICO) and the Freedom of Information Unit (FOI Unit).</td>
</tr>
<tr>
<td>Nov</td>
<td>The Information Commissioner met with members of the Cabinet on 3 November 2010 to discuss and report on FOI and the ICO. On 5 November 2009, the Public Service Management Law was amended to include the Information Commissioner as a Chief Officer. The ICO returned to Cayman Brac and hosted an access clinic. The Commissioner and Deputy made presentations on FOI to several groups and service clubs. The ICO conducted its first own-investigation which stemmed from the media coverage of an FOI request.</td>
</tr>
<tr>
<td>Dec</td>
<td>The ICO staff attended a retreat at the home of the Deputy Commissioner. The ICO’s analysts attended an investigation workshop from 14 – 17 December entitled “Sharpening your Teeth” which was hosted by the Complaints Commissioner’s Office. The Information Commissioner convened her second Hearing on 14 December 2009. The holiday edition of the ICON and 2nd issue was published and distributed.</td>
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</table>

“Opening Doors to Information”
The Freedom of Information Law, 2007 was brought into effect on 5 January 2009. As of 31 December, a total of 822 requests had been made for the year 2009.

In total, 678 requests have been closed and 72.5% of resolvable applications that have been processed will receive all records requested. After discounting the 34 withdrawn requests and 95 requests where no records were found to exist in relation to the application, 61.4% of the remaining requests were granted fully, 9.3% were already in the public domain, and 1.8% were deferred (i.e. full access will be granted at a defined later date). A further 15.8% were granted in part, meaning some of the information was redacted.

These statistics and the accompanying explanations were taken from the Freedom of Information Unit (FOI Unit) December 2009 - Report on Implementation. The entirety of this report can be found in the document library of their website at www.FOI.gov.ky

“The liberties of people never were, nor will be, secure, when the transactions of their rulers may be concealed from them.”

Patrick Henry
5 June 1788
Information Commissioner’s Office Appeal Statistics

The Information Commissioner’s Office received its first appeal on 22 January 2009. As of 31 December, we had opened 26 appeal files. In July 2009, the Information Commissioner rendered her first Decision.

ICO APPEALS—2009

<table>
<thead>
<tr>
<th>Reason for Appeal</th>
<th>Percentage</th>
</tr>
</thead>
<tbody>
<tr>
<td>1. Withheld – Full (fully withheld records from disclosure)</td>
<td>34%</td>
</tr>
<tr>
<td>2. Refusal (Refused on several grounds to respond to a request)</td>
<td>23%</td>
</tr>
<tr>
<td>3. Withheld – Partial (partially withheld / redacted records from disclosure)</td>
<td>15%</td>
</tr>
<tr>
<td>4. Time Limit (failure to respond to applicant within set timeframe)</td>
<td>12%</td>
</tr>
<tr>
<td>5. Deferred Disclosure (deferred disclosure to a later date)</td>
<td>8%</td>
</tr>
<tr>
<td>6. Reasonable Search (no reasonable search for records conducted)</td>
<td>8%</td>
</tr>
</tbody>
</table>
Policy Development

Appeals Intake

The ICO’s Intake role is critical to the function of the Office. The responsibilities of the role include upholding the dignity, integrity and neutrality of the Office by treating all callers and persons requesting an appeal with respect and professionalism.

As the front line of the ICO, Intake handles:

- receiving all operational related correspondence;
- determining jurisdiction of the Office over a particular matter;
- classifying and opening appeal files; and
- issuing correspondence to parties.

For this purpose, it was necessary to establish Intake Policies and Procedures to make the process of handling requests for information, and for accepting appeals easy, efficient, and consistent.

From the inception of the FOI Law in January 2009, the current Intake Policy and Procedures have gone through several changes such as creating a checklist for determining the ICO’s jurisdiction; defining case types; creating and recording case files; creating form letters for speedy response to persons, and creating a post to specifically handle Intake matters. The Intake Policy and Procedures were complete in August 2009.

As applications for appeals and general correspondence were received, we identified key areas of the Intake role that needed further development.

