

REPUBLIC OF TRINIDAD AND TOBAGO

IN THE HIGH COURT OF JUSTICE

Claim No. CV2021-00503

BETWEEN

NIGEL BIRCH

Claimant

AND

THE COMMISSIONER OF POLICE

Defendant

Before the Honourable Madam Justice Margaret Y. Mohammed

Date of Delivery 27 October 2021

Appearances

Mr Anand Ramlogan SC, Ms Jayanti Lutchmedial, Mr Jared Jagroo and Mr Che Dindial instructed by Ms Natasha Bisram Attorneys at Law for the Claimant.

Mr Keron Ramkhalwan Attorney at Law for the Defendant.

JUDGMENT

INTRODUCTION

1. In this jurisdiction there is a plethora of case law arising from matters concerning the application of the Freedom of Information Act¹ (“the FOIA”).

¹ Chapter 22:02

As a consequence, public bodies have been provided with detailed guidance by the Courts on their duties under the FOIA and the approach which is to be taken when dealing with a request for information under the FOIA. In this case, the propriety of the exercise of the Defendant's discretion under sections 30 and 35 of the FOIA is called into question.

THE FACTS

2. The undisputed facts in this matter were set out in the Claimant's Affidavit² and the Defendant's Affidavit in response by Yohan Niles³, dated 15 July 2021 ("the Defendant's Affidavit"). The Claimant is an Assistant Superintendent in the Trinidad and Tobago Police Service ("TTPS"). On 19 November 2018, the Claimant wrote an examination to be promoted to his current position. The examination was supervised by Odyssey Consultant Inc. Limited ("Odyssey") and held at the UTT Complex at O'Meara Industrial compound in Arima. The Claimant scored 77% in the written exam. On 20 November 2018 the Claimant attended his oral interview at the Hilton Hotel Port of Spain. Later that night he was informed by email from Odyssey that he scored 80%. However, he was later informed by personnel from Odyssey that his score had been wrongly recorded as 80%.
3. In late December 2018, the Claimant received an email from Odyssey in which there was an apology for the arithmetic error. It also informed him that instead of scoring 40/50 (80%) he had scored 30/50 (60%). In December 2018, the TTPS promoted 58 Inspectors to the rank of Assistant Superintendent of Police. The Claimant was placed 122 on the Merit List ("the Merit List") published at the material time with a revised score of 75.95%. Prior to the error by Odyssey the Claimant's score was 83.95% which would have potentially placed him between 64 and 67 on the Merit List.

² Filed 5 February 2021

³ Filed 15 July 2021

4. The Claimant made a request under the FOIA with cover letter on 12 August 2020 (“the FOIA Request”) for the following information:
- (i) A copy of all documents provided from Odyssey to the TTPS concerning the interview, assessment and scoring of Nigel Birch regimental number 12587 for the position of Assistant Superintendent of Police in 2018;
 - (ii) A copy of the merit list for the position of Assistant Superintendent of Police for 2018 and 2019, in which Nigel Birch was placed at position 122. This list must be inclusive of the overall scores of each individual, in addition to their placement on the list;
 - (iii) A copy of all correspondence from Odyssey, regarding the arithmetic error they made with Nigel Birch’s assessment for the promotion to Assistant Superintendent;
 - (iv) The policy, practice, criteria and procedure that Odyssey proposed to use (and utilized) in assessing officers who were applying and being assessed for the position of Assistant Superintendent of Police in 2018; and
 - (v) A copy of the individual score sheet for Nigel Birch reflecting the scores that were awarded to him after his interview on November 20, 2018 at Hilton Hotel, Port of Spain conducted by Odyssey.
5. The Defendant responded by letter dated 5 October 2020 (“the October 2020 letter”) with some of the information requested. Further information was provided by the Defendant by letter dated 5 November 2020 (“the November 2020 letter”). In the November 2020 letter, the Defendant provided the Merit

List but relied on the exemption under section 30(1) of the FOIA (“the Access Decision”) and refused to disclose the scores of the other officers. The Claimant issued a pre-action protocol letter on 25 January 2021. On 4 February 2021, the Claimant received the Defendant’s response, in which it maintained its previous position and continued to refuse to disclose the scores of the other officers based on the exemption raised.

