



Access to Information Act 2018 (ATIA)

Appeal Case to the Information Commission, Seychelles

Statement of Recommendations, Findings, Orders, Decisions and Directives as per Part VII, Section 64

Public Body: Employment Department

Address: Independence House Annex, 4th Floor Victoria, Mahe

Scope of the Case

1. The requestor Mr. Ralph Amelie wrote to the Chief Information Commissioner on the June 19th 2019 to appeal to the Employment Department failure to respond and release his request.
2. The Office of the Commission was initially open to public on August 1st 2019.
3. Initial investigation in this appeal stated on August 8th 2019.
4. The Commission has considered whether the Employment Department has met its requirements under the ATIA's Section 8 right of access and Section 11(1) response to request.

Request and Response

5. On March 28th, 2019, the requestor wrote to the Information Officer (IO) and requested information in the following terms: "I am formally requesting copies of the following documents as follows":
 - 3.1 The missing attachment of the letter dated September 21st 2016 from Cable and Wireless Seychelles to the Ministry of Employment.
 - 3.2 A letter from CWS to the Ministry informing the latter on the potential transfer of shares between Bahrain Telecoms (BATELCO) and Cable and Wireless Holding, specifically Monaco, dated November 2012 to March 2013.
 - 3.3 The response from the Ministry of Employment to Cable and Wireless Seychelles for the above is a letter signed by Egbert Rosalie (2013).
4. The Information Officer acknowledged the request on March 29th 2019.
5. Access was denied for the letter from Cable and Wireless Seychelles to the Ministry of Employment informing the latter on the potential transfer of shares between Bahrain Telecoms (BATELCO) and Cable and Wireless Holding, specifically Monaco letters dated between November 2012 to March 2013.
6. On April 17th 2019, the requestor made another request with the IO and requested information in the following terms:
 - 6.1 Letter dated January 7th 2013 regarding the Agreement to sell Monaco and Islands Portfolio to Batelco;
 - 6.2 Letter dated May 16th 2016 regarding the transfer to Business Undertaking: Sale of CWS/CWS to Liberty Global;

- 6.3 Letter dated February 26th 2013, regarding the agreement to sell Monaco and Islands Portfolio Batelco;
- 6.4 Letter dated August 30th 2016, regarding the transfer of Business Undertaking (Sal) of CWS/CWS to Liberty Global.
7. On April 17th 2019, the Information Officer acknowledged receipt of the request, but no release was issued.

Orders

8. On August 8th 2019, the Commission request access to the information to review before making a decision.
9. On the August 19th 2019, upon meeting with the Information Officer the Commission request justification and clarification as per ATIA for the reason for non-disclosure of the Information.

Directives

10. Pursuant to Section 63 (1)(d) and in conjunction with Section 48 (4)(a to e) of the Access to Information Act, 2018, the Commission orders the Employment Department to provide the appellant the following documents:
- 10.1 Letter dated January 7th 2013 RE: Agreement to Sell Monaco and Islands Portfolio, Batelco.
- 10.2 Letter dated May 16th 2016 RE: Transfer to Business Undertaking: Sale of CWS/CWS to Liberty Global.
11. Pursuant to Section 22 (1) (a) (b) of the Access to Information Act, 2018, the Commission orders that documents that contain commercial and confidential information about a third party should be retained as per public body decision. The following documents:
- 11.1 Letter dated February 26, 2013, RE: Agreement to Sell Monaco and Island Portfolio Batelco.
- 11.2 Letter, August 30, 2016, RE: Transfer of Business Undertaking: Sal of CWS/CWS to Liberty Global.

Decision (including any steps ordered)

12. The Information Officer did not applied Section 33 (4) which states that, “where a third party does not provide a response under subsection (3) within 10 days of receipt of the intimation or cannot be located after reasonable steps have been taken to do so, the Information Officer may assume that the third party does not object to the information being granted to the requestor.
13. It was determined that the exemption from Section 22 regarding commercial and confidential information of a third party did not apply.
14. The requestor gained access to the Letters dated January 7th 2013 and May 16th 2016 on December 30th, 2019.
15. The case was resolved and closed on January 6th 2019.

Reasons for Decision

16. Section 8 of ATIA states that: “Subject of this Act, every person has a right to access to information from a public body.”
17. Section 11(1) of ATIA states that: “Subject of subsection (2), the Information Officer to whom a request is made under Section 9 shall, as soon as reasonably possible, but in any event within 21 days after the request is submitted –
- (a) Determine whether to grant the request;
- (b) Notify the requestor of the decision in writing.

18. Section 22 (1) of ATIA states that: “Subject to subsection (2), an Information Officer may refuse a request for information if it contains —
 - (a) trade secrets of the information holder or a third party; or
 - (b) information about the information holder or a third party that would substantially prejudice a legitimate commercial or financial interest of the information holder or third party.”
19. Section 33 (1) of ATIA states that: “ If an Information Officer is considering a request for access to personal information of a natural third party or commercial or confidential information of a third party, the Information Officer shall take reasonable steps to inform the third party to whom or which the information relates or, where the third party is deceased, the next of kin or legal representative of the third party, in writing of the request as soon as reasonably possible, but in any event within eight days after the request is received.
 - 19.1 Subject to subsection (8), within 10 days of being informed of a request under subsection (1), a third party may — Notice to third parties
 - (a) inform the Information Officer in writing that he or she consents to the release of the information to the requestor; or
 - (b) make a representation to the Information Officer in writing stating why the request for access to the information should not be granted.