Sonji Myles
Intake Analyst
Employed 18 July 2009

Sonji brings with him a wealth of varied professional experience. Having worked as the Assistant Manager of Cayman Islands Emergency Communication Centre (911) he is well versed with public administration, emergency management and communications. Previous to that Sonji served as a member of the Royal Cayman Islands Police Service, most recently as a Detective Sergeant in the Criminal Investigations Department. Sonji’s Investigative skills, experience and keen interest in public administration, along with ongoing legal education has provided him with the tools necessary to uphold the ICO’s aims and obligations under the FOI Law.
Mediation Process

After consulting with Freedom of Information practitioners in other jurisdictions, the ICO has adopted an informal mediation process that is used as a first step in all appeals made to the Office. Information Commissioners worldwide have indicated that mediation is an effective and efficient step in the appeals process for all parties concerned and it was with this in mind that the ICO adopted the process. Mediation has been widely accepted and is proving it's value having allowed many appeals to be satisfactorily resolved in a much shorter time and with less cost and resources than a formal hearing may incur.

The mediation process is conducted on a voluntary basis, and seeks to resolve differences between parties by providing clarity on the issues at hand, and proposing alternative resolutions to the parties when appropriate. Any party may opt to discontinue mediation at any time and the matter can proceed directly to a formal hearing; however, the mediation process has many advantages over the hearing process. For example:

- mediation can be less costly;
- mediated appeals can be resolved more quickly;
- mediation can be more efficient and offers reasonable outcomes to all parties involved;
- mediation does not set precedents so therefore creative solutions can be taken advantage of;
- mediation is often more private than a formal hearing process;
- attempting to voluntarily resolve disputes is good for Government’s public relations;
- information may be shared in confidence at mediation; and
- mediation offers multiple and flexible possibilities for resolving a dispute.

Of the 26 appeals received in 2009 by the ICO all but 4 have been resolved through the mediation process. The advantages of mediation are persuasive and the results are evident. The ICO’s mediation policy will surely evolve as time passes, and more experience in the process is gained, but it is clear that it will remain an effective tool of the Office.
Hearing Policy Guidance

The ICO has designed a comprehensive set of policies and procedures relating to the hearing process. Formal Hearings before the Information Commissioner to date have been written Hearings, and as such require that specific steps be taken at defined times to ensure that administrative and procedural fairness are maintained. The policies and procedures for written hearings guide the parties (applicant, public authority and third party when applicable) through the process.

The Registrar of Hearings oversees the hearing by upholding deadlines and troubleshooting issues. Thorough records of the hearings are kept and submissions are compiled in a prescribed format for the Commissioner to consider when coming to her decision.

### Step 1
- **Notice of Hearing & Fact Report** are sent to parties

### Step 2
- **Parties make Initial Submissions** which include their arguments & evidence

### Step 3
- **Initial Submissions** are exchanged between parties

### Step 4
- **Parties are invited to make Reply Submissions**

### Step 5
- **Reply Submissions** are exchanged between parties

### Step 6
- The Hearing is **closed** and the parties are notified

### Step 7
- The Commissioner will render a **Decision** within 30 calendar days (or 60 days if extended)

Pasha joined the Information Commissioner’s Office in July 2009 after having worked for several years with the Tourism Attraction Board where she most recently held the posts of Information Manager and PA to the CEO.

Originally from Canada, Pasha moved to Cayman in 1997. Her background in administration and marketing combined with legal studies focused on Alternative Dispute Resolution both locally and abroad give her a well rounded and holistic approach to what is needed to support the Information Commissioner and the ICO.
When dealing with appeals filed under the Law, it is the adopted policy of the ICO to attempt to mediate the issues before a formal hearing is brought to the Information Commissioner. Below is a sampling of mediation summaries which have been dealt with by the ICO. Full details of recently mediated cases can be found in the document library of our website at www.INFOCOMM.ky

MEDIATED — Governor Defers “Roll Over Policy” Report

An Applicant requested a copy of the report given to the Governor’s Office regarding recommendations for the civil service roll over policy entitled, “Term Limit Policy for Civil Servants”. The Governor’s Office deferred releasing the record on the grounds that it was under consideration by the Governor, and because a premature release of the record could prejudice any review of the Immigration Law that the Government might undertake. At mediation the ICO examined, in detail, the applicability of the deferral applied by the Governor’s Office. During mediation, the media applicant commented on the matter in the local press and subsequently withdrew the appeal.