6. As a consequence of the position adopted by the Defendant, the Claimant has brought the instant action seeking the following reliefs:
 - i. An Order of Certiorari to remove into this Honourable Court and quash the decision of the Defendant dated 5 November, 2020 to refuse disclosure of the documents listed at item 2 of FOIA Request dated the 12 August, 2020.
 - ii. A Declaration that the decision of the Defendant to refuse and/or deny access to the document listed at 2 of the FOIA application, contained in the November 2020 letter is illegal, irrational, unfair and amounts to a breach of the provisions of the FOIA.
 - iii. An Order remitting the matter to the Defendant pursuant to Section 21 of the Judicial Review Act with the directive to reconsider it and reach a decision in accordance with the findings of the Court.
 - iv. Alternatively, an Order of Mandamus to compel the Defendant to provide the Claimant with the documents listed at item 2 of the FOIA application dated 12 August 2020 within seven (7) days.

- v. Costs.
- vi. Such further other orders, directions or writs as the Court considers just and as the circumstances of this case warrant pursuant to Section 8 (1)(d) of the Judicial Review Act Chapter 7:08.

THE ISSUES

- 7. Based on the position articulated by the parties, the determination of this action can be narrowed down to the following two issues:
 - (a) Did the Defendant demonstrate that the disclosure of the information (“the requested information”) was unreasonable in the circumstances of this case?
 - (b) Did the Defendant properly address his responsibility under section 35 of the FOIA?

DID THE DEFENDANT DEMONSTRATE THAT THE DISCLOSURE OF THE REQUESTED INFORMATION WAS UNREASONABLE IN THE CIRCUMSTANCES OF THIS CASE?

- 8. Section 30 of the FOIA provides that :
 - “30. (1) A document is an exempt document if its disclosure under this Act would involve the unreasonable disclosure of personal information of any individual (including a deceased individual).
 - (2) Subject to subsection (4), the provisions of subsection (1) do not have effect in relation to a request by a person for access to a

document by reason only of the inclusion in the document of matter relating to that person.

(3) Where a request by a person other than a person referred to in subsection (2) is made to a public authority for access to a document containing personal information of any individual (including a deceased individual) and the public authority decides to grant access to the document, the public authority shall, if practicable, notify the individual who is the subject of that information (or in the case of a deceased individual, that individual's next-of-kin) of the decision and of the right to apply to the High Court for judicial review of the decision and the time within which the application for review is required to be made.

(4) Nothing in this Act shall be taken to require a public authority to give information as to the existence or non-existence of a document of a kind referred to in subsection (1) where information as to the existence or non-existence of that document, if included in a document of a public authority, would cause the last-mentioned document to be an exempt document by virtue of this section."

9. It was not disputed by the Claimant that the requested information, namely the scores of the officers who were on the Merit List in December 2018 is personal information. The parties disagree on the second limb of section 30 of the FOIA, with respect to whether the disclosure of the information "would be unreasonable in the circumstances".

10. It was submitted on behalf of the Claimant that the reasons put forward by the Defendant were insufficient to invoke the exemption under section 30 of the FOIA. On the other hand, the Defendant's position was that the disclosure

of the requested information was unreasonable, as it is currently not relevant to the Claimant and it would require the consent of 157 police officers because it concerned a comprehensive educational analysis of each of these officers.