MEDIATED — Water Authority Releases Septic Reading

A media Applicant asked the Water Authority for the test results of private sewage treatment plants. Out of an abundance of caution, the Water Authority removed any details that would identify the sites, but provided the test results. Mediation with the staff of the Information Commissioner’s Office (“ICO”) resulted in the applicant narrowing the original request to the sites with the highest ratings. The Water Authority then reconsidered its original decision, and determined that the all the information requested in respect of the narrowed request, including site details, should be disclosed.

MEDIATED — Policy Documents Used By CINICO

A request was made for CINICO records that referred to the process by which entitlements under the Government health care plan were made. Initially, CINICO did not locate any responsive records. The ICO met with CINICO and discussed the matter with the Applicant, and it was determined that six documents, including the Service Level Agreement and the Plan Document, were responsive to the request. These were disclosed to the Applicant. The Applicant believed other records should exist that were specifically referenced in the plan document such as policies, interpretations, practices and procedures. CINICO confirmed search efforts and the ICO concluded that the applicant was in receipt of all relevant records; a conclusion accepted by the Applicant.
Investigation

On 18 December 2009, the Information Commissioner signed the report of the first investigation of her office. Below is an excerpt of the findings of ICO Investigation 1-00109:

**SUMMARY:** An Applicant made an FOI request to a public authority (PA) on 31 August 2009 and an internal review was formally conducted on 1 December 2009. Prior to the review, the PA, having originally informed a third party that a report pertaining to them would not be released until after a pending court decision had been made, decided to release the report and notified the third party accordingly. However, the Applicant was not so informed and was only made aware of the situation after reading about the third party’s application for judicial review. It appears the PA’s Chief Officer reached this decision not by way of an internal review under the FOI Law, but outside FOI procedure, primarily because it had been granted permission from a higher authority to decide whether or not to proactively release the information.

**OUTCOME:**

- The PA had not acted unreasonably given the circumstances and complexities surrounding the matter.
- The PA is bound by a decision of the Grand Court not to release the responsive record until after a final determination by another Court.
- The third party had no alternative than to seek remedies outside the FOI Law process to protect their legitimate personal interests, which could not be protected under FOI Law.
- The FOI Law was not in any way undermined or avoided, and there was no measurable detriment to the FOI Law or to the public interest resulting from this exceptional case.

Hearing

On 30 July 2009, the Information Commissioner of the Cayman Islands, Jennifer Dilbert rendered her first Decision. A summary of ICO Hearing 1-01009 and highlights from her Decision are found below:

**SUMMARY:** A media Applicant was refused access to the specific salaries of individual Government Information Services (GIS) employees under section 23 of the Freedom of Information Law, 2007. The Public Authority, GIS, provided the applicant with the published Government salary bands associated with each position.

The Information Commissioner found that individual salaries are personal information and disclosure would constitute unreasonable disclosure of personal information. She also found that disclosure of salary information would not prejudice the effective conduct of public affairs. She ruled that the public interest test is not met by the disclosure of current Government salary bands. The public interest requires narrowing of the bands and full disclosure of senior management salaries. The PA was required to release the exact salary of the Acting Chief Information Officer, and to provide to the Applicant a salary range within $10,000 or at points on the salary band nearest to a spread of $10,000.
ISSUES UNDER REVIEW IN THIS HEARING:

- Does the salary information of employees of GIS constitute “personal information” as defined in section 2 of the Freedom of Information (General) Regulations?
- If the salary information is determined to be “personal information,” would disclosure of that information constitute an unreasonable disclosure of personal information as stated in section 23 of the FOI Law?
- If the answer is “yes” to questions 1 and 2, does the public interest test in section 26 require disclosure of the individual salary information?
- Is GIS permitted to add an additional exemption (section 20(1)(d)) to the records in dispute?

FINDINGS:

- Individual salary information is “personal information” as defined in the Freedom of Information (General) Regulations (2008);
- The disclosure of individual salaries of GIS employees would not prejudice the effective conduct of public affairs;
- The disclosure of the individual salary of the Acting Chief Information Officer is not an unreasonable disclosure of personal information and the public interest test also requires its disclosure;
- The disclosure of the individual salaries of the remainder of the GIS employees is an unreasonable disclosure of personal information;
- The disclosure of the full salary bands does not provide sufficient accountability for the expenditure of public monies as stated in subsection (d) of the definition of “public interest” and that in the public interest a smaller band must be disclosed;

DECISION:

Section 42(4)(a) states that I may, on the consideration of an appeal make any decision which could have been made on the original application.

I require GIS to do the following:

Disclose to the applicant the exact salary of the Acting Chief Information Officer. For the rest of the GIS employees, provide the applicant with a salary range within $10,000 or at points on the salary band nearest to a spread of $10,000.

To access the entire outcome and decision for ICO Investigation 1-00109 and ICO Hearing 01009, please visit the ‘Appeals’ section of our website at www.INFOCOMM.ky
Promoting FOI

Right to Know

International Right to Know (RTK) Day is celebrated each year on 28 September. To mark this occasion in the Cayman Islands, and to highlight and promote the new Freedom of Information (FOI) Law, the ICO hosted a week of FOI themed events from September 27 to October 3, 2009. In addition to the special events held during Right to Know Week 2009, the ICO also promoted access rights through a variety of educational presentations to schools and service clubs throughout the entire month.

Below are some highlights of events:

- Several workshops were held for high school students Island wide
- Law Students participated in a round table discussion on FOI
- Presentations were made to several service clubs and groups
- The Commissioner and her Deputy met with the Bar Association
- The Governor hosted an Information Managers reception
- The ICO hosted a RTK Day access clinic & open house tea
- A print media campaign was launched promoting access rights
- A worship service was held at Elmslie Memorial United Church
- The FOI Unit hosted a Fun Run / Walk / Ride for RTK
- The Online RTK quiz as won by a Cayman Brac student
- The ICO visited Cayman Brac and held an access clinic
- Various on-air interviews with local media were given
- Several opinion pieces were published about FOI

“RIGHT TO KNOW” WEEK LOGO

Christina Smith
Office Manager / Information Manager
Employed 6 March 2009

Christina Smith was the first employee to join the Commissioner in the establishment of the Information Commissioner’s Office. Her role includes providing administrative, secretarial and management support to the ICO. She handles personnel issues, budget related matters, and assists the public and responds to FOI requests made to the ICO.

Christina previously worked for Deloitte Financial Advisory Services, before joining Government where she worked with the Cabinet Office and FOI Unit.

She holds a Bachelor degree in Business Administration from the International College of the Cayman Islands.
Outreach Initiatives

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<thead>
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<td>School presentations</td>
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<td>Service Club presentations</td>
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<td>Information Manager’s workshops</td>
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<tr>
<td>Private sector presentations</td>
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<tr>
<td>Presentations to Government</td>
<td>5</td>
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<tr>
<td>Educational &amp; fact finding visits abroad</td>
<td>7</td>
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<tr>
<td>Information Commissioner’s Office retreats</td>
<td>1</td>
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<tr>
<td>Information Commissioner’s Office in-house training sessions</td>
<td>12</td>
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<tr>
<td>Access clinics (Grand Cayman &amp; Cayman Brac)</td>
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<td>Newspaper Advertisements</td>
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<td>Articles in the Media</td>
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<td>Radio Interviews conducted</td>
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<td>Television Appearances</td>
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<td>Internet &amp; Web Presence</td>
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<td>Flyers designed</td>
<td>5</td>
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<td>Reports published</td>
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**ICON (Information Commissioner’s Office Newsletter)**

The inaugural issue of the ICON was distributed during the month of September.

The newsletter is intended to update the public, and public authorities, on the activities of the ICO and includes educational information, summaries of recently mediated appeals, guidance notes and excerpts from decisions. Appeal Statistics are also included in each issue.