11. It is settled law that the FOIA created a general right of access to information in the possession of public authorities, limited only by exceptions and exemptions necessary for the protection of essential public interests and the private and business affairs of persons in respect of whom information is collected and held by public authorities⁴. It was common ground by the parties that the burden of proof is on the public authority claiming the exemption, to justify its reliance on the exemption and that the sufficiency of reasons to justify the exemption claimed would turn on the circumstances and context which surround the particular request made.⁵
12. There were various reasons which the Defendant gave the Claimant for not disclosing the requested information. The first position which the Defendant adopted was contained in the Access Decision⁶, which stated that the reason the requested information was exempt from disclosure was because the score of each of the 157 officers is personal information and it would be impractical to notify each of these officers to seek their approval for its release. The second position which the Defendant took was in its letter dated 1 February 2021⁷, where the reasons for non-disclosure were that it would run counter to established institutional practices, it would open the floodgate and allow an abuse of the FOIA and the rights of the other 157 officers would

⁴ Civ Appeal No 170 of 2008 Caribbean Information Access Ltd v The Hon Minister of National Security at paragraph 8

⁵ Supra paragraphs 18 and 19

⁶ Exhibit NB 3 of the Claimant's Affidavit

⁷ Exhibit NB 5 of the Claimant's Affidavit

be trampled for the benefit of the Claimant as they are entitled to a right to privacy.

13. In addition to the reasons stated aforesaid by the Defendant, in the Defendant's Affidavit, the Defendant stated that the decision maker considered section 30(2) of the FOIA in determining whether the requested information fell within the exception under that section.
14. In the covering letter⁸ which accompanied the Claimant's FOIA Request, he stated that the reasons he sought the information, including the requested information was for potential litigation. He repeated this position in his pre-action letter⁹. In the Claimant's Affidavit he explained in greater details at paragraphs 8, 22, 23 and 24 the reasons he needed the requested information. He stated that in December 2018, he became aware that the Defendant had promoted 58 Inspectors to the rank of Assistant Superintendent of Police. He also became aware that he had been placed at position 122 on the Merit List published by the TTPS with a revised score of 75.95%. According to the Claimant, prior to the error by Odyssey his score was 83.95%, which he believed would have placed him between 64 and 67 on the Merit List, or at least higher than 122.
15. Paragraphs 22 to 24 of the Claimant's Affidavit stated:

"22. I require the unredacted list, to compare my previous score and where I might have been placed in the merit list, before the score was lowered due to an arithmetic error. Had I been placed higher on the merit list, I would have been promoted earlier, and been privy to certain opportunities and assessments for higher promotional positions. I need this information to obtain full and

⁸ Letter dated 12 August 2020

⁹ Exhibit NB 4 of the Claimant's Affidavit

proper legal advice about a potential claim I am considering. I know the Respondent provided the redacted list, showing the names of the persons but not the scores. I am perplexed as to why they did not provide the scores, and keep the names redacted.

23. I am aware that over previous years, merit lists were disclosed with individuals' scores. As far as I am aware around 2012 or thereabout, the TTPS starting removing the scores from the merit lists.

24. I am concerned to ensure that the effective date of my appointment as ASP is fair, justified and correct, as my relative seniority could easily change with a small variation in my scores. The integrity of the promotion process is an issue and I simply wish to ensure I am given my just review. I do not know how the error was made in calculating my scores, how it was discovered and whether it was properly rectified."

16. In my opinion, the Defendant failed to provide sufficient reasons to justify the reliance on the exemption under section 30(1) of the FOIA. I have arrived at this position for the following reasons. Firstly, the Defendant's reason that it is impractical to notify the 157 officers of the request for the requested information is hollow and is inconsistent with the philosophy of the FOIA which favours disclosure of information. The 157 officers are persons who are or were members of the TTPS. The Defendant did not state that it could not or would not be able to contact them via email or other means of communication available in this modern age. In my opinion, the Defendant failed to present any evidence to explain how it was impractical to contact the 157 officers concerning the release of the requested information.