For the second issue, the ICO also took the opportunity to include a Christmas greeting as it corresponded with the holiday season.
Developing & Improving

In its first year in existence, the ICO has grown to a staff complement of six. During that time, we were fortunate to be able to gain a great deal of knowledge from our Implementation Advisor, Mary Carlson and Hearing Consultant, Maria Dupuis from the Office of the Information and Privacy Commissioner of British Columbia Canada. Their guidance was essential as the ICO was not established until after the Law came into effect. We were also grateful to have the services of Kate Kandiah who helped set up administrative procedures while new staff were recruited.

Staff Development

As Freedom of Information legislation was new to the Cayman Islands, there were limited resources available to train and prepare staff for their respective roles. That notwithstanding, the Implementation Advisor was able to provide extensive and comprehensive guidance to the group on policy development and interpretation of the Law through training sessions held in-house.

The ICO also participated in a staff retreat in December 2009. The casual venue allowed the group to discuss communicating techniques and dealing with different personalities. A session was also held which focused on how we could strengthen the team and reap the benefits of our unique skills.

The Information Commissioner and her staff meet weekly to discuss ongoing projects, administrative matters and brainstorm promotions. We will continue to offer cost-effective in-house training while making use of specialist contacts we have made abroad.

ICO ORGANIZATIONAL CHART

It is universally acknowledged that with freedom comes responsibility. In the context of the FOI Law, the three parties normally involved are the public, the public authority and the press. Each needs to be cognizant of its rights and obligations under the Law.

The public should take advantage of resources provided to educate itself about the workings of Government, documents available within government and in the public domain and the correct procedures for requesting records. The Law protects public authorities from vexatious, repetitive or unreasonable requests. Public authorities are obligated under the Law to meet strict guidelines for responding to requests, and to assist applicants in identifying the documents they seek.

Controversy sells in the world of mass media. However, a responsible press would resist the temptation of maximum sales, in favour of applying a higher standard of reporting when using information gained or requested under the FOI Law.

Jennifer Dilbert
Publication Schemes

In accordance with section 51, and pursuant to section 5 of the Freedom of Information Law, on 11 November 2009, the Chief Secretary issued a directive which provides guidance for public authorities regarding their duty to publish information. Attached to this Code of Practice was a comprehensive template outlining what information public authorities need to include in the yearly publication.

As the Law requires that the publication schemes are published in the Cayman Islands Gazette within 12 months of the inception of the Law and every year thereafter, the FOI Unit took on the task of collecting, revising and sending to print the schemes of all the public authorities. This was a tremendously onerous task for such a small office to take on, however with the cooperation and overall positive response of the public authorities all but two of the publication schemes were published in the Gazette on 4 January 2010. Since then all public authorities have been brought in line with the requirements of the Law.

The ICO is in the process of reorganizing the publication schemes into a user-friendly format which will be posted on the website www.INFOCOMM.ky in early 2010.

Records Management

A new file plan for the ICO was developed in the last quarter of 2009. Prior to implementation, staff participated in a records management presentation that focused on both the basics of filing as well as the specific functions and activities of the new plan.

The ICO file plan groups records into administrative and operational headings. Administrative records include financial, human resources, buildings & equipment, communications and information technology files. The operational records correspond with the ICO’s outputs and include appeals, compliance & promotional files.
Information Requests to the ICO

The Information Commissioner’s Office received a total of 8 requests for information during 2009. Below is a disclosure log which outlines the requests and their outcomes. This chart is updated on a regular basis and can be found on our website under the ‘FOI’ heading.