17. Second, the Defendant failed to indicate when the established institutional practice of not disclosing the scores of officers on a Merit List was introduced and the circumstances surrounding the introduction of this practice. The Claimant's Affidavit stated that this was the practice up until 2012. The Defendant's Affidavit did not dispute this evidence which means that up until 2012 the scores of persons on the Merit List was disclosed. Therefore, any "established practice" had to be after 2012. However, the impression the Defendant gave was that this was always the established practice in the TTPS but this is not accurate. In my opinion, where the FOIA has created a bias in favour of the disclosure of information and as such, the reasons for the TTPS having this "established practice" and when it was introduced are important, as it assists in determining if the actions by the Defendant to not disclose the requested information for this reason was reasonable. Indeed, if the Defendant had continued with the policy which existed in 2012 there would be no need for this action.
18. Even if there has been a practice after 2012 not to reveal the scores of officers on the Merit List, it seems to me that the introduction of this practice demonstrates a failure by the Defendant to appreciate the impact of promotions in the TTPS on the morale of its officers, as this concerns career advancement and more importantly their own confidence in the promotion system of the TTPS.
19. Third, the Defendant's reasons that the provision of the requested information would cause an opening of the floodgate and an abuse of the FOIA, are not only speculative but also inconsistent with the tenor of the FOIA. In my opinion, the provision of the requested information would do quite the opposite. It would increase transparency in the promotion process, as officers who have subjected themselves to this process would know where they scored relative to others. It would cause officers in the TTPS to have an

increased confidence in the transparency of the promotion process which would result in improving morale in the TTPS. By providing the scores, there would be no need for aggrieved officers to seek this information using the FOIA, thereby reducing the litigation against the Defendant on the promotion process.

20. Further, in the circumstances of this case, the Claimant has reason to be suspicious of the reason advanced for the lowering of his score at his oral assessment interview. The disclosure of the requested information would assist in dispelling those suspicions.
21. Fourth, the Defendant's reason that to provide the requested information would violate the right to privacy of 157 officers is also lacking in substance. The Defendant made this assertion without even contacting the 157 officers to determine if any of the said officers objected to the release of the requested information on the grounds of privacy. The names and the ranking of the 157 officers on the Merit List have already been released to the Claimant which reduces the privacy argument. Further, based on the Claimant's Affidavit, some of the officers on the Merit List have already been promoted so they would not be adversely affected by the release of the requested information. In any event, where third parties are affected, in this case, the 157 officers on the Merit List, section 30(3) of the FOIA permits the Defendant to grant the access to the requested information and if practicable notify them, or their next of kin if deceased.

DID THE DEFENDANT PROPERLY ADDRESS HIS RESPONSIBILITY UNDER SECTION 35 OF THE FOIA?

22. Section 35 of the FOIA provides :

“Notwithstanding any law to the contrary a public authority shall give access to an exempt document where there is reasonable evidence that significant—

- (a) abuse of authority or neglect in the performance of official duty;
or
- (b) injustice to an individual; or
- (c) danger to the health or safety of an individual or of the public; or
- (d) unauthorised use of public funds,

has or is likely to have occurred or in the circumstances giving access to the document is justified in the public interest having regard both to any benefit and to any damage that may arise from doing so.”

23. The principles of law which the public body is required to apply in considering section 35 of the FOIA are not in dispute by the parties. They correctly agree that, section 35 mandates the public authority to consider and override any initial assessment of any claim to exemption, where, any of the first four conditions in section 35 exist and/or where in the circumstances, giving access to the document is justified in the public interest having regard both to any benefit and to any damage that may arise from so doing¹⁰.

24. It was also common ground that, in deciding whether to give the Claimant access to the requested information, the onus was on the Defendant to be satisfied that, it was not in the public interest to do so, having regard to both any benefit and to any damage that may arise from doing so. The Defendant was also required to conduct this balancing exercise with the knowledge that

¹⁰ See *The Minister of Planning and Sustainable Development v The Joint Consultative Council for the Construction Industry*, CA Civ P 200 of 2014, per *Jamadar JA* at paragraph 19

there is a general right to information, the general presumption in favour of disclosure and his duty to facilitate access to information¹¹.