<table>
<thead>
<tr>
<th>2009</th>
<th>Request Number</th>
<th>Request Details</th>
<th>Outcome</th>
<th>Exemptions (Relevant section/subsection)</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>24009</td>
<td>Records relating to the recruitment process of the Deputy Information Commissioner</td>
<td>Granted in part</td>
<td>20(1)(d) 23(1)</td>
</tr>
<tr>
<td>2</td>
<td>25943</td>
<td>Records relating to the recruitment process of the Appeals &amp; Policy Analyst</td>
<td>Granted in part</td>
<td>23(1)</td>
</tr>
<tr>
<td>3</td>
<td>26732</td>
<td>Records relating to the recruitment process of the Executive Assistant</td>
<td>Granted in part</td>
<td>23(1)</td>
</tr>
<tr>
<td>4</td>
<td>26757</td>
<td>Records relating to the consultants’ rent / hotel expenses</td>
<td>Granted in part</td>
<td>23</td>
</tr>
<tr>
<td>5</td>
<td>28028</td>
<td>Records relating to; consultants’ salary; transportation costs; all other expenses paid for and on behalf of the consultant</td>
<td>Granted in part</td>
<td>23</td>
</tr>
<tr>
<td>6</td>
<td>29655</td>
<td>Records relating to number of staff employed</td>
<td>Granted in full</td>
<td>n/a</td>
</tr>
<tr>
<td>7</td>
<td>29679</td>
<td>Records relating to staff salaries and qualifications</td>
<td>Granted in part</td>
<td>23(1)</td>
</tr>
<tr>
<td>8</td>
<td>29710</td>
<td>Records relating to staff responsibilities; records relating to advertising expenses; &amp; records relating to publication expenses</td>
<td>Granted in full</td>
<td>n/a</td>
</tr>
</tbody>
</table>
Financial Overview

The ICO awaits an amendment to the Public Management and Finance Law (PMFL) which will enable it to independently govern its own accounts. Currently the ICO budget remains part of the Cabinet Office, and as such it was not possible to obtain audited financial statements as required under section 40 of the Freedom of Information Law, 2007. In addition, as the Government’s financial year runs from July to June, and the ICO’s operations correlate to the calendar year, the figures below are therefore estimated and unaudited.

<table>
<thead>
<tr>
<th>Description</th>
<th>Jan - Dec 2009 Budgeted (KYD $)</th>
<th>Jan - Dec 2009 Actual (KYD $)</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Staffing costs</strong> (includes: salary, healthcare and pension contributions and allowances)</td>
<td>414,724.00</td>
<td>312,095.41</td>
</tr>
<tr>
<td><strong>Accommodation</strong> (includes: rent, rates and services)</td>
<td>76,370.00</td>
<td>73,057.80</td>
</tr>
<tr>
<td><strong>Training, travel, subsistence and hospitality</strong></td>
<td>42,300.00</td>
<td>36,057.80</td>
</tr>
<tr>
<td><strong>Office supplies, printing and stationery</strong></td>
<td>28,950.50</td>
<td>28,404.00</td>
</tr>
<tr>
<td><strong>Information technology &amp; telecommunications costs</strong></td>
<td>58,511.50</td>
<td>25,981.00</td>
</tr>
<tr>
<td><strong>Specialist assistance, legal fees &amp; financial charges</strong></td>
<td>122,500.00</td>
<td>82,054.32</td>
</tr>
<tr>
<td><strong>Communications &amp; Public Relations</strong> (includes: marketing, advertising and publishing)</td>
<td>25,927.00</td>
<td>33,828.23</td>
</tr>
<tr>
<td><strong>TOTAL OPERATING EXPENSES - 2009</strong></td>
<td>769,283.00</td>
<td>591,898.76</td>
</tr>
<tr>
<td><strong>Capital Expenditure</strong> (includes: initial outfitting of premises and equipment)</td>
<td>105,769.99</td>
<td>115,151.00</td>
</tr>
<tr>
<td><strong>TOTAL</strong></td>
<td>875,052.99</td>
<td>707,049.76</td>
</tr>
</tbody>
</table>
Compliance Reporting

All public authorities are required to submit quarterly reports to the ICO which are generated by the JADE tracking system. These reports were compiled and analyzed by the ICO to enable an overview of the operation of the Law. The reports are also used as a tool for measuring the practices and efficiencies of public authorities’ application of the Law.

Section 40 of the Freedom of Information Law, 2007 requires that the Information Commissioner lay before the Legislative Assembly a comprehensive report. In addition to audited accounts, this report must contain, but is not limited to the following:

(a) The number of applications received, granted, deferred, refused or granted subject to deletions;

(b) Categories of exemptions claimed and the numbers of each category - 138
(see page 23 “Categories of Exemptions Claimed” for a full breakdown and chart of these numbers)

(c) Number of applications received for -

(i) amendments of personal records - 0
(ii) annotation of personal records - 5

(d) Number of -

(i) applications for Internal Review of relevant decisions - 24
(ii) appeals against relevant decisions - 26;
and the rate of success or failure thereof - 10 = 100% success², 5 still pending, 11 referred back to public authority

² Rate of success is based on the number of closed files where the applicant did not seek any further remedy
Analysis of 2009 FOI Requests

Public authorities are required by Law to provide the Information Commissioner’s Office ("ICO") with compliance reports containing details of all Freedom of Information ("FOI") requests received by each authority and their respective responses.

In analyzing the compliance reports submitted by public authorities, the ICO has identified certain trends which will be discussed below. Additionally, it has found that there are some minor discrepancies between the numbers reported to the ICO and the statistics produced by the FOI Unit. These differences are caused by data inputting errors on the part of some public authorities, and the ICO’s inability to review entire FOI requests, as the ICO has limited access to the JADE tracking system.

The ICO’s access to the JADE system is currently restricted in order to limit any presumption of bias which might be raised if the Information Commissioner was privy to all the details of FOI requests which may come before her at a hearing. In the ensuing year, the ICO will review the issue of having full access to JADE and report accordingly. That said, the discrepancies are not sufficiently serious at this stage to prevent the ICO from conducting meaningful analysis.

Out of the 678 FOI files closed in 2009, the ICO has noted that a significant number of requests have been closed as either “refused”, “exempt” or “no records exist”.

Out of the 138 exemptions applied, 26 different categories of exemption were claimed. The most frequently applied exemption was section 23(1) - unreasonable disclosure of personal information; totaling 47 uses, and equating to 34% of the total number of exemptions applied. While the ICO sees 34% usage of a single exemption as high, it accepts that this number does not necessarily indicate that the public authorities have incorrectly applied this exemption. Some of these requests may be for ‘personal information’ of a third party which is a legitimate exemption from disclosure under the Law.

In 2009, 14% (95) of FOI requests were closed as “no records found”. This category can be misleading, implying that either the requested records do not exist, or that the requested records could not be located. However, if existing records cannot be found or if records are simply not being created or kept, this might indicate poor record keeping practices.

The ICO has initiated an investigation into the record keeping practices of public authorities, in relation to whether they are adhering to the requirements under the Records Management Code of Practice established in accordance with the Law. The report on this investigation will comment on practices currently adopted by public authorities, as well as make recommendations for any necessary changes.