25. The approach to section 35 of the FOIA was reiterated by the Privy Council in **Ravi Balgobin Maharaj v The Petroleum Company of Trinidad and Tobago**¹² which adopted the position of Jamadar JA (as he then was) in **Minister of Planning and Sustainable Development v the Joint Consultative Council for the Construction Industry**¹³ (“the JCC case”). At paragraph 42 of the judgment Lord Sales stated:

42. Jamadar JA was explicit at para 40 of his judgment that “when one comes to the evaluative exercise demanded by section 35 of the FOIA, in so far as denial of access to information is justified, both a public authority (initially) and a court of review (subsequently) are obliged to carry out the required balancing exercise in the context of the ... statutory and constitutional framework and values”. That is to say, although the public authority must carry out the relevant balancing exercise for the purposes of limb (ii) of section 35 in the first place, the court has an independent role in carrying out its own balancing exercise thereafter to rule on whether the right of a member of the public to be given access to information in the possession of a public authority has been infringed by the decision taken by that authority. After performing that balancing exercise in the case at hand, Jamadar JA concluded, in agreement with Bereaux JA, that the legal advice in question should be disclosed (para 47). Jamadar JA’s statement at para 40 of his judgment was cited by Rampersad J as part of the relevant

¹¹ See *The Minister of Planning and Sustainable Development v The Joint Consultative Council for the Construction Industry*, CA Civ P 200 of 2014 at paragraph 26

¹² Privy Council Appeal No 47 of 2018

¹³ CA CIV P 200/ 2014

guidance regarding the application of section 35, at para 27.13 of his judgment in the Port Authority case cited above.

26. The Claimant contended that the Defendant has failed to put forward any indication of performing a section 35 consideration in the Access Decision; he has also failed to perform a proper consideration of the harm and benefits of disclosure in the Defendant's Affidavit, given that he has deposed to there being no benefits of disclosure for the public interest, despite there being obvious and inherent benefits of disclosure; and the Defendant's failure to consider section 35 of the FOIA in arriving at his decision invalidates the Access Decision under the FOIA.
27. The Claimant invited the Court to quash the illegal decision and remit the matter to the public authority for it to reconsider or perform a section 35 analysis instead of making an access decision as part of the judgment.
28. Counsel for the Defendant submitted that in the instant case, there are no relevant factors pertaining to the first limb of section 35 of the FOIA that would require the disclosure of the requested information, even on the face of its exempted nature. With regard to the second limb, the Defendant contended that having already considered the purpose for which the Claimant has sought access to the requested information and the public interest, the exemption ought to be upheld since there is no other compelling evidence to override the public interest. The Defendant also specifically relied on the learning in the local case of **Ramdeo Sookdeo v The Commissioner of Police**.¹⁴
29. In **Ramdeo Sookdeo**, the Claimant had attained a Bachelor of Laws Degree ("LLB"), which entitled him to 35 points under the examination criteria being automatically added to his overall score and the addition of same would have

¹⁴ CV 2016-02467

improved his placement on the Order of Merit List. However, these points were not automatically added to the Claimant's score and as such he was not considered eligible for promotion to the rank of Sergeant. The Commissioner of Police conceded and awarded the Claimant the 35 points by virtue of his LLB, adjusted the Claimant's position on the Order of Merit List and the Claimant was retroactively promoted to the rank of Sergeant.