As 2009 was the first year that the Law has been in operation, there is no benchmark against which to compare the statistics relating to exemptions claimed. In the future, the ICO will be conducting other investigations with various public authorities, to assess how they have responded to requests for information, and how they are approaching proactive disclosure in general.
<table>
<thead>
<tr>
<th>Section</th>
<th>Description</th>
<th>Request</th>
</tr>
</thead>
<tbody>
<tr>
<td>3(1)c</td>
<td>Records are outside the FOI Law as per section 50 of the Monetary Authority Law</td>
<td>3</td>
</tr>
<tr>
<td>3(5)(b)</td>
<td>Records are outside the FOI Law as they relate to security or intelligence services, and their intelligence gathering activities</td>
<td>1</td>
</tr>
<tr>
<td>3(7)</td>
<td>Other law takes precedence</td>
<td>11</td>
</tr>
<tr>
<td>9(a)</td>
<td>Request for record is deemed to be vexatious</td>
<td>1</td>
</tr>
<tr>
<td>9(b)</td>
<td>Public Authority has already complied with a substantially similar request from the same person</td>
<td>1</td>
</tr>
<tr>
<td>9(c)</td>
<td>Compliance with the request would unreasonably divert recourses</td>
<td>2</td>
</tr>
<tr>
<td>15 (a)</td>
<td>Record exempt as disclosure would prejudice the security, defence or international relations of the Islands.</td>
<td>3</td>
</tr>
<tr>
<td>15 (b)</td>
<td>Records exempt as they contain information communicated in confidence to the Government by or on behalf of a foreign government, or international organization</td>
<td>1</td>
</tr>
<tr>
<td>16(a)</td>
<td>Records exempt as they relate to law enforcement and disclosure would or could reasonably endanger a persons life or safety</td>
<td>2</td>
</tr>
<tr>
<td>16(b)(i)</td>
<td>Records exempt as they relate to law enforcement and disclosure would or could reasonably be expected to affect the conduct of an investigation or prosecution of a breach or possible breach of the law.</td>
<td>6</td>
</tr>
<tr>
<td>16(b)(ii)</td>
<td>Records exempt as they relate to law enforcement and disclosure would or could reasonably be expected to affect the trial of any person or adjudication of a particular case.</td>
<td>3</td>
</tr>
<tr>
<td>16(d)</td>
<td>Records exempt as they relate to law enforcement and 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.</td>
<td>6</td>
</tr>
<tr>
<td>17(a)</td>
<td>Record exempt as it would be privileged from production in legal proceedings on the ground of legal professional privilege</td>
<td>7</td>
</tr>
<tr>
<td>17(b)(i)</td>
<td>Record exempt as disclosure would constitute and actionable breach of confidence.</td>
<td>6</td>
</tr>
<tr>
<td>17(b)(ii)</td>
<td>Record exempt as disclosure would be in contempt of court.</td>
<td>1</td>
</tr>
<tr>
<td>18(1)</td>
<td>Records including but not limited to duties, monetary policy or records not liable to disclosure under the Confidential Relationships (Preservation) Law (1995) are exempt from disclosure if disclosure, or premature disclosure would, or could reasonably be expected to have a substantial adverse effect on the Caymanian economy, or Governments ability to manage the economy.</td>
<td>1</td>
</tr>
<tr>
<td>19(1)(b)</td>
<td>Record exempt as it would reveal consultations or deliberations arising in the course of proceedings of the Cabinet or of a committee thereof.</td>
<td>1</td>
</tr>
<tr>
<td>20(1)(b)</td>
<td>Record exempt as its disclosure would, or would be likely to, inhibit the free and frank exchange of views for the purpose of deliberation.</td>
<td>1</td>
</tr>
<tr>
<td>Section</td>
<td>Description</td>
<td>Count</td>
</tr>
<tr>
<td>---------</td>
<td>------------------------------------------------------------------------------</td>
<td>-------</td>
</tr>
<tr>
<td>20(1)(c)</td>
<td>Record exempt as it is legal advice given by or on behalf of the Attorney-General</td>
<td>1</td>
</tr>
<tr>
<td>20(1)(d)</td>
<td>Record exempt as its disclosure would otherwise prejudice, or would be likely to prejudice, the effective conduct of public affairs.</td>
<td>1</td>
</tr>
<tr>
<td>21(1)(a)(i)</td>
<td>Record exempt as its disclosure would reveal trade secrets.</td>
<td>3</td>
</tr>
<tr>
<td>21(1)(a)(ii)</td>
<td>Record exempt as disclosure would reveal information of commercial value, which value would be, or could reasonably be expected to be, destroyed or diminished if the information were disclosed.</td>
<td>8</td>
</tr>
<tr>
<td>21(1)(b)</td>
<td>Record exempt as it contains information concerning the commercial interest of a person or organization, where disclosure would prejudice those interests.</td>
<td>17</td>
</tr>
<tr>
<td>23(1)</td>
<td>Record exempt as disclosure would involve the unreasonable disclosure of personal information, of any person, living or dead.</td>
<td>47</td>
</tr>
<tr>
<td>24(a)</td>
<td>Record exempt as disclosure would, or would be likely to endanger the physical or mental health of any individual.</td>
<td>3</td>
</tr>
<tr>
<td>24(b)</td>
<td>Record exempt as disclosure would, or would be likely to endanger the safety of any individual.</td>
<td>1</td>
</tr>
</tbody>
</table>

**TOTAL** 138

**CHART OF CATEGORIES OF EXEMPTIONS CLAIMED**