30. Despite the consent order entered on behalf of the parties in respect of the adjustment of the Claimant's position on the Order of Merit List and his retroactive promotion to the rank of sergeant, the Court still had to determine whether the Commissioner of Police had an obligation to provide the Claimant with a copy of the complete Order of Merit List, inclusive of the documents used to compile the list and the points awarded to all eligible officers. In doing so the Court considered whether the disclosure of the requested information would involve the unreasonable disclosure of the personal information of the eligible officers whose names appeared on the Order of Merit List.
31. The Court refused the order for disclosure sought by the Claimant and stated that the circumstances of the case did not give rise to any public interest considerations that favoured disclosure of the information sought. Further, the information sought was no longer relevant, as the Claimant had already been promoted to the rank of Sergeant and as such the disclosure of the information would be an unreasonable disclosure of the personal information of the other officers whose names appeared on the Order of Merit List.
32. In my opinion, the outcome in the **Ramdeo Sookdeo** case turned on the facts of that case which can be distinguished from the instant case and therefore the Court's findings are not applicable to the instant case.
33. At paragraph 6 of the judgment in **Ramdeo Sookdeo**, Seepersad J explained:

“The Claimant’s substantive claim was premised on the basis that points should have been automatically added to his score by virtue of his attainment of a Bachelors of Laws Degree and that the addition of same would have improved his placement on the Order of Merit List and would have entitled him to a promotion. The Defendant conceded and awarded the Claimant 35 points by virtue of his LLB Degree, his place on the list was adjusted, and he was retroactively promoted to the rank of Sergeant with effect from 22nd April, 2016. There was also an agreement to pay to him all outstanding salaries due by virtue of the said retroactive appointment. In the circumstances, the Court is unable to understand how the requested information as to the points awarded to other officers and their respective positions on the order of merit list is of any further relevance to the Claimant.”

34. In **Ramdeo Sookdeo** there was no longer any need for the Claimant to pursue obtaining the Merit List. In the instant case, although, the Claimant was promoted to the position of Assistant Superintendent, he has sought the requested information to obtain legal advice to pursue litigation on the basis that he may have lost opportunities in promotion, as there may have been a substantial gap between when he was promoted and when he could have been promoted in accordance with his correct place on the Merit List. This is different from **Ramdeo Sookdeo** which dealt with the automatic inclusion of 35 points for officers who obtained an LLB.
35. In my opinion, this matter concerns the second limb of section 35 of the FOIA. The Defendant’s position on his consideration of section 35 of the FOIA in the Access Decision was set out in the November 2020 letter. The Defendant demonstrated that he appreciated the Claimant’s interest in seeking the requested information to pursue legal action against the State, however, he

found that the privacy rights of other persons on the Merit List were more important than the interest of the Claimant and that the Claimant's interest did not reflect the public's interest.

36. In the Defendant's Affidavit, the Defendant took the position that the Claimant did not suffer any injuries but an arithmetic error to his score, no further disclosure was required and that the only benefit from disclosure of the requested information is that the Claimant would have the personal confidential information of 157 officers.
37. It seems to me that the Defendant did not conduct a proper balancing exercise when he made the Access Decision for the following reasons.
38. First, the material aspect of the Access Decision which concerned the balancing exercise conducted by the Defendant with respect to section 35 of the FOIA stated:

"Even if one were to argue the application of Section 35 of the Freedom of Information Act, the public interest would not override the assessment, analysis and decision by this public authority not to disclose the requested documents. This is premised upon the fact that, the public interest is clearly sought and considered in maintaining matters of individuals' personal privacy, which is ultimately in the public's interest. Therefore, the information would rather be for your client's personal knowledge and not that of the public interest.

...while we acknowledge that your client wishes to pursue legal action against the State and therefore requires these documents to advance his case, the damage that would be done in disclosing

these documents would be greater than the benefit in disclosing same and as such we uphold the exemption set out above."¹⁵

39. At paragraph 13 of the Defendant's Affidavit, the matters which were considered in the section 35 of the FOIA override were that: the Claimant did not suffer any injustice from the error made by Odyssey; the error was arithmetic; the likely benefit from disclosure is that the Claimant would have the personal confidential information of 157 officers and the likely damage is that the professional, business and personal affairs of 157 officers would be disclosed to the Claimant.
40. In my opinion, the Defendant took a narrow view of the public interest in the balancing exercise which was conducted under section 35 of the FOIA, as he equated it with the privacy of the 157 officers and not the wider public interest. In the context of this case, the public interest is more than simply the interest of the 157 officers whose scores were requested. It must include the actions of the Defendant which would instil confidence in the public and the officers of the TTPS in the transparency of the promotion process. The benefit is it would increase the public's confidence that senior officers are qualified to serve in the TTPS in their respective positions in the fight against crime.
41. Second, there was no proper balancing exercise by the Defendant of the damage that would be caused by the disclosure of the requested information as opposed to the benefits. The only damage which the Defendant considered was that the scores of the 157 officers would be disclosed to the Claimant, which he considered not to be in the public interest. There was no explanation of the nature and extent of the damage which the 157 officers would suffer. Indeed the Defendant's evidence was that the 157 officers were

¹⁵ Exhibit NB 3 – Letter dated 5 November 2020.

not contacted to inform them that a request was made for their information. Therefore, any statement with respect to damage to the privacy of the 157 officers is speculation.

42. Third, the only benefit which was considered was that the Claimant would have access to the requested information in order to pursue his legal options. However, there are other significant benefits which the Defendant did not consider. The Defendant did not consider that the TTPS is one of the leading law enforcement bodies in this jurisdiction, which has a duty to uphold the law and that disclosure of the requested information would remove suspicion of favouritism in promotion, amongst its own officers and the public, in a small society where the institution is constantly under public scrutiny. In my opinion, the disclosure of the requested information would improve morale of the officers at the TTPS, as they would have confidence that promotions are merit based with a transparent process and if they harboured any doubt, action would be taken to remove such doubt. It would also improve the reputation of the TTPS in the eyes of the public, as an institution which takes positive steps to remove doubt when any suspicion is cast over the propriety of the promotion process.
43. Another benefit which was not considered was that it would encourage officers to submit themselves to promotion exams, as they would have the confidence that the scores of everyone who took the exam would be disclosed.
44. In any event, it was not in dispute that many of the 157 officers have already been promoted. Therefore, another benefit is that the disclosure of the requested information would benefit those officers as it would remove any suspicion over the validity of their promotion.

45. In my opinion, the failure by the Defendant to consider the aforesaid benefits which favour disclosure resulted in a skewed decision against disclosure of the requested information.
46. I now turn to the options available to me at this stage. In the claim, the Claimant has requested that the Court either order the disclosure within seven (7) days from the date of the judgment or remit the matter to the Defendant for consideration in light of the Court's findings.
47. I see no benefit in remitting the matter to the Defendant as the section 35 of the FOIA override was already considered and I have found that it was deficient, thus resulting in a skewed outcome. In light of my aforesaid findings, I have decided to order the Defendant to provide the unredacted Merit List as requested under item 2 of the Claimant's FOA Request. I think a reasonable period to do so is twenty one (21) days from the date of my order.

ORDER

48. The decision of the Defendant dated 5 November, 2020 to refuse disclosure of the documents listed at item 2 of the FOIA application dated 12 August, 2020 is quashed.
49. It is declared that the decision of the Defendant to refuse and/or deny access to the document listed at item 2 of the FOIA application, contained in the Defendant's letter dated 5 November, 2020 is illegal, irrational, unfair and amounts to a breach of the provisions of the FOIA.
50. The Defendant to provide the Claimant with the documents listed at item 2 of the FOIA application dated 12 August, 2020 within twenty one (21) days of this order.

51. The Defendant to pay the Claimant's the costs of the action certified fit for Senior Counsel and 1 Junior Counsel to be assessed by the Registrar in default of agreement.

Margaret Y Mohammed
Judge